G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Residence Hall Agreements
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

The Regulatory Flexibility Addendum is not applicable.

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 University of Tennessee anticipates that this rule change will have no 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;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

(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;

None.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

(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

Matthew Scoggins Deputy General Counsel University of Tennessee 719 Andy Holt Tower Knoxville, TN 37996-0170 scoggins@tennessee.edu 865-974-3245

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

None.

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Sequence Number: 09-24-16
Rule ID(s): 6309
File Date: 9/16/16
Effective Date: 8/1/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Deputy General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

Revision Type (check all that apply):

___ Amendment
_X_ New
___ Repeal

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

Chapter Number	**Chapter Title**
1720-01-13	Student Housing
Rule Number	**Rule Title**
1720-01-13-.01	General
1720-01-13-.02	Residence Hall Agreements
1720-01-13-.03	Definitions

RULES
OF
THE UNIVERSITY OF TENNESSEE

CHAPTER 1720-01-13
STUDENT HOUSING

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1720-01-13-.01 General
1720-01-13-.02 Residence Hall Agreements
1720-01-13-.03 Definitions

1720-01-13-.01 GENERAL.

(1) The primary purpose of student housing at The University of Tennessee is to provide living accommodations and educational programming for undergraduate and graduate students enrolled at such campuses.

(2) Subject to the general supervision of the President, Chancellors are authorized to exercise complete executive authority over student housing, including, without limitation, development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. Policies, procedures, and agreements shall be developed in consultation with appropriate system-level administrators (e.g., Chief Financial Officer, Office of the General Counsel) and shall be consistent with this Chapter 1720-01-13.

(3) Chancellors are authorized to determine which categories of students (e.g., full-time; enrolled) are eligible to live in student housing and which categories of students are either required to live in student housing or are restricted from living in student housing, subject to federal and state law.

1720-01-13-.02 RESIDENCE HALL AGREEMENTS.

(1) A student who applies to reside in a residence hall shall, as a condition to residing in the residence hall, sign an agreement prepared by the University that establishes the terms and conditions of the student's occupancy of the residence hall.

(2) The agreement described in Section .02(1) should address the following subjects:

(a) Term of the agreement;
(b) Amounts, billing, payment, and refunds of housing fees, security; deposits, and damage and cleaning fees;
(c) Assignment and reassignment of rooms;
(d) Policies and procedures governing the use and safety of the residence hall and conduct within the residence hall, including, without limitation, policies governing the room within which the student is to reside (e.g., emergency procedures, animals, prohibited items, commercial solicitation);
(e) Rights of entry to rooms;
(f) Loss of or damage to the student's personal property;
(g) Loss of or damage to University property;
(h) Alterations, additions, or improvements to rooms;
(i) Animals;
(j) Prohibited activities;
(k) Visitation;
(l) Prohibition on assignment and subleasing by the student;

(m) Termination of the agreement by either the student or the University, and options for the student to appeal the termination; and

(n) Other reasonable and necessary subjects determined by the Chancellor.

(3) The agreement described in Section .02(1) may be in a paper or electronic format.

1720-01-13-.03 DEFINITIONS.

(1) The term "campus" means The University of Tennessee at Chattanooga; The University of Tennessee Health Science Center; The University of Tennessee, Knoxville; The University of Tennessee Space Institute; The University of Tennessee at Martin; and/or The University of Tennessee Institute of Agriculture.

(2) The term "Chancellor" means the person elected by the Board of Trustees for The University of Tennessee to serve as the Chancellor for a particular campus or institute, or the Chancellor's designee.

(3) The term "fraternity house(s)" means a building located on University-controlled property that is leased to an organized national or local college or university fraternity.

(4) The term "residence hall(s)" means student housing other than fraternity houses and sorority houses.

(5) The term "sorority house(s)" means a building located on University-controlled property that is leased to an organized national or local college or university sorority.

(6) The term "student" means a person admitted, enrolled or registered for study at the University of Tennessee, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree seeking students.

(7) The term "student housing" means University property primarily intended for use by University students as places to reside. Examples of student housing include, without limitation, residence halls, dormitories, apartments, hotels, fraternity houses, and sorority houses.

(8) The terms "University" and "University of Tennessee" mean the campuses, centers, and institutes of the University of Tennessee, and all their constituent parts, and the University of Tennessee system.

(9) The term "University property" means all land, buildings, houses, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University of Tennessee.

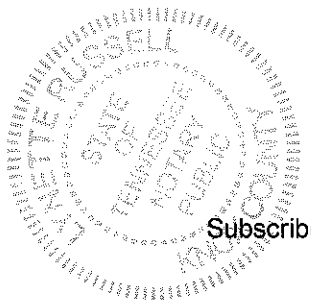
Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

*If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-01-13 Student Housing

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.



Date: 07/01/2016

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature: Nanette Russell

My commission expires on: 12-4-18

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

Herbert H. Slatery III
Attorney General and Reporter

7/27/2016
Date

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Differentiated Housing, Judicial Proceedings, Safety Regulations
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

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None.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
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(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

Matthew Scoggins Deputy General Counsel University of Tennessee 719 Andy Holt Tower Knoxville, TN 37996-0170 scoggins@tennessee.edu 865-974-3245

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

None.

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Sequence Number: 09-20-16
Rule ID(s): 6305
File Date: 9/16/16
Effective Date: 8/1/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Deputy General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

Revision Type (check all that apply):

___ Amendment
___ 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**
1720-05-04	Student Housing Regulations
Rule Number	**Rule Title**
1720-05-04-.01	Housing Requirement
1720-05-04-.02	Classification (For Housing Purposes Only)
1720-05-04-.03	Types of Differentiated Housing
1720-05-04-.04	Separate Accommodations By Sex
1720-05-04-.05	Judicial Proceedings
1720-05-04-.06	Room Painting
1720-05-04-.07	Period of Occupancy
1720-05-04-.08	Residence Hall Safety Regulations
1720-05-04-.09	Termination of Housing Contract
1720-05-04-.10	Pregnancy
1720-05-04-.11	Repealed

RULES
OF
THE UNIVERSITY OF TENNESSEE AT MARTIN

CHAPTER 1720-5-4
STUDENT HOUSING REGULATIONS

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1720-5-4-.01 Housing Requirement
1720-5-4-.02 Classification (For Housing Purposes Only)
1720-5-4-.03 Types of Differentiated Housing
1720-5-4-.04 Separate Accommodations By Sex
1720-5-4-.05 Judicial Proceedings
1720-5-4-.06 Room Painting
1720-5-4-.07 Period of Occupancy
1720-5-4-.08 Residence Hall Safety Regulations
1720-5-4-.09 Termination of Housing Contract
1720-5-4-.10 Pregnancy
1720-5-4-.11 Repealed

1720-5-4-.01 HOUSING REQUIREMENT. In view of the educational advantages and academic needs on campus and the desire to provide campus housing at a minimum cost to students, The University of Tennessee at Martin requires all single freshmen and sophomores, except those living with their parents, to live on campus.

Authority: *T.C.A. §49-9-209(e).* ***Administrative History:*** *Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed August 22, 1980; effective December 1, 1980. Repeal and new rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*

1720-5-4-.02 CLASSIFICATION (FOR HOUSING PURPOSES ONLY). For housing policy purposes (but not for academic classification purposes), a freshman is defined as a student with less than two completed semesters of work (fewer than 30 hours), a sophomore as one with two but less than four semesters (fewer than 60 hours), a junior as one with four but less than six semesters, and a senior as one with six or more semesters completed. A graduate student is a student taking course work beyond the bachelor degree level. Summer semester work may be counted in computing the number of semesters.

Authority: *§49-9-209(e).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*

1720-5-4-.03 TYPES OF DIFFERENTIATED HOUSING.

Three types of on campus housing are available for single students.

(a) TYPE I: No Visitation. Available to all single students, with preference to freshmen, followed by sophomores, juniors, and seniors. Quiet hours are enforced between 8:00 p.m. and 8:00 a.m. Sunday through Thursday and from 12:00 a.m. until 8:00 a.m. Friday and Saturday. During examination week, quiet hours are in effect 24 hours daily. Hall clerks are on duty 24 hours daily. Resident Assistants on each floor provide counseling and aid in maintaining order. Emergency message service is available at the central desk.

(b) TYPE II: Limited Visitation. Available to all single students, with preference to freshmen, followed by sophomores, juniors and seniors. Quiet hours are enforced between 8:00 p.m. and 8:00 a.m. Sunday through Thursday and from 12:00 a.m. until 8:00 a.m. Friday and Saturday. During examination weeks, quiet hours are in effect 24 hours daily. Sunday through Thursday, visitation is permitted between 12:00 p.m. and 12:00 a.m. Friday and Saturday visitation is between 12:00 p.m. and 2:00 a.m. Hall clerks are on duty 24 hours daily. Resident Assistants on each floor provide counseling and aid in maintaining order. Emergency message service is available at the central desk.

(Rule 1720-5-4-.03, continued)

(c) TYPE III: Available to all single students living in apartments. Open visitation 24 hours daily. Minimal supervision and regulations. Students must conform to all Student Handbook policies.

Authority: *§49-9-209(c).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*

1720-5-4-.04 SEPARATE ACCOMMODATIONS BY SEX. Co-educational housing of single students in the same suites, rooms or apartments is not permitted at UTM.

Authority: *§49-9-209(c).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*

1720-5-4-.05 JUDICIAL PROCEEDINGS. Standards of conduct expected of students are published in the Student Handbook, and specific regulations pertaining to residence halls are posted on bulletin boards or announced in hall meetings. Students who are accused of violations may have their cases handled in either of two ways:

(1) Administratively by the Hall Director or Student Affairs staff; or

(2) By the student court.

After hearing a case, a judgment of guilt or innocence is made and a penalty is assessed where appropriate. The penalties that may be assessed are loss of privilege, disciplinary warning, disciplinary probation, and suspension. In addition, these penalties may include dismissal from the residence hall or apartment. The student has the option to appeal to the Disciplinary Hearing Board or the University Council.

Authority: *§49-9-209(c).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*

1720-5-4-.06 ROOM PAINTING. Interested residents should visit the Housing Facilities Office and discuss room painting with the Paint Supervisor.

Authority: *§49-9-209(c).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*

1720-5-4-.07 PERIOD OF OCCUPANCY. Students having assignments may occupy their rooms on the date specified by the Office of Housing. Normally the dates begin the day preceding registration period and end on the last day of the final examination period, except for certain university holidays such as Thanksgiving and Easter. If a student fails to occupy the assigned room by the date specified without giving the Office of Housing prior notification of delayed arrival, the room may be reassigned to another student. Delayed arrival does not relieve the student of the responsibility for accepting available accommodation.

(1) Soliciting is not permitted in the non-public areas of the residence halls. It may be permitted in the public areas by registered student organizations depending on space, circumstances and provisions of the Student Handbook.

(2) Windows and Screens: Window screens must not be unfastened or removed. In addition, the following rules also apply:

(a) Food may not be stored between windows and screens or outside of the windows at anytime.

(b) Displays in windows which are deemed inappropriate by the hall head staff and not removed by the resident(s), will be removed by the staff and the resident(s) billed for this service.

(Rule 1720-5-4-.07, continued)

(c) Under no circumstances will the throwing of objects from any windows in the residence halls be tolerated. Such conduct poses a danger to the health and safety of other residents. Residents assigned to a room from which an object is thrown will be subject to administrative eviction from the university residence halls in accordance with the terms and conditions of the Housing Contract.

(3) Business from Residents' Rooms: Residents are not permitted to carry on any organized business for remunerative purposes from their apartments or rooms, inscribe or affix any sign, object, advertisement, or notice on any part of the inside or outside of the building or premises, or use their room phone numbers for business purposes.

(4) Open House and Visitation: At no time may a member of the opposite sex be in a non-public area unless the guest is in compliance with the open house or visitation policies of that unit. Resident Assistants are able to define these areas specifically for the hall, including but not limited to corridor of a living unit, resident's room, etc.

(5) Guests: Residents may have overnight guests of the same sex only; it is the host's responsibility to arrange for sleeping facilities, including linens, permission from another roommate for use of his/her bed, etc. Unless extraordinary arrangements have been made with the Hall Director or Assistant Hall Director, no keys will be issued to guests, and no resident may have a guest in the hall when the resident will not be present to act as his/her host.

(a) Guests are discouraged during weekday nights and during the last week of each semester when final exams are being given. The maximum length of any visit is 3 days and 3 nights, with extensions granted only by the Hall Director or Assistant Hall Director.

(b) University officials can require guests to produce proof that they are legitimate guests. Guests must complete a Guest Registration Card available at the main desk of each hall. The information on this card may aid in contacting the guest and/or his/her designee should the need arise. The guest's copy of the card will also serve as an identification card during his/her stay on campus.

(c) All guests are governed by university and residence hall rules and regulations. For a violation of rules by an off-campus guest, the host is responsible for any damages caused by the guest.

(d) No individual will be permitted to sleep in the main or floor lounges of university residence halls. Night clerks and hall staff will ask such persons to leave the hall or to return to their assigned rooms. If a non-resident does not comply with the request to leave, Campus Security will be called to remove them.

(6) Pets: For health reasons, pets are not permitted in the halls. Cats, dogs and other pets present a multitude of problems in a residence hall and are not permitted on the premises. (The only exceptions to this policy are (1) guide dogs accompanying blind persons and (2) fish which live completely submerged in water.)

(7) Attachments: Residents should not install any of the following in their rooms:

(a) Locks;

(b) Decals or transfer pictures;

(c) Outside antenna for radio or television;

(Rule 1720-5-4-.07, continued)

(d) Additional electrical wiring;

(e) Attachments to the telephone;

(f) Shades, blinds, awnings or window guards;

(g) Air-conditioning or heating units.

(8) Noise Level: Residents are expected to show consideration for others at all times and should avoid excessive noise. They are requested to refrain from: unnecessary noise; congregating in the hall, bath, or elevator areas; loud talking or laughing; and loud playing of electronic equipment. For obvious (audible) reasons, musical instruments may be played only in areas provided for this purpose. Abuse of these standards may result in the instrument or appliance being stored until it can be removed from the campus. Radios, stereos or other electronic equipment should not be placed in or near windows, as the noise may distract others whose windows may be open.

Beyond this, residence hall associations may establish specific quiet hours within their respective halls.

(9) Furniture: All university property is inventoried according to location and is not to be moved or dismantled except with written permission of the Hall Director. Removal of furniture from its assigned location, except with permission, is grounds for disciplinary action. Residents will also be charged for any furniture or facilities assigned to their rooms and found missing at the time of checkout.

(10) Water Furniture: Water furniture, including beds and chairs, are not permitted in residents' rooms.

(11) Bicycles: Racks are provided for bikes in front of each hall. Off-street parking is provided for motorized bikes in designated areas. Motorized bikes are not allowed inside residence halls. Although non-motorized bikes may be kept in residents' rooms, they are not to be left unattended, ridden, or chained in common areas of the halls such as hallways, stairwells, lobbies, study rooms, etc. Bikes found in such areas will be removed at the owner's expense, stored for a short time, and then disposed of. (Bikes may not be stored in luggage or other storage rooms due to lack of space.)

(12) Stairwells: Under no circumstances will the dropping of objects or fireworks down stairwells be tolerated. Such conduct poses obvious danger to the health and safety of other residents. Persons involved in such actions will be subject to eviction from university residence halls, in accordance with the terms and conditions of the Housing contract.

(13) The University Of Tennessee Reserves The Right To Make Other Policies From Time To Time Deemed Necessary And Appropriate For The Safety And Cleanliness Of The Premises, And For Securing The Comfort And Convenience Of All Residents.

Authority: §49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule file November 10, 2005; effective March 30, 2006.

1720-5-4-.08 RESIDENCE HALL SAFETY REGULATIONS.

(1) Flammable Items: Items which are flammable, such as fuel, etc., may not be stored in residents' rooms.

(Rule 1720-5-4-.08, continued)

(2) Open Flames: Items which require an open flame to operate or which produce heat (i.e., Bunsen burners, lighted candles, alcohol burners) are not allowed in residents' rooms. Candles must have the wicks removed and may be used for decorative purposes.

(3) Decorations: Decorative items, such as fishnets, parachutes, and other such items which are flammable are not permitted in residents' rooms, unless they have been fireproofed. Only Underwriters' Laboratory (U.L.) approved lights may be used to decorate rooms.

(4) Cooking: Hall kitchens and other facilities are provided for residents to use for cooking. Cooking with open coil appliances is not permitted in student rooms.

(5) Electrical Appliances: In residence halls, U.L. approved microwaves, George Forman type grills, closed coil only popcorn poppers and coffee makers may be in student rooms.

(6) Fires And Fire Drills: Fire evacuation plans are posted in each resident's room. A resident will be subject to disciplinary action for tampering with or activating fire alarm or control equipment except in case of a fire or for failure to evacuate the building during an evacuation and safety drill. A safety exit drill will be conducted in each residence hall once per month in compliance with state law. A resident who sees or suspects a fire should immediately notify a staff member who will activate the fire alarm system if necessary.

(7) Fire Lanes: Several halls have nearby emergency lanes which are strictly reserved for use by emergency vehicles only. Unauthorized vehicles parked in these areas will be towed away by Public Safety at the owner's risk and expense.

(8) Safety Equipment: The University of Tennessee at Martin, through the Office of Housing, hereby advises all students that the University will not tolerate the irresponsible behavior of persons whose actions jeopardize the safety and welfare of others. Tampering with, vandalizing, or otherwise abusing elevator, fire, or safety equipment in the university residence halls will constitute reason for eviction from the residence halls and possible suspension from The University of Tennessee at Martin.

Authority: *§49-9-209(e).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*

1720-5-4-.09 TERMINATION OF HOUSING CONTRACT. When considered in the best interest of the university, a resident can be asked to move from the hall. An appeal can be made by the student through the established administrative and judicial procedures.

Authority: *§49-9-209(e).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed November 10, 2005; effective March 30, 2006.*

1720-5-4-.10 PREGNANCY. UTM Housing Office policies do not permit assignment of single student rooms to pregnant students during the third trimester of pregnancy. This policy does not prevent a pregnant woman from enrolling in the university provided off campus housing and medical arrangements can be made by the enrolling student and her family. The primary concern of this university policy is that the prospective mother be in an environment where the necessary service and care be provided for her and her baby. Alternative housing will be offered. Refund of the customary portion of rent paid would be made.

Authority: *§49-9-209(e).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Repeal and new rule filed November 10, 10, 2005; effective March 30, 2006.*

1720-5-4-.11 REPEALED.

~~(Rule 1720-5-4-.08, continued)~~

~~***Authority:*** *§49-9-209(e).* ~~***Administrative History:***~~ *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed January 13, 1999; effective May 31, 1999. Repeal filed November 10, 2005; effective March 30, 2006.*~~

The University of Tennessee at Martin
Chapter 1720-05-04
Student Housing Regulations

Repeal

Chapter 1720-05-04 Student Housing Regulations is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

*If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	**Aye**	**No**	**Abstain**	**Absent**	**Signature (if required)**
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-05-04 Student Housing Regulations

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature:

My commission expires on: 12-4-18

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

Herbert H. Slatery III
Attorney General and Reporter

7/27/2016
Date

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Safety Inspections, Violations, Housing Contracts
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

The Regulatory Flexibility Addendum is not applicable.

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 University of Tennessee anticipates that this rule change will have no 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;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

(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;

None.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

(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

Matthew Scoggins
Deputy General Counsel
University of Tennessee
719 Andy Holt Tower
Knoxville, TN 37996-0170
scoggins@tennessee.edu
865-974-3245

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

None.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 09-21-16
Rule ID(s): 6306
File Date: 9/16/16
Effective Date: 8/1/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Deputy General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

Revision Type (check all that apply):

___ Amendment
___ 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**
1720-03-06	Student Housing Regulations
Rule Number	**Rule Title**
1720-03-06-.01	General Rules and Regulations
1720-03-06-.02	Safety Inspection
1720-03-06-.03	Violations
1720-03-06-.04	Housing Contracts

RULES
OF
THE UNIVERSITY OF TENNESSEE, HEALTH SCIENCE CENTER

CHAPTER 1720-3-6
STUDENT HOUSING REGULATIONS

TABLE OF CONTENTS

1720-3-6-.01	General Rules and Regulations	1720-3-6-.03	Violations
1720-3-6-.02	Safety Inspection	1720-3-6-.04	Housing Contracts

1720-3-6-.01 GENERAL RULES AND REGULATIONS.

(1) Room Damages – Student Housing recognizes the residents' desire to personalize their room with items such as pictures, lamps, etc. When the use or hanging of these items damages the walls, floors, ceilings or furnishings of a room or apartment, charges for repair or replacement will be the responsibility of the resident.

(2) Possession of alcohol and drugs in residence halls is prohibited.

(3) Possession of explosive or firearms in residence halls is prohibited.

(4) Pets are prohibited in the residence halls and on the premises. The only exception to this policy is trained guide dogs accompanying individuals with visual impairment.

(5) Cooking in the residence halls is allowed in designated kitchen areas. Appliances approved for use in student rooms are: Electric coffeepots, coffee warmer, electric hot pots and microwave ovens. All other appliances are prohibited. No appliances with an open flame or exposed heating element are allowed.

Authority: *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64.* ***Administrative History:*** *Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.*

1720-3-6-.02 SAFETY INSPECTION.

(1) Fire drills are conducted a minimum on 4 times each year. All residents are required to participate. Persons in the hall who fail to exit the building when a fire alarm sounds, shall be subject to disciplinary action.

(2) Safety inspections are conducted monthly to check smoke detectors and check for other fire or safety violations. A notice of the scheduled inspection will be posted in visible areas of the residence halls 24 hours before the scheduled inspection. Residents violating safety rules and regulations are subject to disciplinary action.

(3) Smoke Detectors have been installed in each residence hall room according to Tennessee Fire Code. These detectors are placed in the room to alert the residents to the presence of smoke. UT, Health Science Center staff members inspect the smoke detectors monthly to assure that they are operating properly. Removal or tampering with smoke detectors or other fire safety equipment is prohibited.

Authority: *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64.* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.*

(Rule 1720-3-6-.02, continued)

1720-3-6-.03 VIOLATIONS. Any violation of these regulations is punishable by those penalties set forth in the Student Rights and Responsibilities section of the UT Health Science Center Student Handbook.

Authority: *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807 Chapter 64.* ***Administrative History:*** *New rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995.*

1720-3-6-.04 HOUSING CONTRACT.

(1) The Housing Acceptance Agreement Form (Housing Contract) is a binding contract. Signing of the agreement constitutes a legal contract between The University of Tennessee, Health Science Center and the resident to fulfill the terms of the contract.

(2) Contract Period: The Housing Acceptance Agreement Form, unless otherwise stated on the agreement, is for the full academic year from July 1 through June 30.

(3) Release from Contract: Release from the contract will be granted for any of the following reasons. Marriage during a term, end of term, university assignment to an out of town rotation, withdrawal or suspension. Residents are required to submit a notice of cancellation to the Office of Student Housing thirty (30) days before the date they plan to cancel the contract. Providing the request for release meets the terms of the contract residents will be held responsible for 30 days rent from the date cancellation notice is received.

(a) New assignments – A contract may be cancelled with no penalty providing the Office of Student Housing is notified in writing by the cancellation date shown on the contract. A contract cancelled after the contract cancellation date through the first day of registration will be accepted providing the student has not checked in the residence hall. This cancellation will result in forfeiture of the $50.00 advance rent deposit.

(b) Current residents/End of term – A resident may cancel the upcoming portions of a contract by submitting a written notice of cancellation to the office of Student Housing 30 days before the end of any term. A resident who fails to check out at the end of the term may be held responsible for rent for the next term.

(c) Assignment to out-of-town rotation – A resident who receives an out-of-town assignment will be released by submitting a 30 day notice of cancellation.

(d) Marriage during Contract – A resident will be released with 30 day notice and proof of marriage.

(e) Withdrawal, Suspension or Dismissal – A resident who withdraws from the university or is suspended or dismissed from the University is expected to vacate the residence halls within 24 hours of completing university withdrawal or official notification of suspension or dismissal.

Authority: *T.C.A. §4-9-209(c).* ***Administrative History:*** *Original rule filed August 31, 1995; effective December 30, 1995. Amendment filed November 17, 2000; effective March 30, 2001.*

The University of Tennessee, Health Science Center
Chapter 1720-03-06
Student Housing Regulations

Repeal

Chapter 1720-03-06 Student Housing Regulations is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

*If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	**Aye**	**No**	**Abstain**	**Absent**	**Signature (if required)**
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-03-06 Student Housing Regulations

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature:

My commission expires on: 12-4-18

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

Herbert H. Slatery III
Attorney General and Reporter
8/4/2016
Date

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Residence Requirements, Contractual Arrangements, Room Changes
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

The Regulatory Flexibility Addendum is not applicable.

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 University of Tennessee anticipates that this rule change will have no 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;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

(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;

None.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

(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

Matthew Scoggins Deputy General Counsel University of Tennessee 719 Andy Holt Tower Knoxville, TN 37996-0170 scoggins@tennessee.edu 865-974-3245

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

None.

Department of State
Division of Publications
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Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 09-22-16
Rule ID(s): 6307
File Date: 9/16/16
Effective Date: 8/1/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Deputy General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

Revision Type (check all that apply):

___ Amendment
___ 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**
1720-02-02	Student Housing Regulations
Rule Number	**Rule Title**
1720-02-02-.01	Residence Requirements
1720-02-02-.02	Differentiated Housing
1720-02-02-.03	Contractual Arrangements
1720-02-02-.04	Damage
1720-02-02-.05	Room Changes
1720-02-02-.06	Check Out
1720-02-02-.07	Inspection and Search Policy
1720-02-02-.08	Residence Hall Regulations

RULES
OF
THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA

CHAPTER 1720-2-2
STUDENT HOUSING REGULATIONS

TABLE OF CONTENTS

1720-2-2-.01	Residence Requirements	1720-2-2-.05	Room Changes
1720-2-2-.02	Differentiated Housing	1720-2-2-.06	Check-Out
1720-2-2-.03	Contractual Arrangements	1720-2-2-.07	Inspection and Search Policy
1720-2-2-.04	Damage	1720-2-2-.08	Residence Hall Regulations

1720-2-2-.01 RESIDENCE REQUIREMENTS.

(1) Single out-of-town students attending the University are expected to live in University housing when space is available unless they commute from their homes in nearby towns.

(2) They may not live off-campus when residence hall space is available without permission from the Housing Office.

Authority: *TCA § 49-9-209(e).* ***Administrative History:*** *Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.*

1720-2-2-.02 DIFFERENTIATED HOUSING.

(1) The concept of Differentiated Housing at The University of Tennessee at Chattanooga campus offers students, with parental involvement, the choice of the housing facility and living atmosphere in which he or she will live. The plans available are:

(a) TYPE A – Visitation privileges are allowed in the living-dining area from 12:00 noon until 12:00 midnight.

(b) TYPE B – This plan involves minimal rules, regulations, and supervision. This option is available to upper class students only.

Authority: *TCA § 49-9-209(e).* ***Administrative History:*** *Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed June 19, 2006; effective October 27, 2006.*

1720-2-2-.03 CONTRACTUAL ARRANGEMENTS.

Contractual Arrangements. Each resident student signs an individual contract with the University for the premises he/she will occupy. This agreement covers occupancy for the entire academic year unless specifically indicated otherwise on the contract itself. Any student who for any reason wishes to alter the terms of his/her contract, must apply in writing to the University Housing Office at least thirty days prior to the anticipated change. If the contract is modified, notification will be sent in writing to all parties concerned prior to the effective date of action. Unless written exception is granted by the University, he/she is liable for the full extent of the original statement.

Authority: *TCA § 49-9-209(e).* ***Administrative History:*** *Original rule filed September 15, 1976; effective October 15, 1976. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.*

1720-2-2-.04 DAMAGE.

(1) The student is responsible for the condition and proper care of the accommodations assigned and shall reimburse the University for all damages done within or to said accommodations in which he/she is housed, for all damages to Resident Hall non public areas, and all damage to, or loss of University fixtures, furnishings, or property furnished under the contract. Charges for damages and/or necessary cleaning will be assessed against the student, or students, by the University and must be paid promptly. Failure to pay assessment will result in a hold on a student's registration, graduation and/or transcript.

(2) Non-public areas refer to the studies, lounges and restroom facilities, hallways and other areas of a floor of the residence hall which are provided primarily for the use of students having accommodations on that floor.

Authority: *TCA § 49-9-209(e).* ***Administrative History:*** *Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed July 9 1983; effective October 14, 1983. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.*

1720-2-2-.05 ROOM CHANGES.

(1) The University expects students to continue residency in the room to which they are assigned. However, it realizes that changes are sometimes mutually beneficial.

(2) Through regularly scheduled procedures, room changes may be made. With the prior written approval of the Resident Director and the Housing Office one change that is mutually agreeable may be made without charge during the semester. After the first charge, a $5.00 fee will be assessed any time a student is allowed to move. Failure to obtain the written prior approval of both the Resident Director and the Housing Office will result in a minimum $5.00 assessment for administrative costs and also could result in the imposition of disciplinary sanctions.

Authority: *TCA § 49-9-209(e).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December30,1995. Amendment filed June 19, 2006; effective October 27, 2006.*

1720-2-2-.06 CHECK OUT. Check Out. When a student is assigned specific accommodations, the University assumes occupancy by that student until notified otherwise. When vacating the premises, either for another on-campus facility or to leave University housing it is the occupant's responsibility to check out in person with a staff member of the residence hall. At that time, an evaluation of the facility is made in the occupant's presence and a report is completed on deficiencies or damages for which the student is responsible. Failure to check out in the prescribed manner will result in the occupant's being held liable for any or all deficiencies or damages found, as well as for the cost to replace keys, locks or other such items that affect the appearance or security of the unit. He/she will also be assessed administrative costs incurred by this failure to check out.

Authority: *TCA § 49-9-209(e).* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.*

1720-2-2-.07 INSPECTION AND SEARCH POLICY.

(1) Entry by University authorities into occupied rooms in residence halls will be divided into three categories: inspection, search, and emergency. Inspection is defined as the entry into an occupied room or apartment by University authorities in order to ascertain the health and safety conditions in the areas, or to check the physical condition of the area, or to make repairs on facilities, or to perform cleaning and janitorial operations. Search is defined as the entry into an occupied room by on-campus authorities for the purpose of investigating suspected violations of campus regulations and/or city,

Rule 1720-2-2-.07, continued

state, or federal law. An emergency situation exists when the delay necessary to obtain search authorization constitutes a danger to persons, property, or the building itself.

(a) Inspection: Scheduled inspection by on-campus authorities with the exception of daily janitorial operations, shall be proceeded, if possible, by twenty-four hours notice to the residents.

(b) During the inspection, there will be no search of drawers or closets or personal belongings.

(c) Search: On-campus authorities will not enter a room for purposes of search except in compliance with state law or with the permission of the resident or the written permission of the Vice Chancellor for Student Development or his/her representative. University authorities shall have, if possible, the Resident Director of the hall or his/her designee accompany them on the search.

(d) For purposes of maintenance, and fire and safety evaluation, rooms will be inspected periodically by the University staff. Normally the resident assistant will be involved in this part of the program and will work out arrangements with the individual occupant beforehand.

Authority: TCA § 49-9-209(e). Administrative History: Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed June 19, 2006; effective October 27, 2006.

1720-2-2-.08 RESIDENCE HALL REGULATIONS.

(1) Telephone Services. Telephones have been installed in the rooms of all residence halls and apartments. Each phone may be reached directly from without the University as well as within it by merely dialing its assigned number. There is no additional charge for local service. However, long distance calls may be made or accepted collect only by those persons who have an official charge card number from the UTC Telephone Services, or a private company or the Bell Telephone Company. No calls may be charged to the telephone number that is listed on the telephone instrument. No collect calls will be accepted and extensions are prohibited.

(2) Safety Prohibitions.

(a) Percolators, hot plates, immersion heaters, and popcorn poppers are prohibited in dorm rooms.

(b) No candles, open flames, or incense burning is allowed.

(c) Light bulbs should not be touching or near clothing or other flammables.

(d) Extension cords must be underwriter laboratory approved or equal. Covering must be in good condition. Plugs and cords must be the same size or larger than appliance wire and not hidden under rugs, trash, paper, clothing, or books, nor near heat sources.

(e) Storage of gasoline, other fuels or vehicles containing them is prohibited.

(f) Hot plates or other cooking equipment may not be used in dormitory rooms because of fire regulations and sanitary reasons.

(g) Cooking in individual rooms is prohibited.

(3) Fire Drills. Each dormitory must have at least one fire drill per month. These are conducted so that each resident can vacate the building quickly and safely in case of emergency. The drills are planned and supervised by the Housing Office, the Security Office, and the Resident Directors. Anytime that

(Rule 1720-2-2-.08, continued)

the fire alarm is sounded in a University building every occupant of the building is required to evacuate immediately. The University police will assist with the evacuation to see that the building is totally vacated and no one will be allowed to re-enter prior to the expressed consent of the security officers on duty. Reports are filed with the offices concerned.

(4) Guests. Residents may have overnight guests of the same sex only, if prior arrangements have been made with roommate(s). The maximum length of any visit is three days and three nights. All guests are governed by the University and residence hall regulations, and it is the host's responsibility to make guests aware of this. In cases where the guest is in violation of University regulations, disciplinary action may be brought against the host.

(5) Alcohol and Drugs. The possession or use of alcoholic beverages, other illegal drugs or intoxicants of any kind is prohibited on campus.

(6) Pets. Only fish tanks no larger than 10 gallons are allowed. Otherwise, no animals are permitted.

(7) Weapons or Explosives, Fireworks. The possession of firearms, hunting knives, fireworks or other type of weapons and explosives is not allowed in the residence halls or on the University property.

(8) Keys. Misuse or loss of them may jeopardize the safety of others and constitutes grounds for disciplinary action. There is a charge for lost keys and other security measures that must be taken due to the loss of such keys.

(9) Quiet Hours. If a student consistently violates Quiet Hours, he/she will be subject to disciplinary action.

Authority: *TCA § 49-9-209(e)* ***Administrative History:*** *Original rule filed May 27, 1986; effective August 12, 1986. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed June 19, 2006; effective October 27, 2006.*

The University of Tennessee at Chattanooga
Chapter 1720-02-02
Student Housing Regulations

Repeal

Chapter 1720-02-02 Student Housing Regulations is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

*If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	**Aye**	**No**	**Abstain**	**Absent**	**Signature (if required)**
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-02-02 Student Housing

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

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

Herbert H. Slatery III
Attorney General and Reporter

8/17/2016
Date

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Housing Regulations; Housing/Food Services General, Open House and Visitation Procedures, Termination of Housing Contract
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	August 1, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Student affairs and housing officials in the University of Tennessee System (UT) have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

The Regulatory Flexibility Addendum is not applicable.

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 University of Tennessee anticipates that this rule change will have no 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;

Student affairs and housing officials in The University of Tennessee System have worked together to develop a rule on student housing. The rule provides a uniform framework within which each UT campus will manage student housing, including development of policies, procedures, and agreements that apply to the lease, assignment, occupancy, pricing, safety, construction, maintenance, use, and visitation of student housing. The new rule will replace the current UT campus rules on student housing, which are being repealed in conjunction with the promulgation of the new rule.

(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;

None.

(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;

Students of the University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule.

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

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

Not significant.

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

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

Matthew Scoggins
Deputy General Counsel
University of Tennessee

(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

Matthew Scoggins Deputy General Counsel University of Tennessee 719 Andy Holt Tower Knoxville, TN 37996-0170 scoggins@tennessee.edu 865-974-3245

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

None.

Department of State
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Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 09-23-16
Rule ID(s): 6308
File Date: 9/16/16
Effective Date: 8/1/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §§ 4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission:	University of Tennessee
Division:	
Contact Person:	Matthew Scoggins, Deputy General Counsel
Address:	719 Andy Holt Tower, 1331 Circle Park, Knoxville, TN
Zip:	37996-0170
Phone:	865-974-3245
Email:	scoggins@tennessee.edu

Revision Type (check all that apply):

___ Amendment
___ 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**
1720-04-04	Student Housing Regulations
Rule Number	**Rule Title**
1720-04-04-.01	Housing/Food Services General
1720-04-04-.02	Differentiated Housing
1720-04-04-.03	Open House and Visitation Procedures
1720-04-04-.04	Residence Hall Regulations
1720-04-04-.05	Residence Hall Safety Regulations
1720-04-04-.06	Termination of Housing Contract

~~RULES~~
~~OF~~
~~THE UNIVERSITY OF TENNESSEE, KNOXVILLE~~

~~CHAPTER 1720-4-4~~
~~STUDENT HOUSING REGULATIONS~~

~~TABLE OF CONTENTS~~

~~1720-4-4-.01 Housing/Food Services General~~
~~1720-4-4-.02 Differentiated Housing~~
~~1720-4-4-.03 Open House and Visitation Procedures~~
~~1720-4-4-.04 Residence Hall Regulations~~
~~1720-4-4-.05 Residence Hall Safety Regulations~~
~~1720-4-4-.06 Termination of Housing Contract~~

~~1720-4-4-.01 HOUSING/FOOD SERVICES - GENERAL.~~

~~(1) Freshman Students: All single freshmen students, who do not commute from the home of their parent or legal guardian, are required to live in University Residence Halls.~~

~~***Authority:*** *T.C.A. §49-9-209(e).* ~~***Administrative History:***~~ *~~New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii)-(i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and~~ new rule filed October 30, 2007; effective February 28, 2008.*

~~1720-4-4-.02 DIFFERENTIATED HOUSING.~~

~~(1) The University maintains a differentiated housing concept begun Fall Quarter, 1971. Differentiated housing permits the student to select the type of facility in which he or she will live, within the University's capability to offer such living arrangements. Students are encouraged to give considerable thought and attention to their housing selection.~~

~~***Authority:*** *T.C.A. §49-9-209(e).* ~~***Administrative History:***~~ *~~New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii)-(i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.~~*

~~1720-4-4-.03 OPEN HOUSE AND VISITATION PROCEDURES.~~

~~(1) Hours of authorized visitation periods will be posted in the lobby of each residence hall.~~

~~(2) All guests of floor members participating in open houses/visitation periods must be escorted by an eligible host (a member of the participating floor) at all times in non-public (living) areas (i.e., rooms, floor corridors, floor study lounges, elevators and stairwells, etc. Resident Assistants are able to define these specifically for the hall). Guests of the opposite sex must stay on floors participating in open houses/visitation periods.~~

~~(3) Guests of the opposite sex must use the restroom provided in the hall main lobby area.~~

~~(4) Any resident who violates the policy shall be subject to disciplinary action and be asked to:~~

~~(a) Leave, if he or she is not a member of the floor.~~

~~(b) Escort his or her guest out and not participate in the remainder of the open house/visitation period if he or she is a resident of the floor.~~

(Rule 1720-4-4-.03, continued)

1. In the event of a floor violation, the Hall Director or Assistant Hall Director on duty may terminate the open house/visitation period at his/her discretion.

2. Hosts and their guests are responsible for the particulars of this policy and will be personally charged when violations occur. Hosts are responsible for the conduct of their guests and may be personally charged for a guests's violations.

Authority: *T.C.A. §49-9-209(e).* ***Administrative History:*** *New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.*

1720-4-4-.04 RESIDENCE HALL REGULATIONS.

(1) Soliciting: For the residents' protection against fraudulent sales and annoyance, soliciting is not permitted in the halls. Permission for any soliciting must be obtained through the Dean of Students.

(2) Windows and Screens: Window screens may not be unfastened or removed.

(3) Business from Resident's Rooms: Residents are not permitted to carry on any organized business for remunerative purposes from their apartments or rooms; inscribe or affix any sign, object, advertisement, or notice on any part of the inside or outside of the building or premises; or use their room phone numbers for business purposes.

(4) Pets: Pets are not permitted in the halls or on the premises. The only exceptions to this policy are fish, guide dogs accompanying sight-impaired persons or guide dogs in training.

(5) Attachments: Residents should not modify the room without prior, written approval of the Hall Director.

(6) Furniture and Fixtures: All University property is inventoried according to location and is not to be moved or dismantled except with written permission of the Hall Director.

(7) Water furniture: Water furniture, including beds and chairs, are not permitted in residents' rooms.

(8) Keys: Residence hall keys are the sole property of The University of Tennessee and may not be duplicated under any circumstances.

(9) Unauthorized Moving: Unauthorized room and hall changes are prohibited.

Authority: *T.C.A. §49-9-209(e).* ***Administrative History:*** *New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii) (i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.*

1720-4-4-.05 RESIDENCE HALL SAFETY REGULATIONS.

(1) Flammable Items: Items which are flammable, such as fuel, etc., may not be stored in residents' rooms.

(2) Open Flames: Items which require an open flame to operate or which produce heat are not allowed in residents' rooms.

(Rule 1720-4-4-.05, continued)

(3) Decorations: Decorative items which are flammable are not permitted in residents' rooms, unless they have been fireproofed. Only Underwriters' Laboratory (UL) approved lights may be used to decorate a room.

(4) Cooking: Hall kitchens and other facilities are provided for residents to use for cooking. Cooking meals is not permitted in student rooms except in the apartment style residence halls. Snack preparation is limited to the use of approved cooking appliances.

(5) Cooking Appliances: Underwriters' Laboratories (UL) approved, closed coil or hot air popcorn poppers, sealed unit coffee makers, and thermostatically controlled hot pots may be kept in student rooms. A student may use a microwave in the Apartment Residence Hall provided the microwave is UL approved and does not exceed 600 watts and provided that student must have prior roommate approval; only one microwave is permitted per room. Other appliances, including slow cookers, electric frying pans, and open coil appliances (including, but not limited to, toasters, toaster ovens, and hot plates) are prohibited except in the apartment style residence halls where kitchens are equipped with fire extinguishers.

(6) Fire Safety: Fire evacuation plans are posted in each resident's room. Tampering with, vandalizing, or misuse of fire safety equipment is prohibited and constitutes reason for eviction from the residence hall and possible suspension or expulsion from the University. Fire safety equipment includes, but is not limited to, alarms, extinguishers, smoke detectors, door closures, alarmed doors, and sprinklers. A Safety Exit Drill will be conducted regularly in each residence hall in accordance with state law.

Failure to evacuate a building during such a Safety Exit Drill will be grounds for disciplinary action.

(7) Elevators: Tampering with, vandalism to, or other misuse of elevator equipment in the University residence halls is prohibited. Such action will constitute reason for disciplinary action, including eviction from the residence hall.

(8) Extension Cords and Multiple Plugs: An extension cord must be UL approved, 16 gauge, a polarized plug and a single outlet; it may not be placed under floor covering or furnishings and may not be secured by penetrating the insulation. Multiple outlets are prohibited; however, one UL approved 15 amp multiple outlet strip with a circuit breaker may be used in each room.

(9) Refrigerators: Refrigerators are prohibited in the residence halls except those provided by the Department of University Housing.

Authority: *T.C.A. §49-9-209(e).* ***Administrative History:*** *New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii)-(i).) Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Repeal and new rule filed October 30, 2007; effective February 28, 2008.*

1720-4-4-.06 TERMINATION OF HOUSING CONTRACT.

(1) The University may cancel a student's housing contract if the student fails to meet the full terms and conditions of his/her contract, or for violation of University or Residence Hall regulations.

(2) Hearings and/or appeals of disciplinary action are available through established University administrative and judicial procedures.

Authority: *T.C.A. §49-9-209(e).* ***Administrative History:*** *New rule filed May 27, 1986; effective August 12, 1986. (For history prior to August 12, 1986 see pages (iii)-(i).) Amendment filed October 18, 1989;*

(Rule 1720-4-4-.06, continued)

effective January 29, 1990. Amendment filed March 22, 1990; effective June 26, 1990. Amendment filed August 31, 1995; effective December 30, 1995. Amendment filed January 13, 1999; effective May 31, 1999. Repeal and new rule filed October 30, 2007; effective February 28, 2008.

The University of Tennessee, Knoxville
Chapter 1720-04-04
Student Housing Regulations

Repeal

Chapter 1720-04-04 Student Housing Regulations is repealed in its entirety.

Authority: T.C.A. § 49-9-209(e) and Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5, and Public Acts of Tennessee, 1807, Chapter 64.

*If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	**Aye**	**No**	**Abstain**	**Absent**	**Signature (if required)**
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Dr. Russ Deaton (non-voting)					
Charles C. Anderson, Jr.				X	
Shannon Brown	X				
George E. Cates	X				
Dr. Susan C. Davidson (non-voting)					
Spruell Driver, Jr.				X	
Dr. William E. Evans	X				
John N. Foy	X				
Crawford Gallimore	X				
Vicky B. Gregg				X	
Raja J. Jubran	X				
Brad A. Lampley	X				
James L. Murphy, III	X				
Sharon J. Miller Pryse	X				
Dr. Jefferson S. Rogers	X				
Rhedona Rose	X				
Miranda N. Rutan	X				
John Tickle	X				
Julia T. Wells	X				
Charles E. Wharton	X				
Tommy G. Whittaker	X				

University of Tennessee Rules
Chapter 1720-04-04 Student Housing Regulations

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on 06/23/2016, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 07/01/2016

Signature: [signature]

Name of Officer: Matthew Scoggins

Title of Officer: Deputy General Counsel

Subscribed and sworn to before me on: 7-1-16

Notary Pubiic Signature: Lynette Russell

My commission expires on: 12-4-18

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

Herbert H. Slatery III
Attorney General and Reporter
7/27/2016
Date

Department of State Use Only

Filed with the Department of State on: 9/16/16

Effective on: 8/1/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Air Pollution Control
SUBJECTS:	Control of Sulfur Dioxide Emissions; Nitrogen Oxides
STATUTORY AUTHORITY:	The new federal trading program is the Cross-State Air Pollution Rule ("CSAPR" or the "Transport Rule") which was originally published in 76 FR 48208 (August 8, 2011) with some later modifications. The Transport Rule supersedes former emissions allowance trading programs and establishes federal implementation plans (FIPs) for states. The federal trading program is designed to reduce regional transport of emissions that cause ozone pollution. Non-EGUs that were formerly allowed to participate in allowance trading related to ozone season emissions so that they could comply with a different federal requirement under 40 CFR § 51.121 (NOx SIP Call) are not allowed by EPA to participate in the new Transport Rule trading program.
EFFECTIVE DATES:	February 19, 2017 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking hearing rule modifies existing rules for electricity generating units (EGUs) and for large boilers and combustion turbines (non-EGUs) by making the following changes: 1. The rule repeals the state rules that implemented former federal emissions allowance trading programs for sulfur dioxide (S02) and nitrogen oxides (NOx). EPA ceased to administer these programs as of January 1, 2015 because a new federal trading program has been established. The

rules repealed are Rules 1200-03-14.04, 1200-03-27-.10, and 1200-03-27-.11.

2. Non-EGUs cannot participate in the new federal trading program. The new Rule 1200-03-27-.12 establishes a new compliance method similar to the former NOx trading program for non-EGUs based on an allocated budget of allowances and reporting. The limits will not require further emissions reduction measures by existing sources because Tennessee is currently well within the unchanged allowance budget.

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For Department of State Use Only

Sequence Number: 11-12-16
Rule ID(s): 0367-0368
File Date: 11/21/2016
Effective Date: 2/19/2017

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Travis Blake
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Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-03-14	Control of Sulfur Dioxide Emissions
Rule Number	**Rule Title**
1200-03-14-.04	CAIR So_2 Annual Trading Program

Chapter Number	**Chapter Title**
1200-03-27	Nitrogen Oxides
Rule Number	**Rule Title**
1200-03-27-.10	CAIR NO_X Annual Trading Program
1200-03-27-.11	CAIR NO_X Ozone Season Trading Program
1200-03-27-.12	NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines

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.

The following comments were received from the federal Environmental Protection Agency ("EPA") in a letter dated June 3, 2016.

Comment: The monitoring, recordation, and reporting of heat input is not addressed under subpart H of 40 CFR part 75. EPA therefore recommends that Tennessee also reference, at or near 1200-03-27-.12(11)(a) (which references subpart H of 40 CFR part 75, which covers the monitoring, recordation, and reporting of NOx mass emissions), all of 40 CFR part 75 to specifically cover the monitoring, recordation, and reporting of heat input.

Response: Subparagraph 1200-03-27-.12(11)(a) was revised to read as follows: "Except as otherwise allowed in subparagraph (b) of this paragraph, the owners and operators, and to the extent applicable, the Responsible Official, of an affected unit shall comply with the applicable monitoring, recordkeeping, and reporting requirements provided in 40 CFR part 75 for each control period."

Comment: The definition of "existing affected unit" at 1200-03-27-.12(1)(n) references Rule 1200-03-27-.11, which Tennessee is proposing to delete. EPA suggests Tennessee consider an alternative means to denote non-EGUs that received a CAIR allowance allocation (for instance, a table listing such units in 1200-03-27-.12, etc.).

Response: Subparagraph 1200-03-27-.12(1)(n) was revised to read as follows:

(n) "Existing affected unit" means the following units:

Packaging Corporation of America	Unit 17
Tate & Lyle, Loudon	Units 34 and 35
Resolute FP US, Inc.	Units 11 and 12
Eastman Chemical Company	Units 83-23 and 83-24; Units 253-25, Units 253-26, Units 253-27, Units 253-28, and Units 253-29; Units 325-30 and 325-31
The Valero Refining Company - Tennessee, LLC	Unit P049
TVA Cumberland	Startup Boilers A1 and A2*

* See TVA comments for additional information.

Comment: For the provision at 1200-03-27-.12(6)(c)2 regarding addressing the calculation of NO_X tons for the purpose of determining allowance allocations please clarify how heat input would be calculated for units that have four or more years of heat input data.

Response: Subparagraph 1200-03-27-.12(6)(c)2 was revised to read as follows:

(ii) The emission rates indicated in items (i)(I) through (III) of this part shall be converted to tons as follows:

(I) For units with four years of heat input data, the emission rate shall be multiplied by the average of the three highest years of heat input (of the most recent four-year period) as indicated in subparagraph (b) of this paragraph divided by 2,000, and rounded to the nearest whole number as appropriate.

(II) For units with less than four years of heat input data, the emission rate shall be multiplied by the unit's maximum design heat input, divided by 2,000, and rounded to the nearest whole number as appropriate.

Comment: EPA suggests that Tennessee consider changing the "compliance deadline" as defined at 1200-03-27-.12(1)(j) as November 30 to December 1, since December 1 is also the allowance transfer deadline for EGUs subject to the CSAPR NOx Ozone Season Trading Program.

Response: Subparagraph 1200-03-27-.12(1)(j) was revised to change the compliance deadline from November 30 to December 1.

Comment: The term "Responsible Official" is referenced throughout 1200-03-27-.12 but is not explicitly defined at 1200-03-27-.12(1). EPA recommends Tennessee define "responsible official" at rule 1200-03-27-.12 Definitions - Responsible official would appear to reference the designated representative as defined in EPA's regulations in part 97.

Response: 1200-03-27-.12(1) was amended to define "Responsible Official" as follows:

(x) "Responsible Official" has the same meaning as defined by Rule 1200-03-09-.02(11); however, a designated representative as defined by 40 CFR part 72, relative to actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder, including 40 CFR part 75, may also serve as the Responsible Official for any purposes under this rule.

Comment: The EPA suggests Tennessee clarify in the submission that these non-EGU sources will be required to continue compliance with the monitoring, recordkeeping and reporting requirements pursuant 40 CFR part 75 (40 CFR 51.121(i)(4)).

Response: This comment refers to the proposed technical demonstration for the 2015 ozone season. The demonstration was revised to add the following language: "These non-EGU sources are subject to the monitoring, recordkeeping and reporting requirements established by 40 CFR Part 75 (40 CFR §51.121(i)(4)) and will be required to continue compliance with these requirements."

The following comments were received from Tennessee Valley Authority ("TVA") in a letter dated June 15, 2016.

Comment: In the Rulemaking Notice, Tennessee requests comment on whether intrastate trading should be established to facilitate compliance of the non-EGU sources with the NO_X requirements. TVA generally supports emissions trading as a compliance option, since it should result in lower costs for all sources. However, it appears there will be more than sufficient allowances under the proposed rulemaking to meet the operating needs of all affected units, as well as a significant new unit set-aside amount that should meet the requirements for new units for the foreseeable future. Therefore, a Tennessee state NO_X trading program does not appear to be warranted at this time. TVA does support implementation of a future Tennessee state NO_X trading program for non-EGU sources if allocated allowances become insufficient for some sources.

Response: Tennessee has elected to take no action to add state-only trading provisions to the final rule.

Comment: Tennessee's proposed NO_X allocations for existing affected units do not include an allocation for TVA Cumberland startup boilers A1 and A2. These boilers do not serve a generator, are rated at 349.2 MMBtu/hr each, and are limited by permit to 30.6 tons of NOx emissions annually for both boilers. Accordingly, Tennessee should allocate 31 allowances annually to TVA for these boilers.

Response: Tennessee revised the final rule to list startup boilers A1 and A2 at Cumberland Fossil Plant as existing affected units. Tennessee also revised the allowance allocations to existing sources to allocate 31 tons of NO_X allowances to TVA for these boilers.

Comment: As proposed, the 1200-03-27-.12(1)(c) definition of an "Affected Unit" would make some units, which were not affected units under the NOx SIP Call, CAIR, or CSAPR, subject to the proposed rule. A prime example would be a CT [combustion turbine] with nameplate capacity less than 25 MWe that produces power for sale. We understand that it is not TDEC's intention to subject such small units to this rule. Accordingly, TVA proposes the following sentence be added to the definition of "Affected Unit".

Any unit that serves a generator that produces power for sale shall not be an affected unit.

Response: The final rule was revised to add the requested language.

Comment: TVA's Cumberland startup boilers A1 and A2 were not allocated CAIR NOX Ozone Season allowances. Under Comment 2, we are requesting that allowances be allocated to these boilers. Further, as proposed, the definition of an "Existing Affected Unit" in 1200-03-27-.12(1)(n) would automatically exclude TVA Cumberland startup boilers from being considered "existing affected units" since they were not allocated CAIR NOx Ozone Season allowances. These boilers were affected units under the NOx SIP Call and should be affected units under the proposed rule. They burn oil, do not serve a generator, and are rated at 349.2 MMBtu/hr each. Accordingly, TVA proposes that the definition of "Existing Affected Unit" should be edited as follows to account for non-EGU sources such as the Cumberland startup boilers that could have been allocated allowances but were excluded:

"Existing affected unit" means any affected unit for which CAIR NOX Ozone Season Allowances were allocated by the Technical Secretary or that qualified for allocations, pursuant to Rule 1200-03-27-.11.

Response: Tennessee modified the definition of "existing affected unit" to include the startup boilers at TVA Cumberland.

The following comments were received from Eastman Chemical Company in a letter dated June 15, 2016.

Comment: Eastman urges TDEC to request EPA to allow non-electric generating units (non-EGUs) into the Cross-State Air Pollution Rule (CSAPR) Trading Program and to thereafter modify the Tennessee SIP to take advantage of any such change.

EPA excluded non-EGU units from the current NO_X trading program under CSAPR. In its recent proposed rule to revise CSAPR, EPA solicited comment on whether or not EPA should permit states to allow non-EGUs back in this trading program. Eastman responded to that solicitation with the attached comments [letter dated January 21, 2016], which are incorporated here by reference:

> As stated, Eastman's nine boilers subject to the NO_X SIP Call have not been operating with surplus budgets caused by overestimation of baseline emissions. In fact, Eastman invested about $4 M in monitoring equipment and about $4 M in low-NOx burners in 2004/2005 to meet its allocation without purchasing any allowances. Later, when Eastman made the decision to convert five of our coal boilers to natural gas combustion, we assumed the approximately 1,000 tons of ozone season NOx reductions could have been sold under the trading program. When EPA subsequently decided to exclude non-

EGUs from trading, our excess credits were stranded despite Eastman's considerable investment aimed at program participation.

Response: On February 1, 2016, Tennessee submitted a comment letter to EPA regarding the Agency's proposed Cross-State Air Pollution Rule ("CSAPR") Update for the 2008 Ozone NAAQS. In that letter, Tennessee supported the option to allow non-EGU sources to participate in trading. We specifically noted that trading would provide non-EGUs with a better incentive to reduce emissions below their existing budgets. We also stated that any non-EGU trading should be minimally restrictive to maximize the incentive for non-EGUs to reduce emissions.

Tennessee continues to support the option to allow non-EGU participation in CSAPR. However, any final decision on whether to participate in non-EGU trading will depend on the specific requirements established by the final CSAPR Update.

The following comments were received on behalf of the Sierra Club of Tennessee in an e-mail dated June 15, 2016.

Comment: I oppose any provision for trading of NO_X allowances as listed in number (2) of the Rulemaking Notice. Trading of allowances could be open for abuses and will not generally reduce NO_X emissions. Trading is a waste of money and would be unfair to some people and/or companies. Department should consider bigger fines and penalties for those who emit NO_X over the limits allowed.

Response: Tennessee has elected to adopt this rule without adding state-only trading provisions.

Other Changes:

During the comment period, Tennessee found that one facility in the NO_X SIP Call technical demonstration was incorrectly listed under a previous name (Resolute FP, US, Inc. was listed as Bowater Newsprint – Calhoun Operations). Tables 1 and 2 of the technical demonstration were updated to correct the facility name. The technical demonstration was also updated to add the startup boilers at TVA's Cumberland Fossil Plant. These changes do not affect the conclusions of the technical demonstration – NO_X emissions during the 2015 ozone season were well below the emissions budget established by the NO_X SIP Call.

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 Division of Air Pollution Control anticipates that no small businesses will bear the cost of, or directly benefit from, these amended rules. None of the existing facilities subject to the amended rules are small businesses. Because this rule affects large emission sources in capital intensive industries, the Division believes that any new source subject to the amended rules would not be owned or operated by small businesses.

(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.

With respect to small businesses, the Division anticipates that there will be no 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.

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

The Division expects that the proposed rule will have no effect on small businesses and consumers because it changes the process but does not change the emissions budget.

(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.

The proposed rule is not projected to impact small business.

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

The proposed rule does not have a direct counterpart in the Code of Federal Regulations. This rule implements the requirements promulgated by EPA at 40 CFR § 51.121 (Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen or "NOx SIP Call") by replacing the CAIR NO_X Ozone Season Trading Program (40 CFR 96 Subparts AAAA through IIII), which EPA ceased to administer in 2015. The requirements of the proposed rule are similar to the CAIR NO_X Ozone Season Trading Program, except that there is no emission trading under the new 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.

The proposed rule is not projected to impact small business.

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 anticipates that these amended rules will not have a financial 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;

This rulemaking modifies existing rules for electricity generating units (EGUs) and for large boilers and combustion turbines (non-EGUs) by making the following changes:

1. This rulemaking repeals the state rules that implemented former federal emissions allowance trading programs for sulfur dioxide (SO_2) and nitrogen oxides (NOx). EPA ceased to administer these programs as of January 1, 2015 because a new federal trading program has been established. The rules repealed are Rules 1200-03-14.04, 1200-03-27-.10, and 1200-03-27-.11.

2. Non-EGUs cannot participate in the new federal trading program. The new proposed Rule 1200-03-27-.12 establishes a new compliance method similar to the former NOx trading program for non-EGUs based on an allocated budget of allowances and reporting. The limits will not require further emissions reduction measures by existing sources because Tennessee is currently well within the unchanged allowance budget.

(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 new federal trading program is the Cross-State Air Pollution Rule ("CSAPR" or the "Transport Rule") which was originally published in 76 FR 48208 (August 8, 2011) with some later modifications. The Transport Rule supersedes former emissions allowance trading programs and establishes federal implementation plans (FIPs) for states. The federal trading program is designed to reduce regional transport of emissions that cause ozone pollution.

Non-EGUs that were formerly allowed to participate in allowance trading related to ozone season emissions so that they could comply with a different federal requirement under 40 CFR § 51.121 (NOx SIP Call) are not allowed by EPA to participate in the new Transport Rule trading program.

(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;

Owners and operators of large boilers and combustion turbines that do not produce electricity for sale are most directly affected by this rule. Several persons submitted comments on these rules, but the Tennessee Air Pollution Control Board did not receive specific comments urging adoption or rejection of the rule.

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

The Air Pollution Control Board is not aware of any opinions that directly relate to the rulemaking.

(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;

No change in state and local government revenues and expenditures is expected to result from these amendments.

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

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

Lucian Geise
Senior Counsel for Legislative Affairs
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
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312 Rosa L. Parks Avenue, 2nd Floor
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Tennessee Air Pollution Control Board is not aware of any additional relevant information.

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 1200-03-14
Control of Sulfur Dioxide Emissions

Amendments

The Table of Contents for Chapter 1200-03-14 Control of Sulfur Dioxide Emissions is amended by deleting "Cair So_2 Annual Trading Program (40 Cfr 96)" from the title of 1200-03-14-.04 and substituting instead the word "Reserved."

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Rule 1200-03-14-.04 CAIR SO_2 Annual Trading Program is amended by deleting it in its entirety and substituting instead the following:

1200-03-14-.04 Reserved. ~~CAIR SO_2 Annual Trading Program (40 CFR 96)~~

~~(1) The provisions of 40 CFR Part 96 concerning the CAIR SO_2 Annual Trading Program are hereby adopted by reference with the following revisions:~~

~~(a) (Reserved)~~

~~(2) PART 96--CAIR SO_2 Annual Trading Program~~

~~Subpart AAA – CAIR SO_2 Trading Program General Provisions~~

~~96.201 Purpose.~~
~~96.202 Definitions.~~
~~96.203 Measurements, abbreviations, and acronyms.~~
~~96.204 Applicability.~~
~~96.205 Retired unit exemption.~~
~~96.206 Standard requirements.~~
~~96.207 Computation of time.~~
~~96.208 Appeal Procedures.~~

~~Subpart BBB – CAIR Designated Representative for CAIR SO_2 Sources 96.210 Authorization and responsibilities of CAIR designated representative.~~

~~96.211 Alternate CAIR designated representative.~~
~~96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.~~
~~96.213 Certificate of representation.~~
~~96.214 Objections concerning CAIR designated representative.~~

~~Subpart CCC – Permits~~

~~96.220 General CAIR SO_2 Trading Program permit requirements.~~
~~96.221 Submission of CAIR permit applications.~~
~~96.222 Information requirements for CAIR permit applications.~~
~~96.223 CAIR permit contents and term.~~
~~96.224 CAIR permit revisions.~~

~~Subpart DDD – [Reserved]~~

~~Subpart EEE – [Reserved]~~

Subpart FFF – CAIR SO_2 Allowance Tracking System

96.250 [Reserved]
96.251 Establishment of accounts.
96.252 Responsibilities of CAIR authorized account representative.
96.253 Recordation of CAIR SO_2 allowances.
96.254 Compliance with CAIR SO_2 emissions limitation.
96.255 Banking.
96.256 Account error.
96.257 Closing of general accounts.

Subpart GGG – CAIR SO_2 Allowance Transfers

96.260 Submission of CAIR SO_2 allowance transfers.
96.261 EPA recordation.
96.262 Notification.

Subpart HHH – Monitoring and Reporting

96.270 General requirements.
96.271 Initial certification and recertification procedures.
96.272 Out of control periods.
96.273 Notifications.
96.274 Recordkeeping and reporting.
96.275 Petitions.
96.276 Additional requirements to provide heat input data.

Subpart III – CAIR SO_2 Opt-in Units

96.280 Applicability.
96.281 General.96.282 CAIR designated representative.
96.283 Applying for CAIR opt-in permit.
96.284 Opt-in process.
96.285 CAIR opt-in permit contents.
96.286 Withdrawal from CAIR SO_2 Trading Program.
96.287 Change in regulatory status.
96.288 SO_2 allowance allocations to CAIR SO_2 opt-in units.

Subpart AAA – CAIR SO_2 Trading Program General Provisions

§ 96.201 Purpose.

This subpart and subparts BBB through III establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) SO_2 Trading Program, under section 110 of the Clean Air Act and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBB through III as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.124(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.124(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR SO_2 Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.202 Definitions.

The terms used in this subpart and subparts BBB through III shall have the meanings set forth in this section as follows:

~~Account number means the identification number given by the Administrator to each CAIR SO_2 Allowance Tracking System account.~~

~~Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.~~

~~Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.~~

~~Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.~~

~~Allocate or allocation means, with regard to CAIR SO_2 allowances issued under the Acid Rain Program, the determination by the Administrator of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit and, with regard to CAIR SO_2 allowances issued under § 96.288, the determination by the permitting authority of the amount of such CAIR SO_2 allowances to be initially credited to a CAIR SO_2 unit.~~

~~Allowance transfer deadline means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR SO_2 allowance transfer must be submitted for recordation in a CAIR SO_2 source's compliance account in order to be used to meet the source's CAIR SO_2 emissions limitation for such control period in accordance with § 96.254.~~

~~Alternate CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBB and III of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_X source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_X Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_X Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.~~

~~Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHH of this part.~~

~~Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.~~

~~Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.~~

~~CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBB and III of this part, to transfer and otherwise dispose of CAIR SO_2 allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.~~

~~CAIR designated representative means, for a CAIR SO_2 source and each CAIR SO_2 unit at the source, the natural person who is authorized by the owners and operators of the source and all~~

such units at the source, in accordance with subparts BBB and III of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR SO_2 Trading Program. If the CAIR SO_2 source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR SO_2 source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR SO_2 source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x Ozone Season source means a source that includes one or more CAIR NO_x Ozone Season units.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x Ozone Season unit means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under § 96.304 and a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_x source means a source that includes one or more CAIR NO_x units.

CAIR NO_x unit means a unit that is subject to the CAIR NO_x Annual Trading Program under § 96.104 and a CAIR NO_x opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCC of this part, including any permit revisions, specifying the CAIR SO_2 Trading Program requirements applicable to a CAIR SO_2 source, to each CAIR SO_2 unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 allowance means a limited authorization issued by the Administrator under the Acid Rain Program, or by a permitting authority under § 96.288, to emit sulfur dioxide during the control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR SO_2 Trading Program as follows:

(1) For one CAIR SO_2 allowance allocated for a control period in a year before 2010, one ton of sulfur dioxide, except as provided in § 96.254(b);

(2) For one CAIR SO_2 allowance allocated for a control period in 2010 through 2014, 0.50 ton of sulfur dioxide, except as provided in § 96.254(b); and

(3) For one CAIR SO_2 allowance allocated for a control period in 2015 or later, 0.35 ton of sulfur dioxide, except as provided in § 96.254(b).

(4) An authorization to emit sulfur dioxide that is not issued under the Acid Rain Program or under the provisions of a State implementation plan that is approved under § 51.124(o)(1) or (2) of this chapter shall not be a CAIR SO_2 allowance.

CAIR SO_2 allowance deduction or deduct CAIR SO_2 allowances means the permanent withdrawal of CAIR SO_2 allowances by the Administrator from a compliance account in order to account for a specified number of tons of total sulfur dioxide emissions from all CAIR SO_2 units at

~~a CAIR SO_2 source for a control period, determined in accordance with subpart HHH of this part, or to account for excess emissions.~~

~~CAIR SO_2 Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR SO_2 allowances under the CAIR SO_2 Trading Program. This is the same system as the Allowance Tracking System under § 72.2 of this chapter by which the Administrator records allocations, deduction, and transfers of Acid Rain SO_2 allowances under the Acid Rain Program.~~

~~CAIR SO_2 Allowance Tracking System account means an account in the CAIR SO_2 Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR SO_2 allowances. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.~~

~~CAIR SO_2 allowances held or hold CAIR SO_2 allowances means the CAIR SO_2 allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFF, GGG, and III of this part or part 73 of this chapter, in a CAIR SO_2 Allowance Tracking System account.~~

~~CAIR SO_2 emissions limitation means, for a CAIR SO_2 source, the tonnage equivalent of the CAIR SO_2 allowances available for deduction for the source under § 96.254(a) and (b) for a control period.~~

~~CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.~~

~~CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.~~

~~CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 96.204 and, except for purposes of § 96.205, a CAIR SO_2 opt-in unit under subpart III of this part.~~

~~Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, et seq.~~

~~Coal means any solid fuel classified as anthracite, bituminous, sub-bituminous, or lignite.~~

~~Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.~~

~~Coal-fired means combusting any amount of coal or coal-derived fuel, alone, or in combination with any amount of any other fuel.~~

~~Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:~~

~~(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and~~

~~(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity—~~

~~(i) For a topping-cycle cogeneration unit,~~

~~(A) Useful thermal energy not less than 5 percent of total energy output; and~~

~~(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or~~

not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

Combustion turbine means:

(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.

Commence commercial operation means, with regard to a unit serving a generator:

(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.205.

(i) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO_2 unit under § 96.204 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR SO_2 unit under § 96.204.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.284(h), for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 96.284(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical

change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.205.

(i) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is a CAIR SO_2 unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.205, for a unit that is not a CAIR SO_2 unit under § 96.204 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR SO_2 unit under § 96.204.

(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.284(h), for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the SO_2 emissions rate and the heat input of the unit under § 96.284(b)(1)(i).

(i) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR SO_2 Allowance Tracking System account, established by the Administrator for a CAIR SO_2 source subject to an Acid Rain emissions limitations under § 73.31(a) or (b) of this chapter or for any other CAIR SO_2 source under subpart FFF or III of this part, in which any CAIR SO_2 allowance allocations for the CAIR SO_2 units at the source are initially recorded and in which are held any CAIR SO_2 allowances available for use for a control period in order to meet the source's CAIR SO_2 emissions limitation in accordance with § 96.254.

Continuous emission monitoring system or CEMS means the equipment required under subpart HHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of sulfur dioxide emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A sulfur dioxide monitoring system, consisting of a SO_2 pollutant concentration monitor and an automated data acquisition handling system and providing a permanent, continuous record of SO_2 emissions, in parts per million (ppm);

(3) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(4) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(5) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 in percent O_2.

Control period means the period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HHH of this part.

Excess emissions means any ton, or portion of a ton, of sulfur dioxide emitted by the CAIR SO_2 units at a CAIR SO_2 source during a control period that exceeds the CAIR SO_2 emissions limitation for the source, provided that any portion of a ton of excess emissions shall be treated as one ton of excess emissions.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

~~Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.~~

~~General account means a CAIR SO_2 Allowance Tracking System account, established under subpart FFF of this part, that is not a compliance account.~~

~~Generator means a device that produces electricity.~~

~~Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.~~

~~Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.~~

~~Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:~~

~~(1) For the life of the unit;~~

~~(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~

~~(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.~~

~~Maximum design heat input means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.~~

~~Monitoring system means any monitoring system that meets the requirements of subpart HHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.~~

~~Most stringent State or Federal SO_2 emissions limitation means, with regard to a unit, the lowest SO_2 emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.~~

~~Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.~~

~~Operator means any person who operates, controls, or supervises a CAIR SO_2 unit or a CAIR~~

~~SO_2 source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

~~Owner means any of the following persons:~~

~~(1) With regard to a CAIR SO_2 source or a CAIR SO_2 unit at a source, respectively:~~

~~(i) Any holder of any portion of the legal or equitable title in a CAIR SO_2 unit at the source or the CAIR SO_2 unit;~~

~~(ii) Any holder of a leasehold interest in a CAIR SO_2 unit at the source or the CAIR SO_2 unit; or~~

~~(iii) Any purchaser of power from a CAIR SO_2 unit at the source or the CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR SO_2 unit; or~~

~~(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR SO_2 allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR SO_2 allowances.~~

~~Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR SO_2 Trading Program in accordance with subpart CCC of this part or, if no such agency has been so authorized, the Administrator.~~

~~Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.~~

~~Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.~~

~~Recordation, record, or recorded means, with regard to CAIR SO_2 allowances, the movement of CAIR SO_2 allowances by the Administrator into or between CAIR SO_2 Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.~~

~~Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.~~

~~Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:~~

~~(1) Atmospheric or pressurized fluidized bed combustion;~~

~~(2) Integrated gasification combined cycle;~~

~~(3) Magnetohydrodynamics;~~

~~(4) Direct and indirect coal-fired turbines;~~

~~(5) Integrated gasification fuel cells; or~~

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR SO_2 allowance, the unique identification number assigned to each CAIR SO_2 allowance by the Administrator.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that adopts the CAIR SO_2 Trading Program pursuant to § 51.124 (o)(1) or (2) of this chapter.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR SO_2 emissions limitation, total tons of sulfur dioxide emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and

useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (e.g., space heating or domestic hot water heating); or

(3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 96.203 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.
CO_2-carbon dioxide.
NO_x-nitrogen oxides.
hr-hour.
kW-kilowatt electrical.
kWh-kilowatt hour.
mmBtu-million Btu.
MWe-megawatt electrical.
MWh-megawatt hour.
O_2-oxygen.
ppm-parts per million.
lb-pound.
scfh-standard cubic feet per hour.
SO_2-sulfur dioxide.
H_2O-water.
yr-year.

§ 96.204 Applicability.

The following units in a State shall be CAIR SO_2 units, and any source that includes one or more such units shall be a CAIR SO_2 source, subject to the requirements of this subpart and subparts BBB through HHH of this part:

(a) Except as provided in paragraph (b) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the

unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

§ 96.205 Retired unit exemption.

(a) (1) Any CAIR SO_2 unit that is permanently retired and is not a CAIR SO_2 opt-in unit under subpart III of this part shall be exempt from the CAIR SO_2 Trading Program, except for the provisions of this section, § 96.202, § 96.203, § 96.204, § 96.206(c)(4) through (8), § 96.207, and subparts BBB, FFF, and GGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR SO_2 unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) Special provisions.

(1) A unit exempt under paragraph (a) of this section shall not emit any sulfur dioxide, starting on the date that the exemption takes effect.

(2) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(3) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR SO_2 Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.222 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(5) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(4) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(4) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(6) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 96.206 Standard requirements.

(a) Permit Requirements.

(1) The CAIR designated representative of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 96.222 in accordance with the deadlines specified in § 96.221; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR SO_2 source required to have a title V operating permit and each CAIR SO_2 unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart III of this part, the owners and operators of a CAIR SO_2 source that is not otherwise required to have a title V operating permit and each CAIR SO_2 unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCC of this part for such CAIR SO_2 source and such CAIR SO_2 unit.

(b) Monitoring, reporting, and recordkeeping requirements.

(1) The owners and operators, and the CAIR designated representative, of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHH of this part shall be used to determine compliance by each CAIR SO_2 source with the CAIR SO_2 emissions limitation under paragraph (c) of this section.

(c) Sulfur dioxide emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR SO_2 source and each CAIR SO_2 unit at the source shall hold, in the source's compliance account, a tonnage equivalent in CAIR SO_2 allowances available for compliance deductions for the control period, as determined in accordance with § 96.254(a) and (b), not less than the tons of total sulfur dioxide emissions for the control period from all CAIR SO_2 units at the source, as determined in accordance with subpart HHH of this part.

(2) A CAIR SO_2 unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under § 96.270(b)(1),(2), or (5) and for each control period thereafter.

(3) A CAIR SO_2 allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR SO_2 allowance was allocated.

(4) CAIR SO_2 allowances shall be held in, deducted from, or transferred into or among CAIR SO_2 Allowance Tracking System accounts in accordance with subparts FFF and GGG of this part.

(5) A CAIR SO_2 allowance is a limited authorization to emit sulfur dioxide in accordance with the CAIR SO_2 Trading Program. No provision of the CAIR SO_2 Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.205 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR SO_2 allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from a CAIR SO_2 unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR SO_2 unit.

(d) Excess emissions requirements. If a CAIR SO_2 source emits sulfur dioxide during any control period in excess of the CAIR SO_2 emissions limitation, then:

(1) The owners and operators of the source and each CAIR SO_2 unit at the source shall surrender the CAIR SO_2 allowances required for deduction under § 96.254(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) Recordkeeping and reporting requirements.

(1) Unless otherwise provided, the owners and operators of the CAIR SO_2 source and each CAIR SO_2 unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.213 for the CAIR designated representative for the source and each CAIR SO_2 unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.213 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHH of this part, provided that to the extent that subpart HHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all

records made or required under the CAIR SO_2 Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR SO_2 Trading Program or to demonstrate compliance with the requirements of the CAIR SO_2 Trading Program.

(2) The CAIR designated representative of a CAIR SO_2 source and each CAIR SO_2 unit at the source shall submit the reports required under the CAIR SO_2 Trading Program, including those under subpart HHH of this part.

(f) Liability.

(1) Each CAIR SO_2 source and each CAIR SO_2 unit shall meet the requirements of the CAIR SO_2 Trading Program.

(2) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 source or the CAIR designated representative of a CAIR SO_2 source shall also apply to the owners and operators of such source and of the CAIR SO_2 units at the source.

(3) Any provision of the CAIR SO_2 Trading Program that applies to a CAIR SO_2 unit or the CAIR designated representative of a CAIR SO_2 unit shall also apply to the owners and operators of such unit.

(g) Effect on other authorities. No provision of the CAIR SO_2 Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.205 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR SO_2 source or CAIR SO_2 unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.207 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR SO_2 Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR SO_2 Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.208 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIR SO_2 Trading Program are set forth in part 78 of this chapter.

Subpart BBB—CAIR designated representative for CAIR SO_2 sources

§ 96.210 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.211, each CAIR SO_2 source, including all CAIR SO_2 units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR SO_2 Trading Program concerning the source or any CAIR SO_2 unit at the source.

(b) The CAIR designated representative of the CAIR SO_2 source shall be selected by an agreement binding on the owners and operators of the source and all CAIR SO_2 units at the source and shall act in accordance with the certification statement in § 96.213(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR SO_2 source represented and each CAIR SO_2 unit at the source in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR SO_2 Allowance Tracking System account will be established for a CAIR SO_2 unit at a source, until the Administrator has received a complete certificate of representation under § 96.213 for a CAIR designated representative of the source and the CAIR SO_2 units at the source.

(e) (1) Each submission under the CAIR SO_2 Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR SO_2 source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR SO_2 source or a CAIR SO_2 unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.211 Alternate CAIR designated representative.

(a) A certificate of representation under § 96.213 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 96.213, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 96.202, 96.210(a) and (d), 96.212, 96.213, 96.251, and 96.282, whenever the term "CAIR designated representative" is used in subparts AAA through III of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.212 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR

~~SO_2 source and the CAIR SO_2 units at the source.~~

~~(b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.213. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR SO_2 source and the CAIR SO_2 units at the source.~~

~~(c) Changes in owners and operators.~~

~~(1) In the event a new owner or operator of a CAIR SO_2 source or a CAIR SO_2 unit is not included in the list of owners and operators in the certificate of representation under § 96.213, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.~~

~~(2) Within 30 days following any change in the owners and operators of a CAIR SO_2 source or a CAIR SO_2 unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.213 amending the list of owners and operators to include the change.~~

~~§ 96.213 Certificate of representation.~~

~~(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:~~

~~(1) Identification of the CAIR SO_2 source, and each CAIR SO_2 unit at the source, for which the certificate of representation is submitted.~~

~~(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.~~

~~(3) A list of the owners and operators of the CAIR SO_2 source and of each CAIR SO_2 unit at the source.~~

~~(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—~~

~~(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR SO_2 unit at the source."~~

~~(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of the owners and operators of the source and of each CAIR SO_2 unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."~~

~~(iii) "I certify that the owners and operators of the source and of each CAIR SO_2 unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."~~

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR SO_2 unit, or where a customer purchases power from a CAIR SO_2 unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR SO_2 unit at the source; and CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR SO_2 allowances by contract, CAIR SO_2 allowances and proceeds of transactions involving CAIR SO_2 allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.214 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.213 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.213 is received by the Administrator.

(b) Except as provided in § 96.212(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR SO_2 Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

Subpart CCC – Permits

§ 96.220 General CAIR SO_2 Trading Program permit requirements.

(a) For each CAIR SO_2 source required to have a title V operating permit or required, under subpart III of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart III of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR SO_2 source and the CAIR SO_2 units at the source covered by the CAIR permit, all applicable CAIR SO_2 Trading Program, CAIR NO_x Annual Trading Program, and CAIR NO_x Ozone Season Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable

permit under paragraph (a) of this section.

§ 96.221 Submission of CAIR permit applications.

(a) Duty to apply. The CAIR designated representative of any CAIR SO_2 source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.222 for the source covering each CAIR SO_2 unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the CAIR SO_2 unit commences operation.

(b) Duty to Reapply. For a CAIR SO_2 source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.222 for the source covering each CAIR SO_2 unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 96.222 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR SO_2 source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR SO_2 source;

(b) Identification of each CAIR SO_2 unit at the CAIR SO_2 source; and

(c) The standard requirements under § 96.206.

§ 96.223 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.222.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subpart FFF, GGG, or III of this part, every allocation, transfer, or deduction of a CAIR SO_2 allowance to or from the compliance account of the CAIR SO_2 source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR SO_2 source's title V operating permit or other federally enforceable permit as applicable.

§ 96.224 CAIR permit revisions.

Except as provided in § 96.223(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDD – [Reserved]

Subpart EEE – [Reserved]

Subpart FFF – CAIR SO_2 Allowance Tracking System

§ 96.250 [Reserved]

§ 96.251 Establishment of accounts.

(a) Compliance accounts. Except as provided in § 96.284(e), upon receipt of a complete certificate of representation under § 96.213, the Administrator will establish a compliance account for the CAIR SO_2 source for which the certificate of representation was submitted, unless the source

already has a compliance account.

(b) General accounts.

(1) Application for general account.

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR SO_2 allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR SO_2 allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR SO_2 allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR SO_2 Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Authorization of CAIR authorized account representative.

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or

persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR SO_2 allowances held in the general account in all matters pertaining to the CAIR SO_2 Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR SO_2 allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR SO_2 allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.

(i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative

before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR SO_2 allowances in the general account.

(iii) (A) In the event a new person having an ownership interest with respect to CAIR SO_2 allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR SO_2 allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR SO_2 allowances in the general account to include the change.

(4) Objections concerning CAIR authorized account representative.

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR SO_2 Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR SO_2 allowance transfers.

(c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.252 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR SO_2 Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR SO_2 allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.253 Recordation of CAIR SO_2 allowances.

(a) (1) After a compliance account is established under § 96.251(a) or § 73.31(a) or (b) of this chapter, the Administrator will record in the compliance account any CAIR SO_2 allowance

allocated to any CAIR SO_2 unit at the source for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the compliance account is established and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the compliance account any CAIR SO_2 allowance allocated to any CAIR SO_2 unit at the source for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and any CAIR SO_2 allowance allocated for the new 30th year and transferred to the source in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(b) (1) After a general account is established under § 96.251(b) or § 73.31(c) of this chapter, the Administrator will record in the general account any CAIR SO_2 allowance allocated for each of the 30 years starting the later of 2010 or the year in which the general account is established and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(2) In 2011 and each year thereafter, after Administrator has completed all deductions under § 96.254(b), the Administrator will record in the general account any CAIR SO_2 allowance allocated for the new 30th year (i.e., the year that is 30 years after the calendar year for which such deductions are or could be made) and transferred to the general account in accordance with subpart GGG of this part or subpart D of part 73 of this chapter.

(c) Serial numbers for allocated CAIR SO_2 allowances. When recording the allocation of CAIR SO_2 allowances issued by a permitting authority under § 96.288, the Administrator will assign each such CAIR SO_2 allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR SO_2 allowance is allocated.

§ 96.254 Compliance with CAIR SO_2 emissions limitation.

(a) Allowance transfer deadline. The CAIR SO_2 allowances are available to be deducted for compliance with a source's CAIR SO_2 emissions limitation for a control period in a given calendar year only if the CAIR SO_2 allowances:

(1) Were allocated for the control period in the year or a prior year;

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR SO_2 allowance transfer correctly submitted for recordation under § 96.260 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section or for deduction under part 77 of this chapter.

(b) Deductions for compliance. Following the recordation, in accordance with § 96.261, of CAIR SO_2 allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR SO_2 allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period as follows:

(1) For a CAIR SO_2 source subject to an Acid Rain emissions limitation, the Administrator will, in the following order:

(i) Deduct the amount of CAIR SO_2 allowances, available under paragraph (a) of this section and not issued by a permitting authority under §96.288, that is required under §§ 73.35(b) and (c) of this part. If there are sufficient CAIR SO_2

allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(b) and (c) of this chapter.

(ii) Deduct the amount of CAIR SO_2 allowances, available under paragraph (a) of this section and not issued by a permitting authority under § 96.288, that is required under §§ 73.35(d) and 77.5 of this part. If there are sufficient CAIR SO_2 allowances to complete this deduction, the deduction will be treated as satisfying the requirements of §§ 73.35(d) and 77.5 of this chapter.

(iii) Treating the CAIR SO_2 allowances deducted under paragraph (b)(1)(i) of this section as also being deducted under this paragraph (b)(1)(iii), deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(A) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(B) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(1)(iii)(A) of this section, until no more CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.

(2) For a CAIR SO_2 source not subject to an Acid Rain emissions limitation, the Administrator will deduct CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) in order to determine whether the source meets the CAIR SO_2 emissions limitation for the control period, as follows:

(i) Until the tonnage equivalent of the CAIR SO_2 allowances deducted equals, or exceeds in accordance with paragraphs (c)(1) and (2) of this section, the number of tons of total sulfur dioxide emissions, determined in accordance with subpart HHH of this part, from all CAIR SO_2 units at the source for the control period; or

(ii) If there are insufficient CAIR SO_2 allowances to complete the deductions in paragraph (b)(2)(i) of this section, until no more CAIR SO_2 allowances available under paragraph (a) of this section (including any issued by a permitting authority under § 96.288) remain in the compliance account.

(c) (1) Identification of CAIR SO_2 allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR SO_2 allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR SO_2 source and the appropriate serial numbers.

(2) First-in, first-out. The Administrator will deduct CAIR SO_2 allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR SO_2 allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period before 2010, in the order of recordation;

(ii) Any CAIR SO_2 allowances that were allocated to any entity for a control period before 2010 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(iii) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period during 2010 through 2014, in the order of recordation;

(iv) Any CAIR SO_2 allowances that were allocated to any entity for a control period during 2010 through 2014 and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation;

(v) Any CAIR SO_2 allowances that were allocated to the units at the source for a control period in 2015 or later, in the order of recordation; and

(vi) Any CAIR SO_2 allowances that were allocated to any entity for a control period in 2015 or later and transferred and recorded in the compliance account pursuant to subpart GGG of this part or subpart D of part 73 of this chapter, in the order of recordation.

(d) Deductions for excess emissions.

(1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR SO_2 source has excess emissions, the Administrator will deduct from the source's compliance account the tonnage equivalent in CAIR SO_2 allowances, allocated for the control period in the immediately following calendar year (including any issued by a permitting authority under § 96.288), equal to, or exceeding in accordance with paragraphs (c)(1) and (2) of this section, 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR SO_2 source or the CAIR SO_2 units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.

(f) Administrator's action on submissions.

(1) The Administrator may review and conduct independent audits concerning any submission under the CAIR SO_2 Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR SO_2 allowances from or transfer CAIR SO_2 allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.255 Banking.

(a) CAIR SO_2 allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR SO_2 allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR SO_2 allowance is deducted or transferred under § 96.254, § 96.256, or subpart GGG of this part.

§ 96.256 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR SO_2 Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.257 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under § 96.260 for any CAIR SO_2 allowances in the account to one or more other CAIR SO_2 Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR SO_2 allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR SO_2 allowances into the account under § 96.260 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGG – CAIR SO_2 Allowance Transfers

§ 96.260 Submission of CAIR SO_2 allowance transfers.

(a) A CAIR authorized account representative seeking recordation of a CAIR SO_2 allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR SO_2 allowance transfer shall include the following elements, in a format specified by the Administrator:

(1) The account numbers of both the transferor and transferee accounts;

(2) The serial number of each CAIR SO_2 allowance that is in the transferor account and is to be transferred; and

(3) The name and signature of the CAIR authorized account representatives of the transferor and transferee accounts and the dates signed.

(b) (1) The CAIR authorized account representative for the transferee account can meet the requirements in paragraph (a)(3) of this section by submitting, in a format prescribed by the Administrator, a statement signed by the CAIR authorized account representative and identifying each account into which any transfer of allowances, submitted on or after the date on which the Administrator receives such statement, is authorized. Such authorization shall be binding on any CAIR authorized account representative for such account and shall apply to all transfers into the account that are submitted on or after such date of receipt, unless and until the Administrator receives a statement signed by the CAIR authorized account representative retracting the authorization for the account.

(2) The statement under paragraph (b)(1) of this section shall include the following: "By this signature I authorize any transfer of allowances into each account listed herein, except that I do not waive any remedies under State or Federal law to obtain correction of any erroneous transfers into such accounts. This authorization shall be binding on any CAIR authorized account representative for such account unless and until a statement signed by the CAIR authorized account representative retracting this authorization for the account is received by the Administrator."

§ 96.261 EPA recordation.

(a) Within 5 business days (except as necessary to perform a transfer in perpetuity of CAIR SO_2 allowances allocated to a CAIR SO_2 unit or as provided in paragraph (b) of this section) of receiving a CAIR SO_2 allowance transfer, the Administrator will record a CAIR SO_2 allowance transfer by moving each CAIR SO_2 allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.260; and

(2) The transferor account includes each CAIR SO_2 allowance identified by serial number in the transfer.

(b) A CAIR SO_2 allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR SO_2 allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.254 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR SO_2 allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.262 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a CAIR SO_2 allowance transfer under § 96.261, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a CAIR SO_2 allowance transfer that fails to meet the requirements of § 96.261(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR SO_2 allowance transfer for recordation following notification of non-recordation.

Subpart HHH – Monitoring and Reporting

§ 96.270 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR SO_2 unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subparts F and G of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.202 and in § 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "CAIR SO_2 unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.202. The owner or operator of a unit that is not a CAIR SO_2 unit but that is monitored under § 75.16(b)(2) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR SO_2 unit.

(a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR SO_2 unit shall:

(1) Install all monitoring systems required under this subpart for monitoring SO_2 mass emissions and individual unit heat input (including all systems required to monitor SO_2 concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration,

and fuel flow rate, as applicable, in accordance with §§ 75.11 and 75.16 of this chapter);

(2) Successfully complete all certification tests required under § 96.271 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) Compliance deadlines. The owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR SO_2 unit that commences commercial operation before July 1, 2008, by January 1, 2009.

(2) For the owner or operator of a CAIR SO_2 unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:

(i) January 1, 2009; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR SO_2 unit for which construction of a new stack or flue or installation of add-on SO_2 emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on SO_2 emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, by the date specified in § 96.284(b).

(5) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section and solely for purposes of § 96.206(c)(2), for the owner or operator of a CAIR SO_2 opt-in unit under subpart III of this part, by the date on which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program as provided in § 96.284(g).

(c) Reporting data.

(1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR SO_2 unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for SO_2 concentration, SO_2 emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine SO_2 mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter or section 2.4 of appendix D to part 75 of this chapter, as applicable.

(2) The owner or operator of a CAIR SO_2 unit that does not meet the applicable compliance date set forth in paragraph (b)(3) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in subpart D of or appendix D to part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator

demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(3) of this section.

(d) Prohibitions

(1) No owner or operator of a CAIR SO_2 unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.275.

(2) No owner or operator of a CAIR SO_2 unit shall operate the unit so as to discharge, or allow to be discharged, SO_2 emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR SO_2 unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording SO_2 mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR SO_2 unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 96.205 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 96.271(d)(3)(i).

§ 96.271 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR SO_2 unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.270(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B and appendix D to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 96.270(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § § 75.16(b)(2)(ii) of this chapter for apportioning the SO_2 mass emissions measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.11 or § 75.16 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.275(a) to

determine whether the approval applies under the CAIR SO_2 Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR SO_2 unit shall comply with the following initial certification and recertification procedures, for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendix D to part 75 of this chapter) under § 96.270(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under § 96.270(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.270(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.270(a)(1) that may significantly affect the ability of the system to accurately measure or record SO_2 mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system under § 96.270(a)(1)is subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.270(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) Notification of certification. The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.273.

(ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR SO_2 Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring

system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

(iv) Certification application approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR SO_2 Trading Program.

(A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) Audit decertification. The permitting authority or, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.272(b).

(v) Procedures for loss of certification. If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under

paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(1) For a disapproved SO_2 pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of SO_2 and the maximum potential flow rate, as defined in sections 2.1.1.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(2) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(3) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) Certification/recertification procedures for alternative monitoring systems. The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 96.272 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance and quality control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of or appendix D to part 75 of this chapter.

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other

requirement under § 96.271 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR SO_2 opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.271 for each disapproved monitoring system.

§ 96.273 Notifications.

The CAIR designated representative for a CAIR SO_2 unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.274 Recordkeeping and reporting.

(a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements in subparts F and G of part 75 of this chapter, and the requirements of § 96.210(e)(1).

(b) Monitoring Plans. The owner or operator of a CAIR SO_2 unit shall comply with requirements of § 75.62 of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart III of this part, §§ 96.283 and 96.284(a).

(c) Certification Applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.271, including the information required under § 75.63 of this chapter.

(d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the SO_2 mass emissions data and heat input data for the CAIR SO_2 unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.270(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.64 of this chapter.

(3) For CAIR SO_2 units that are also subject to an Acid Rain emissions limitation or the CAIR

~~NO_x Annual Trading Program or CAIR NO_x Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the SO_2 mass emission data, heat input data, and other information required by this subpart.~~

~~(e) Compliance certification. The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:~~

~~(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and~~

~~(2) For a unit with add-on SO_2 emission controls and for all hours where SO_2 data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate SO_2 emissions.~~

~~§ 96.275 Petitions.~~

~~(a) The CAIR designated representative of a CAIR SO_2 unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.~~

~~(b) The CAIR designated representative of a CAIR SO_2 unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.~~

~~§ 96.276 Additional requirements to provide heat input data.~~

~~The owner or operator of a CAIR SO_2 unit that monitors and reports SO_2 mass emissions using a SO_2 concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.~~

~~Subpart III CAIR SO_2 Opt-in Units~~

~~§ 96.280 Applicability.~~

~~A CAIR SO_2 opt-in unit must be a unit that:~~

~~(a) Is located in the State;~~

~~(b) Is not a CAIR SO_2 unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;~~

~~(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect and is not an opt-in source under part 74 of this chapter;~~

~~(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and~~

~~(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting~~

requirements of subpart HHH of this part.

§ 96.281 General.

(a) Except as otherwise provided in §§ 96.201 through 96.204, §§ 96.206 through 96.208, and subparts BBB and CCC and subparts FFF through HHH of this part, a CAIR SO_2 opt-in unit shall be treated as a CAIR SO_2 unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR SO_2 unit before issuance of a CAIR opt-in permit for such unit.

§ 96.282 CAIR designated representative.

Any CAIR SO_2 opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR SO_2 units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR SO_2 units.

§ 96.283 Applying for CAIR opt-in permit.

(a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR SO_2 opt-in unit in § 96.280 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.286(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 96.222;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR SO_2 unit under § 96.204 and is not covered by a retired unit exemption under § 96.205 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Is not and, so long as the unit is a CAIR SO_2 opt-in unit, will not become, an opt-in source under part 74 of this chapter;

(iv) Vents all of its emissions to a stack; and

(v) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.222;

(3) A monitoring plan in accordance with subpart HHH of this part;

(4) A complete certificate of representation under § 96.213 consistent with § 96.282, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR SO_2 allowances under § 96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g)).

(b) Duty to reapply.

(1) The CAIR designated representative of a CAIR SO_2 opt-in unit shall submit a complete

CAIR permit application under § 96.222 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR SO_2 Trading Program in accordance with § 96.286 or the unit becomes a CAIR SO_2 unit under § 96.204, the CAIR SO_2 opt-in unit shall remain subject to the requirements for a CAIR SO_2 opt-in unit, even if the CAIR designated representative for the CAIR SO_2 opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.284 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.283 is submitted in accordance with the following:

(a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.283. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the SO_2 emissions rate and heat input of the unit are monitored and reported in accordance with subpart HHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) Monitoring and reporting.

(1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the SO_2 emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHH of this part and continuing until a CAIR opt-in permit is denied under § 96.284(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR SO_2 Trading Program in accordance with § 96.286.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR SO_2 Trading Program under § 96.284(g), during which period monitoring system availability must not be less than 90 percent under subpart HHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the SO_2 emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR SO_2 Trading Program under § 96.284(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) Baseline heat input. The unit's baseline heat rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section.

(d) Baseline SO_2 emission rate. The unit's baseline SO_2 emission rate shall equal:

(1) If the unit's SO_2 emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's SO_2 emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or

(3) If the unit's SO_2 emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on SO_2 emission controls during any such control periods, the average of the amounts of the unit's SO_2 emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on SO_2 emission controls.

(e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline SO_2 emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 96.280 and meets the elements certified in § 96.283(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR SO_2 opt-in unit unless the source already has a compliance account.

(f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR SO_2 opt-in unit in § 96.280 or meets the elements certified in § 96.283(a)(2), the permitting authority will issue a denial of a CAIR SO_2 opt-in permit for the unit.

(g) Date of entry into CAIR SO_2 Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR SO_2 opt-in unit, and a CAIR SO_2 unit, as of the later of January 1, 2010 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) Repowered CAIR SO_2 opt-in unit.

(1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 96.288(c) and such unit is repowered after its date of entry into the CAIR SO_2 Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR SO_2 opt-in unit replacing the original CAIR SO_2 opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline SO_2 emission rate as the original CAIR SO_2 opt-in unit, and the original CAIR SO_2 opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR SO_2 unit.

§ 96.285 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 96.222;

(2) The certification in § 96.283(a)(2);

(3) The unit's baseline heat input under § 96.284(c);

(4) The unit's baseline SO_2 emission rate under § 96.284(d);

(5) A statement whether the unit is to be allocated CAIR SO_2 allowances under § 96.288(c) (subject to the conditions in §§ 96.284(h) and 96.286(g));

(6) A statement that the unit may withdraw from the CAIR SO_2 Trading Program only in accordance with § 96.286; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.287.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.202 and, upon recordation by the Administrator under subpart FFF or GGG of this part or this subpart, every allocation, transfer, or deduction of CAIR SO_2 allowances to or from the compliance account of the source that includes a CAIR SO_2 opt-in unit covered by the CAIR opt-in permit.

§ 96.286 Withdrawal from CAIR SO_2 Trading Program.

Except as provided under paragraph (g) of this section, a CAIR SO_2 opt-in unit may withdraw from the CAIR SO_2 Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit in accordance with paragraph (d) of this section.

(a) Requesting withdrawal. In order to withdraw a CAIR opt-in unit from the CAIR SO_2 Trading Program, the CAIR designated representative of the CAIR SO_2 opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR SO_2 Trading Program under § 96.284(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) Conditions for withdrawal. Before a CAIR SO_2 opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR SO_2 Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR SO_2 opt-in unit must meet the requirement to hold CAIR SO_2 allowances under § 96.206(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR SO_2 opt-in unit CAIR SO_2 allowances equal in number to and allocated for the same or a prior control period as any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 96.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR SO_2 units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR SO_2 opt-in unit may submit a CAIR SO_2 allowance transfer for any remaining CAIR SO_2 allowances to another CAIR SO_2 Allowance Tracking System in accordance with subpart GGG of this part.

(c) Notification.

(1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR SO_2 allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit of the acceptance of the withdrawal of the CAIR SO_2 opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR SO_2 opt-in unit that the CAIR SO_2 opt-in unit's request to withdraw is denied. Such CAIR SO_2 opt-in unit shall continue to be a CAIR SO_2 opt-in unit.

(d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR SO_2 opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR SO_2 opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR SO_2 Trading Program concerning any control periods for which the unit is a CAIR SO_2 opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR SO_2 opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) Ability to reapply to the CAIR SO_2 Trading Program. Once a CAIR SO_2 opt-in unit withdraws from the CAIR SO_2 Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.283 for such CAIR SO_2 opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.284.

(g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR SO_2 opt-in unit shall not be eligible to withdraw from the CAIR SO_2 Trading Program if the CAIR designated representative of the CAIR SO_2 opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR SO_2 opt-in unit of CAIR SO_2 allowances under § 96.288(c).

§ 96.287 Change in regulatory status.

(a) Notification. If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR SO_2 opt-in unit's regulatory status, within 30 days of such change.

(b) Permitting authority's and Administrator's actions.

(1) If a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, the permitting authority will revise the CAIR SO_2 opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.223 as of the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204.

(2) (i) The Administrator will deduct from the compliance account of the source that includes a CAIR SO_2 opt-in unit that becomes a CAIR SO_2 unit under § 96.204, CAIR SO_2 allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 96.288 for any control period after the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204; and

(B) If the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204 is not December 31, the CAIR SO_2 allowances allocated to the CAIR SO_2 opt-in unit under § 96.288 for the control period that includes the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under § 96.204 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR SO_2 unit that becomes a CAIR SO_2 unit under § 96.204 contains the CAIR SO_2 allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3) (i) For every control period after the date on which a CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under §96.204, the CAIR SO_2 opt-in unit will be treated, solely for purposes of CAIR SO_2 allowance allocations under §96.242, as a unit that commences operation on the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under §96.204 and will be allocated CAIR SO_2 allowances under §96.242.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under §96.204 is not January 1, the following number of CAIR SO_2 allowances will be allocated to the CAIR SO_2 opt-in unit (as a CAIR SO_2 unit) under §96.242 for the control period that includes the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under §96.204:

(A) The number of CAIR SO_2 allowances otherwise allocated to the CAIR SO_2 opt-in unit (as a CAIR SO_2 unit) under §96.242 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR SO_2 opt-in unit becomes a CAIR SO_2 unit under §96.204, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 96.288 SO_2 allowance allocations to CAIR SO_2 opt-in units.

(a) Timing requirements.

(1) When the CAIR opt-in permit is issued under § 96.284(e), the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR SO_2 opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) Calculation of allocation. For each control period for which a CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances, the permitting authority will allocate in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocation will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline heat input determined under § 96.284(c); or

(ii) The CAIR SO_2 opt-in unit's heat input, as determined in accordance with subpart HHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g).

(2) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(i) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 96.284(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(3) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (b)(1) of this section, multiplied by the SO_2 emission rate under paragraph (b)(2) of this section, and divided by 2,000 lb/ton.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR SO_2 opt-in unit of CAIR SO_2 allowances under this paragraph (subject to the conditions in §§ 96.284(h) and 96.286(g)), the permitting authority will allocate to the CAIR SO_2 opt-in unit as follows:

(1) For each control period in 2010 through 2014 for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating CAIR SO_2 allowance allocations will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 96.284(d); or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period in which the CAIR SO_2 opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g).

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(1)(i) of this section, multiplied by the SO_2 emission rate under paragraph (c)(1)(ii) of this section, and divided by 2,000 lb/ton.

(2) For each control period in 2015 and thereafter for which the CAIR SO_2 opt-in unit is to be allocated CAIR SO_2 allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR SO_2 allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The SO_2 emission rate (in lb/mmBtu) used for calculating the CAIR SO_2 allowance allocation will be the lesser of:

(A) The CAIR SO_2 opt-in unit's baseline SO_2 emissions rate (in lb/mmBtu) determined under § 96.284(d) multiplied by 10 percent; or

(B) The most stringent State or Federal SO_2 emissions limitation applicable to the CAIR SO_2 opt-in unit at any time during the control period for which CAIR SO_2 allowances are to be allocated.

(iii) The permitting authority will allocate CAIR SO_2 allowances to the CAIR SO_2 opt-in unit with a tonnage equivalent equal to, or less than by the smallest possible amount, the heat input under paragraph (c)(2)(i) of this section, multiplied by the SO_2 emission rate under paragraph (c)(2)(ii) of this section, and divided by 2,000 lb/ton.

(d) Recordation.

(1) The Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR opt-in unit enters the CAIR SO_2 Trading Program under § 96.284(g), and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR SO_2 opt-in unit, the CAIR SO_2 allowances allocated by the permitting authority to the CAIR SO_2 opt-in unit under paragraph (a)(2) of this section.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Chapter 1200-03-27
Nitrogen Oxides

Amendments

The Table of Contents for Chapter 1200-03-27 Nitrogen Oxides is amended by deleting "CAIR NOx Annual Trading Program" from the title of 1200-03-27-.10 and substituting instead the word "Reserved.", deleting "CAIR NOx Ozone Season Trading Program" from the title of 1200-03-27-.11 and substituting instead the word "Reserved.", and adding 1200-03-27-.12 to the table with the title "NOx SIP Call Requirements for Stationary Boilers and Combustion Turbines."

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Rule 1200-03-27-.10 CAIR NO_X Annual Trading Program is amended by deleting it in its entirety and substituting instead the following:

1200-03-27-.10 Reserved. CAIR NO_X Annual Trading Program

(1) The provisions of 40 CFR Part 96 concerning the CAIR NO_X Annual Trading Program are hereby adopted by reference with the following revisions:

(a) The provisions of Sec. 96.143 as adopted for Tennessee are revised to read as follows:

§ 96.143 Compliance supplement pool.

1. In addition to the CAIR NO_x allowances allocated under 40 CFR Sec. 96.142, the permitting authority may allocate up to 8,944 tons of CAIR NO_x allowances for the control period in 2009.

2. For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under part 1. of this subparagraph for such early reduction credits, in accordance with the following:

   (i) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with 40 CFR 96 subpart HH in each control period for which early reduction credit is requested.

   (ii) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, determined in accordance with 40 CFR 96 subpart HH. NO_x emission reductions shall be calculated as follows:

      (I) The unit's heat input in mmBtu for the control period shall be multiplied by the difference between the most stringent federally enforceable requirement (including, if the unit is in a NO_x averaging plan under 40 CFR 76.11, the highest annual NO_x emission rate for the unit that will result in group compliance under the NO_x averaging plan) and the unit's actual NO_x emission rate for such control period in lb/mmBtu, divided by 2,000 lbs/ton, and rounded to the nearest ton; or,

      (II) For units with post combustion NO_x controls (selective catalytic reduction, selective noncatalytic reduction, or other post-combustion NO_x control as approved by the Technical Secretary), NO_x emission reductions shall be calculated by multiplying the unit's heat input during any period in which the control equipment is operated, excluding any period regulated by rule 1200-03-27-.06 (NO_x Budget Trading Program for State Implementation Plans), by the difference between the most stringent federally enforceable requirement (including, if the unit is in a NO_x averaging plan under 40 CFR 76.11, the highest annual NO_x emission rate for the unit that will result in group compliance under the NO_x averaging plan) and the unit's actual NO_x emission rate for such operating period in lb/mmBtu, divided by 2,000 lbs/ton, and rounded to the nearest ton.

3. For any CAIR NO_x unit in the State whose compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under part 1. of this subparagraph, in accordance with the following:

   (i) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

(ii) In the request under subpart (i) of this part, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(I) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(II) Obtain under parts 2. and 4. of this subparagraph, or otherwise obtain, a sufficient amount of CAIR NO_x allowances to prevent such undue risk.

4. The permitting authority will review each request under parts 2. or 3. of this subparagraph submitted by July 1, 2009 and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:

(i) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of parts 2. or 3. of this subparagraph.

(ii) If the State's compliance supplement pool under part 1. of this subparagraph has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under subpart (i) of this part), the permitting authority will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under subpart (i) of this part).

(iii) If the State's compliance supplement pool under part 1. of this subparagraph has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under subpart (i) of this part), the permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = (Unit's adjusted allocation) x (State's compliance supplement pool) / (Total adjusted allocations for all units)

Where:

"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the State's compliance supplement pool.

"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under parts 2. or 3. of this subparagraph, as adjusted under subpart (i) of this part.

"State's compliance supplement pool" is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

"Total adjusted allocations for all units" is the sum of the amounts of allocations requested for all units under parts 2. or 3. of this subparagraph, as adjusted under subpart (i) of this part.

(iv) By November 30, 2009, the permitting authority will determine, and submit to the

Administrator, the allocations under subparts (ii) or (iii) of this part.

(v) By January 1, 2010, the Administrator will record the allocations under subpart (iv) of this part.

(2) PART 96--CAIR NO_x Annual Trading Program

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~~Subpart AA – CAIR NO_x Annual Trading Program General Provisions~~

~~§ 96.101 Purpose.~~

~~This subpart and subparts BB through II establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_x Annual Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BB through II as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.123(o)(1) or (2) of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.123(o)(1) or (2) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_x Annual Trading Program by carrying out the functions set forth for the Administrator in such subparts.~~

~~§ 96.102 Definitions.~~

~~The terms used in this subpart and subparts BB through II shall have the meanings set forth in this section as follows:~~

~~Account number means the identification number given by the Administrator to each CAIR NO_x Allowance Tracking System account.~~

~~Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.~~

~~Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.~~

~~Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.~~

~~Allocate or allocation means, with regard to CAIR NO_x allowances issued under subpart EE, the determination by the permitting authority or the Administrator of the amount of such CAIR NO_x allowances to be initially credited to a CAIR NO_x unit or a new unit set-aside and, with regard to CAIR NO_x allowances issued under § 96.188, the determination by the permitting authority of the amount of such CAIR NO_x allowances to be initially credited to a CAIR NO_x unit.~~

~~Allowance transfer deadline means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a CAIR NO_x allowance transfer must be submitted for recordation in a CAIR NO_x source's compliance account in order to be used to meet the source's CAIR NO_x emissions limitation for such control period in accordance with § 96.154.~~

~~Alternate CAIR designated representative means, for a CAIR NO_x source and each CAIR NO_x unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BB and II of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_x source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program.~~

~~Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HH of this part.~~

~~Boiler means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.~~

~~Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.~~

~~CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BB and II of this part, to transfer and otherwise dispose of CAIR NO_x allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.~~

~~CAIR designated representative means, for a CAIR NO_x source and each CAIR NO_x unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with subparts BB and II of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Annual Trading Program. If the CAIR NO_x source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_x source is also a CAIR NO_x Ozone Season source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program.~~

~~CAIR NO_x allowance means a limited authorization issued by the permitting authority or the Administrator under subpart EE of this part or § 96.188 to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan that are approved under § 51.123(o)(1) or (2)~~

of this chapter shall not be a CAIR NO_x allowance.

CAIR NO_x allowance deduction or deduct CAIR NO_x allowances means the permanent withdrawal of CAIR NO_x allowances by the Administrator from a compliance account in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x units at a CAIR NO_x source for a control period, determined in accordance with subpart HH of this part, or to account for excess emissions.

CAIR NO_x Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x allowances under the CAIR NO_x Annual Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.

CAIR NO_x Allowance Tracking System account means an account in the CAIR NO_x Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x allowances.

CAIR NO_x allowances held or hold CAIR NO_x allowances means the CAIR NO_x allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FF, GG, and II of this part, in a CAIR NO_x Allowance Tracking System account.

CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.

CAIR NO_x emissions limitation means, for a CAIR NO_x source, the tonnage equivalent of the CAIR NO_x allowances available for deduction for the source under § 96.154(a) and (b) for a control period.

CAIR NO_x Ozone Season source means a source that includes one or more CAIR NO_x Ozone Season units.

CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of this part and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.

CAIR NO_x Ozone Season unit means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under § 96.304 and a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part.

CAIR NO_x source means a source that includes one or more CAIR NO_x units.

CAIR NO_x unit means a unit that is subject to the CAIR NO_x Annual Trading Program under § 96.104 and, except for purposes of § 96.105 and subpart EE of this part, a CAIR NO_x opt-in unit under subpart II of this part.

CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CC of this part, including any permit revisions, specifying the CAIR NO_x Annual Trading Program requirements applicable to a CAIR NO_x source, to each CAIR NO_x unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.

CAIR SO_2 source means a source that includes one or more CAIR SO_2 units.

CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.

CAIR SO_2 unit means a unit that is subject to the CAIR SO_2 Trading Program under § 96.204 and a

~~CAIR SO_2 opt-in unit under subpart III of this part.~~

~~Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, et seq.~~

~~Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.~~

~~Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.~~

~~Coal-fired means:~~

~~(1) Except for purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or~~

~~(2) For purposes of subpart EE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.~~

~~Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:~~

~~(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and~~

~~(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity –~~

~~(i) For a topping-cycle cogeneration unit,~~

~~(A) Useful thermal energy not less than 5 percent of total energy output; and~~

~~(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.~~

~~(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.~~

~~Combustion turbine means:~~

~~(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and~~

~~(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.~~

~~Commence commercial operation means, with regard to a unit serving a generator:~~

~~(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.105.~~

~~(i) For a unit that is a CAIR NO_x unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.~~

~~(ii) For a unit that is a CAIR NO_x unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a~~

unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_x unit under § 96.104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x unit under § 96.104.

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1),(2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.184(h) or § 96.187(b)(3), for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of commercial operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_x emissions rate and the heat input of the unit under § 96.184(b)(1)(i).

(i) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remaiapn the unit's date of commencement of commercial operation.

(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(4) Notwithstanding paragraphs (1) through (3) of this definition, for a unit not serving a generator producing electricity for sale, the unit's date of commencement of operation shall also be the unit's date of commencement of commercial operation.

Commence operation means:

(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.105.

(i) For a unit that is a CAIR NO_x unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit that is a CAIR NO_x unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.105, for a unit that is not a CAIR NO_x unit under § 96.104 on the date the unit commences operation as defined in paragraph (1) of this definition and is not a unit under paragraph (3) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_x unit under § 96.104.

(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1),(2), or (3) of this definition as appropriate.

(3) Notwithstanding paragraph (1) of this definition and except as provided in § 96.184(h) or § 96.187(b)(3), for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the unit's date for commencement of operation shall be the date on which the owner or operator is required to start monitoring and reporting the NO_x emissions rate and the heat input of the unit under § 96.184(b)(1)(i).

(i) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.

(ii) For a unit with a date for commencement of operation as defined in paragraph (3) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate.

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_x Allowance Tracking System account, established by the Administrator for a CAIR NO_x source under subpart FF or II of this part, in which any CAIR NO_x allowance allocations for the CAIR NO_x units at the source are initially recorded and in which are held any CAIR NO_x allowances available for use for a control period in order to meet the source's CAIR NO_x emissions limitation in accordance with § 96.154.

Continuous emission monitoring system or CEMS means the equipment required under subpart HH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_x pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_x emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_x-diluent) monitoring system, consisting of a NO_x pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and

handling system and providing a permanent, continuous record of NO_x concentration, in parts per million (ppm), diluent gas concentration, in percent CO2 or O2; and NO_x emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H2O;

(5) A carbon dioxide monitoring system, consisting of a CO2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO2 emissions, in percent CO2; and

(6) An oxygen monitoring system, consisting of an O2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O2, in percent O2.

Control period means the period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by the Administrator in accordance with subpart HH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_x units at a CAIR NO_x source during a control period that exceeds the CAIR NO_x emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_x Allowance Tracking System account, established under subpart FF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis, such decreased maximum amount as specified by the person conducting the physical change.

Monitoring system means any monitoring system that meets the requirements of subpart HH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_x emissions limitation means, with regard to a unit, the lowest NO_x emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.

Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.

Oil-fired means, for purposes of subpart EE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year.

Operator means any person who operates, controls, or supervises a CAIR NO_x unit or a CAIR NO_x source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

Owner means any of the following persons:

(1) With regard to a CAIR NO_x source or a CAIR NO_x unit at a source, respectively:

(i) Any holder of any portion of the legal or equitable title in a CAIR NO_x unit at the source or the CAIR NO_x unit;

(ii) Any holder of a leasehold interest in a CAIR NO_x unit at the source or the CAIR NO_x unit; or

(iii) Any purchaser of power from a CAIR NO_x unit at the source or the CAIR NO_x unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_x unit; or

(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect

to CAIR NO_x allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_x Annual Trading Program in accordance with subpart CC of this part or, if no such agency has been so authorized, the Administrator.

Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to CAIR NO_x allowances, the movement of CAIR NO_x allowances by the Administrator into or between CAIR NO_x Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.

Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:

(1) Atmospheric or pressurized fluidized bed combustion;

(2) Integrated gasification combined cycle;

(3) Magnetohydrodynamics;

(4) Direct and indirect coal-fired turbines;

(5) Integrated gasification fuel cells; or

(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.

Serial number means, for a CAIR NO_x allowance, the unique identification number assigned to each CAIR NO_x allowance by the Administrator.

Sequential use of energy means:

(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or

(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.

Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

State means one of the States or the District of Columbia that adopts the CAIR NO_x Annual Trading Program pursuant to § 51.123(o)(1) or (2) of this chapter.

~~Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:~~

~~(1) In person;~~

~~(2) By United States Postal Service; or~~

~~(3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.~~

~~Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.~~

~~Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.~~

~~Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.~~

~~Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.~~

~~Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.~~

~~Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.~~

~~Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.~~

~~Unit operating day means a calendar day in which a unit combusts any fuel.~~

~~Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.~~

~~Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).~~

~~Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:~~

~~(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;~~

~~(2) Used in a heating application (e.g., space heating or domestic hot water heating); or~~

~~(3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).~~

~~Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.~~

§ 96.103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu-British thermal unit.
CO_2-carbon dioxide.
NO_x-nitrogen oxides.
hr-hour.
kW-kilowatt electrical.
kWh-kilowatt hour.
mmBtu-million Btu.
MWe-megawatt electrical.
MWh-megawatt hour.
O_2-oxygen.
ppm-parts per million.
lb-pound.
scfh-standard cubic feet per hour.
SO_2-sulfur dioxide.
H_2O-water.
yr-year.

§ 96.104 Applicability.

The following units in a State shall be CAIR NO_x units, and any source that includes one or more such units shall be a CAIR NO_x source, subject to the requirements of this subpart and subparts BB through HH of this part:

(a) Except as provided in paragraph (b) of this section, a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(b) For a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.

§ 96.105 Retired unit exemption.

(a) (1) Any CAIR NO_x unit that is permanently retired and is not a CAIR NO_x opt-in unit under subpart II of this part shall be exempt from the CAIR NO_x Annual Trading Program, except for the provisions of this section, § 96.102, § 96.103, § 96.104, § 96.106(c)(4) through (8), § 96.107, and subparts EE through GG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_x unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) Special provisions.

(1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The permitting authority will allocate CAIR NO_x allowances under subpart EE of this part to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_x Annual Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 96.106 Standard requirements.

(a) Permit Requirements.

(1) The CAIR designated representative of each CAIR NO_x source required to have a title V operating permit and each CAIR NO_x unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under § 96.122 in accordance with the deadlines specified in § 96.121(a) and (b); and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a

CAIR permit.

(2) The owners and operators of each CAIR NO_x source required to have a title V operating permit and each CAIR NO_x unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart II of this part, the owners and operators of a CAIR NO_x source that is not otherwise required to have a title V operating permit and each CAIR NO_x unit that is not otherwise required to have a title V operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CC of this part for such CAIR NO_x source and such CAIR NO_x unit.

(b) Monitoring, reporting, and recordkeeping requirements.

(1) The owners and operators, and the CAIR designated representative, of each CAIR NO_x source and each CAIR NO_x unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HH of this part shall be used to determine compliance by each CAIR NO_x source with the CAIR NO_x emissions limitation under paragraph (c) of this section.

(c) Nitrogen oxides emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x source and each CAIR NO_x unit at the source shall hold, in the source's compliance account, CAIR NO_x allowances available for compliance deductions for the control period under § 96.154(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x units at the source, as determined in accordance with subpart HH of this part.

(2) A CAIR NO_x unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of January 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.170(b)(1),(2), or (5).

(3) A CAIR NO_x allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_x allowance was allocated.

(4) CAIR NO_x allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Allowance Tracking System accounts in accordance with subpart EE of this part.

(5) A CAIR NO_x allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Annual Trading Program. No provision of the CAIR NO_x Annual Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR NO_x allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from a CAIR NO_x unit's compliance account is incorporated automatically in any CAIR permit of the source that includes the CAIR NO_x unit.

(d) Excess emissions requirements. If a CAIR NO_x source emits nitrogen oxides during any control period in excess of the CAIR NO_x emissions limitation, then:

(1) The owners and operators of the source and each CAIR NO_x unit at the source shall surrender the CAIR NO_x allowances required for deduction under § 96.154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) Recordkeeping and reporting requirements.

(1) Unless otherwise provided, the owners and operators of the CAIR NO_x source and each CAIR NO_x unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.113 for the CAIR designated representative for the source and each CAIR NO_x unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.113 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HH of this part, provided that to the extent that subpart HH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Annual Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Annual Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Annual Trading Program.

(2) The CAIR designated representative of a CAIR NO_x source and each CAIR NO_x unit at the source shall submit the reports required under the CAIR NO_x Annual Trading Program, including those under subpart HH of this part.

(f) Liability.

(1) Each CAIR NO_x source and each CAIR NO_x unit shall meet the requirements of the CAIR NO_x Annual Trading Program.

(2) Any provision of the CAIR NO_x Annual Trading Program that applies to a CAIR NO_x source or the CAIR designated representative of a CAIR NO_x source shall also apply to the owners and operators of such source and of the CAIR NO_x units at the source.

(3) Any provision of the CAIR NO_x Annual Trading Program that applies to a CAIR NO_x unit or the CAIR designated representative of a CAIR NO_x unit shall also apply to the owners and operators of such unit.

(g) Effect on other authorities. No provision of the CAIR NO_x Annual Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.105 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x source or CAIR NO_x unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Annual Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Annual Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_x Annual Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.108 Appeal Procedures.

The appeal procedures for decisions of the Administrator under the CAIR NO_x Annual Trading Program are set forth in part 78 of this chapter.

Subpart BB – CAIR designated representative for CAIR NO_x sources

§ 96.110 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.111, each CAIR NO_x source, including all CAIR NO_x units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Annual Trading Program concerning the source or any CAIR NO_x unit at the source.

(b) The CAIR designated representative of the CAIR NO_x source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x units at the source and shall act in accordance with the certification statement in § 96.113(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x source represented and each CAIR NO_x unit at the source in all matters pertaining to the CAIR NO_x Annual Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Allowance Tracking System account will be established for a CAIR NO_x unit at a source, until the Administrator has received a complete certificate of representation under § 96.113 for a CAIR designated representative of the source and the CAIR NO_x units at the source.

(e) (1) Each submission under the CAIR NO_x Annual Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_x source or a CAIR NO_x unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.111 Alternate CAIR designated representative.

(a) A certificate of representation under § 96.113 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 96.113, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 96.102, 96.110(a) and (d), 96.112, 96.113, 96.151 and 96.182, whenever the term "CAIR designated representative" is used in subparts AA through II of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.112 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x source and the CAIR NO_x units at the source.

(b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x source and the CAIR NO_x units at the source.

(c) Changes in owners and operators.

(1) In the event a new owner or operator of a CAIR NO_x source or a CAIR NO_x unit is not included in the list of owners and operators in the certificate of representation under § 96.113, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR NO_x source or a CAIR NO_x unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.113 amending the list of owners and operators to include the change.

§ 96.113 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_x source, and each CAIR NO_x unit at the source, for which the certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_x source and of each CAIR NO_x unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative--

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Annual Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each CAIR NO_x unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x unit, or where a customer purchases power from a CAIR NO_x unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x unit at the source; and CAIR NO_x allowances and proceeds of transactions involving CAIR NO_x allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x allowances by contract, CAIR NO_x allowances and proceeds of transactions involving CAIR NO_x allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the CAIR designated representative and any alternate CAIR designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.114 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.113 is received by the Administrator.

(b) Except as provided in § 96.112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_x Annual Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_x allowance transfers.

Subpart CC – Permits

§ 96.120 General CAIR Annual Trading Program permit requirements.

(a) For each CAIR NO_x source required to have a title V operating permit or required, under subpart II of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by this subpart and subpart II of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_x source and the CAIR NO_x units at the source covered by the CAIR permit, all applicable CAIR NO_x Annual Trading Program, CAIR NO_x Ozone Season Trading Program, and CAIR SO_2 Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.121 Submission of CAIR permit applications.

(a) Duty to apply. The CAIR designated representative of any CAIR NO_x source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.122 for the source covering each CAIR NO_x unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_x unit commences operation.

(b) Duty to Reapply. For a CAIR NO_x source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.122 for the source covering each CAIR NO_x unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.

§ 96.122 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_x source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR NO_x source;

(b) Identification of each CAIR NO_x unit at the CAIR NO_x source; and

(c) The standard requirements under § 96.106.

§ 96.123 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.122.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subpart FF, GG, or II of this part, every allocation, transfer, or deduction of a CAIR NO_x allowance to or from the compliance account of the CAIR NO_x source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate

coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x source's title V operating permit or other federally enforceable permit as applicable.

§ 96.124 CAIR permit revisions.

Except as provided in § 96.123(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DD – [Reserved]

Subpart EE – CAIR NO_x Allowance Allocations

§ 96.140 State trading budgets.

The State trading budgets for annual allocations of CAIR NO_x allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State Trading Budget for 2009-2014 (tons)	State Trading Budget for 2015 and thereafter (tons)
Alabama	69,020	57,517
District of Columbia	144	120
Florida	99,445	82,871
Georgia	66,321	55,268
Illinois	76,230	63,525
Indiana	108,935	90,779
Iowa	32,692	27,243
Kentucky	83,205	69,337
Louisiana	35,512	29,593
Maryland	27,724	23,104
Michigan	65,304	54,420
Minnesota	31,443	26,203
Mississippi	17,807	14,839
Missouri	59,871	49,892
New York	45,617	38,014
North Carolina	62,183	51,819
Ohio	108,667	90,556
Pennsylvania	99,049	82,541
South Carolina	32,662	27,219
Tennessee	50,973	42,478
Texas	181,014	150,845
Virginia	36,074	30,062
West Virginia	74,220	61,850
Wisconsin	40,759	33,966

§ 96.141 Timing requirements for CAIR NO_x allowance allocations.

(a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) (1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_x allowance allocations in accordance with paragraph (b)(1), the Administrator will assume that the allocations of CAIR NO_x allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period.

(c) (1) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.142(a),(c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the CAIR NO_x allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of CAIR NO_x allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2015, the Administrator will assume that the allocations equal 83 percent of the allocations for the control period that immediately precedes the applicable control period and except that any CAIR NO_x unit that would otherwise be allocated CAIR NO_x allowances under § 96.142(a) and (b), as well as under § 96.142(a), (c), and (d), for the applicable control period will be assumed to be allocated no CAIR NO_x allowances under § 96.142(a), (c), and (d) for the applicable control period.

§ 96.142 CAIR NO_x allowance allocations.

(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x allowance allocations under paragraph (b) of this section for each CAIR NO_x unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2) (i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,414 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(b) (1) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under § 96.140 (except as provided in paragraph (d) of this section).

(2) The permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x unit to the total amount of baseline heat input of all such CAIR NO_x units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x allowances to CAIR NO_x units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:

(1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.140.

(2) The CAIR designated representative of such a CAIR NO_x unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x allowances under paragraph (b) of this section. The CAIR NO_x allowance allocation request must be submitted on or before July 1 of the first control period for which the CAIR NO_x allowances are requested and after the date on which the CAIR NO_x unit commences commercial operation.

(3) In a CAIR NO_x allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x allowances in an amount not exceeding the CAIR NO_x unit's total tons of NO_x emissions during the calendar year immediately before such control period.

(4) The permitting authority will review each CAIR NO_x allowance allocation request under

paragraph (c)(2) of this section and will allocate CAIR NO_x allowances for each control period pursuant to such request as follows:

(i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after July 1 of the control period, the permitting authority will determine the sum of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each CAIR NO_x unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x allowances (if any) allocated for the control period to the CAIR NO_x unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x unit that was allocated CAIR NO_x allowances under paragraph (b) of this section an amount of CAIR NO_x allowances equal to the total amount of such remaining unallocated CAIR NO_x allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.140, and rounded to the nearest whole allowance as appropriate.

§ 96.143 Compliance supplement pool.

(a) In addition to the CAIR NO_x allowances allocated under § 96.142, the permitting authority may allocate for the control period in 2009 up to the following amount of CAIR NO_x allowances to CAIR NO_x units in the respective State:

State	Compliance Supplement Pool
Alabama	10,166
District Of Columbia	0
Florida	8,335
Georgia	12,397
Illinois	11,299
Indiana	20,155
Iowa	6,978
Kentucky	14,935
Louisiana	2,251

Maryland	4,670
Michigan	8,347
Minnesota	6,528
Mississippi	3,066
Missouri	9,044
New York	0
North Carolina	0
Ohio	25,037
Pennsylvania	16,009
South Carolina	2,600
Tennessee	8,944
Texas	772
Virginia	5,134
West Virginia	16,929
Wisconsin	4,898

(b) For any CAIR NO_x unit in the State that achieves NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, the CAIR designated representative of the unit may request early reduction credits, and allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section for such early reduction credits, in accordance with the following:

(1) The owners and operators of such CAIR NO_x unit shall monitor and report the NO_x emissions rate and the heat input of the unit in accordance with subpart HH of this part in each control period for which early reduction credit is requested.

(2) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the sum of the amounts (in tons) of the unit's NO_x emission reductions in 2007 and 2008 that are not necessary to comply with any State or federal emissions limitation applicable during such years, determined in accordance with subpart HH of this part.

(c) For any CAIR NO_x unit in the State whose compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period, the CAIR designated representative of the unit may request the allocation of CAIR NO_x allowances from the compliance supplement pool under paragraph (a) of this section, in accordance with the following:

(1) The CAIR designated representative of such CAIR NO_x unit shall submit to the permitting authority by July 1, 2009 a request, in a format specified by the permitting authority, for allocation of an amount of CAIR NO_x allowances from the compliance supplement pool not exceeding the minimum amount of CAIR NO_x allowances necessary to remove such undue risk to the reliability of electricity supply.

(2) In the request under paragraph (c)(1) of this section, the CAIR designated representative of such CAIR NO_x unit shall demonstrate that, in the absence of allocation to the unit of the amount of CAIR NO_x allowances requested, the unit's compliance with CAIR NO_x emissions limitation for the control period in 2009 would create an undue risk to the reliability of electricity supply during such control period. This demonstration must include a showing that it would not be feasible for the owners and operators of the unit to:

(i) Obtain a sufficient amount of electricity from other electricity generation facilities, during the installation of control technology at the unit for compliance with the CAIR NO_x emissions limitation, to prevent such undue risk; or

(ii) Obtain under paragraphs (b) and (d) of this section, or otherwise obtain, a sufficient

amount of CAIR NO_x allowances to prevent such undue risk.

(d) The permitting authority will review each request under paragraph (b) or (c) of this section submitted by July 1, 2009 and will allocate CAIR NO_x allowances for the control period in 2009 to CAIR NO_x units in the State and covered by such request as follows:

(1) Upon receipt of each such request, the permitting authority will make any necessary adjustments to the request to ensure that the amount of the CAIR NO_x allowances requested meets the requirements of paragraph (b) or (c) of this section.

(2) If the State's compliance supplement pool under paragraph (a) of this section has an amount of CAIR NO_x allowances not less than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the permitting authority will allocate to each CAIR NO_x unit covered by such requests the amount of CAIR NO_x allowances requested (as adjusted under paragraph (d)(1) of this section).

(3) If the State's compliance supplement pool under paragraph (a) of this section has a smaller amount of CAIR NO_x allowances than the total amount of CAIR NO_x allowances in all such requests (as adjusted under paragraph (d)(1) of this section), the permitting authority will allocate CAIR NO_x allowances to each CAIR NO_x unit covered by such requests according to the following formula and rounding to the nearest whole allowance as appropriate:

Unit's allocation = Unit's adjusted allocation x (State's compliance supplement pool ÷ Total adjusted allocations for all units)

Where:

"Unit's allocation" is the number of CAIR NO_x allowances allocated to the unit from the State's compliance supplement pool.

"Unit's adjusted allocation" is the amount of CAIR NO_x allowances requested for the unit under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

"State's compliance supplement pool" is the amount of CAIR NO_x allowances in the State's compliance supplement pool.

"Total adjusted allocations for all units" is the sum of the amounts of allocations requested for all units under paragraph (b) or (c) of this section, as adjusted under paragraph (d)(1) of this section.

(4) By November 30, 2009, the permitting authority will determine, and submit to the Administrator, the allocations under paragraph (d)(2) or (3) of this section.

(5) By January 1, 2010, the Administrator will record the allocations under paragraph (d)(4) of this section.

Subpart FF – CAIR NO_x Allowance Tracking System

§ 96.150 [Reserved]

§ 96.151 Establishment of accounts.

(a) Compliance accounts. Except as provided in § 96.184(e), upon receipt of a complete certificate of representation under § 96.113, the Administrator will establish a compliance account for the CAIR NO_x source for which the certificate of representation was submitted unless the source already has a compliance account.

(b) General accounts.

(1) Application for general account.

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_x allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to CAIR NO_x allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Annual Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Authorization of CAIR authorized account representative.

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_x allowances held in the general account in all matters pertaining to the CAIR NO_x Annual Trading Program,

notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.

(i) The CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x allowances in the general account.

(iii) (A) In the event a new person having an ownership interest with respect to CAIR NO_x allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_x allowances in the general account, including the addition of persons, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_x allowances in the general account to include the change.

(4) Objections concerning CAIR authorized account representative.

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Annual Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternative CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x allowance transfers.

(c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.152 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_x Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_x allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.153 Recordation of CAIR NO_x allowance allocations.

(a) By December 1, 2006, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at a source, as submitted by the permitting authority in accordance with § 96.141(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority or as determined by the Administrator in accordance with § 96.141(b), for the control period in 2015.

(c) In 2011 and each year thereafter, after the Administrator has made all deductions (if any) from a CAIR NO_x source's compliance account under § 96.154, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.141(b), for the control period in the sixth year after the year of the control period for which such deductions were or could have been made.

(d) By December 1, 2009 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x source's compliance account the CAIR NO_x allowances allocated for the CAIR NO_x units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.141(c), for the control period in the year of the applicable deadline for recordation under this paragraph.

(e) Serial numbers for allocated CAIR NO_x allowances. When recording the allocation of CAIR NO_x allowances for a CAIR NO_x unit in a compliance account, the Administrator will assign each CAIR NO_x allowance a unique identification number that will include digits identifying the year of the control period for which the CAIR NO_x allowance is allocated.

§ 96.154 Compliance with CAIR NO_x emissions limitation.

(a) Allowance transfer deadline. The CAIR NO_x allowances are available to be deducted for compliance with a source's CAIR NO_x emissions limitation for a control period in a given calendar year only if the CAIR NO_x allowances:

(1) Were allocated for the control period in the year or a prior year;

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_x allowance transfer correctly submitted for recordation under § 96.160 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section.

(b) Deductions for compliance. Following the recordation, in accordance with § 96.161, of CAIR NO_x allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_x allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_x emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_x allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HH of this part, from all CAIR NO_x units at the source for the control period; or

(2) If there are insufficient CAIR NO_x allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_x allowances available under paragraph (a) of this section remain in the compliance account.

(c) (1) Identification of CAIR NO_x allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_x source and the appropriate serial numbers.

(2) First-in, first-out. The Administrator will deduct CAIR NO_x allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_x allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO_x allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO_x allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GG of this part, in the order of recordation.

(d) Deductions for excess emissions.

(1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_x source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_x source or the CAIR NO_x units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.

(f) Administrator's action on submissions.

(1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_x Annual Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_x allowances from or transfer CAIR NO_x allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.

§ 96.155 Banking.

(a) CAIR NO_x allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_x allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x allowance is deducted or transferred under § 96.154, § 96.156, or subpart GG of this part.

§ 96.156 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_x Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.157 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under § 96.160 for any CAIR NO_x allowances in the account to one or more other CAIR NO_x Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_x allowances into the account under § 96.160 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GG – CAIR NO_x Allowance Transfers

§ 96.160 Submission of CAIR NO_x allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_x allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR NO_x allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_x allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 96.161 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_x allowance transfer, the Administrator will record a CAIR NO_x allowance transfer by moving each CAIR NO_x allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.160; and

(2) The transferor account includes each CAIR NO_x allowance identified by serial number in the transfer.

(b) A CAIR NO_x allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.154 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_x allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.162 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a CAIR NO_x allowance transfer under § 96.161, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a CAIR NO_x allowance transfer that fails to meet the requirements of § 96.161(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_x allowance transfer for recordation following notification of non-recordation.

Subpart HH—Monitoring and Reporting

§ 96.170 General Requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this

subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.102 and in § 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "CAIR NO_x unit," "CAIR designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.102. The owner or operator of a unit that is not a CAIR NO_x unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_x unit.

(a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR NO_x unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO2 or O2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 96.171 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) Compliance deadlines. The owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR NO_x unit that commences commercial operation before July 1, 2007, by January 1, 2008.

(2) For the owner or operator of a CAIR NO_x unit that commences commercial operation on or after July 1, 2007, by the later of the following dates:

(i) January 1, 2008; or

(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.

(3) For the owner or operator of a CAIR NO_x unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1),(2), (4), or (5) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.

(4) Notwithstanding the dates in paragraphs (b)(1) and (2) of this section, for the owner or operator of a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, by the date specified in § 96.184(b).

(5) Notwithstanding the dates in paragraphs (b)(1), (2), and (4) of this section and solely for purposes of § 96.106(c)(2), for the owner or operator of a CAIR NO_x opt-in unit under subpart II of this part, by the date on which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program as provided in § 96.184(g).

(c) Reporting data.

(1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a CAIR NO_x unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for

any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with § 75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(2) The owner or operator of a CAIR NO_x unit that does not meet the applicable compliance date set forth in paragraph (b)(3) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(3) of this section.

(d) Prohibitions

(1) No owner or operator of a CAIR NO_x unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.175.

(2) No owner or operator of a CAIR NO_x unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_x unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere, except periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_x unit shall retire or permanently discontinue use of the emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 96.105 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with § 96.171(d)(3)(i).

§ 96.171 Initial certification and recertification procedures.

(a) The owner or operator of a CAIR NO_x unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.170(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under § 96.170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12, § 75.17, or subpart H of part 75 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.175(a) to determine whether the approval applies under the CAIR NO_x Annual Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_x unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 96.170(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under § 96.170(a)(1)(including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.170(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flowmeter system, and any excepted NO_x monitoring system under appendix E to part 75 of this chapter, under § 96.170(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under § 96.170(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) Notification of certification. The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.173.

(ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete

certification application shall include the information specified in § 75.63 of this chapter.

(iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_x Annual Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

(iv) Certification application approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_x Annual Trading Program.

(A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) Audit decertification. The permitting authority or, for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.172(b).

(v) Procedures for loss of certification. If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of

this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), § 75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(1) For a disapproved NO_x emission rate (i.e., NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.

(2) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO2 concentration or the minimum potential O2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(4) For a disapproved fuel flowmeter system, the maximum potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(5) For a disapproved excepted NO_x monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) Certification/recertification procedures for alternative monitoring systems. The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 96.172 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under § 96.171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR NO_x opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.171 for each disapproved monitoring system.

§ 96.173 Notifications.

The CAIR designated representative for a CAIR NO_x unit shall submit written notice to the permitting authority and the Administrator in accordance with § 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 96.174 Recordkeeping and reporting.

(a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under § 75.73 of this chapter, and the requirements of § 96.110(e)(1).

(b) Monitoring Plans. The owner or operator of a CAIR NO_x unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart II of this part, §§ 96.183 and 96.184(a).

(c) Certification Applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.171, including the information required under § 75.63 of this chapter.

(d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:

(1) The CAIR designated representative shall report the NO_x mass emissions data and heat input data for the CAIR NO_x unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering January 1, 2008 through March 31, 2008; or

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.170(b), unless that quarter is the third or fourth quarter of 2007, in which case reporting shall commence in the quarter covering January 1, 2008 through March 31, 2008.

(2) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(3) For CAIR NO_x units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Ozone Season Trading Program or CAIR SO_2 Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the NO_x mass emission data, heat input data, and other information required by this subpart.

(e) Compliance certification. The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions.

§ 96.175 Petitions.

(a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_x unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

(b) (1) The CAIR designated representative of a CAIR NO_x unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

(2) The CAIR designated representative of a CAIR NO_x unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

§ 96.176 Additional requirements to provide heat input data.

The owner or operator of a CAIR NO_x unit that monitors and reports NO_x mass emissions using a NO_x concentration system and a flow system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.

Subpart II CAIR NO_x Opt-in Units

§ 96.180 Applicability.

A CAIR NO_x opt-in unit must be a unit that:

(a) Is located in the State;

(b) Is not a CAIR NO_x unit under § 96.104 and is not covered by a retired unit exemption under § 96.105 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HH of this part.

§ 96.181 General.

(a) Except as otherwise provided in §§ 96.101 through 96.104, §§ 96.106 through 96.108, and subparts BB and CC and subparts FF through HH of this part, a CAIR NO_x opt-in unit shall be treated as a CAIR NO_x unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_x unit before issuance of a CAIR opt-in permit for such unit.

§ 96.182 CAIR designated representative.

Any CAIR NO_x opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_x units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x units.

§ 96.183 Applying for CAIR opt-in permit.

(a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x opt-in unit in § 96.180 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.186(f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 96.122;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_x unit under § 96.104 and is not covered by a retired unit exemption under § 96.105 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack, and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.122;

(3) A monitoring plan in accordance with subpart HH of this part;

(4) A complete certificate of representation under § 96.113 consistent with § 96.182, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x allowances under § 96.188(c) (subject to the conditions in §§ 96.184(h) and 96.186(g)).

(b) Duty to reapply.

(1) The CAIR designated representative of a CAIR NO_x opt-in unit shall submit a complete CAIR permit application under § 96.122 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR opt-in unit from the CAIR NO_x Annual Trading Program in accordance with § 96.186 or the unit becomes a CAIR NO_x unit under § 96.104, the CAIR NO_x opt-in unit shall remain subject to the requirements for a CAIR NO_x opt-in unit, even if the CAIR designated representative for the CAIR NO_x opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.184 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for a CAIR opt-in permit under § 96.183 is submitted in accordance with the following:

(a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.183. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) Monitoring and reporting.

(1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HH of this part and continuing until a CAIR opt-in permit is denied under § 96.184(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Annual Trading Program in accordance with § 96.186.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_x Annual Trading Program under § 96.184(g), during which period monitoring system availability must not be less than 90 percent under subpart HH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_x Annual Trading Program under § 96.184(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) Baseline heat input. The unit's baseline heat rate shall equal:

(1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section.

(d) Baseline NO_x emission rate. The unit's baseline NO_x emission rate shall equal:

(1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_x emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or

(3) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_x emission controls.

(e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x opt-in unit in § 96.180 and meets the elements certified in § 96.183(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_x opt-in unit unless the source already has a compliance account.

(f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x opt-in unit in § 96.180 or meets the elements certified in § 96.183(a)(2), the permitting authority will issue a denial of a CAIR NO_x opt-in permit for the unit.

(g) Date of entry into CAIR NO_x Annual Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_x opt-in unit, and a CAIR NO_x unit, as of the later of January 1, 2009 or January 1 of the first control period during which such CAIR opt-in permit is issued.

(h) Repowered CAIR NO_x opt-in unit.

(1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x opt-in unit of CAIR NO_x allowances under § 96.188(c) and such unit is repowered after its date of entry into the CAIR NO_x Annual Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_x opt-in unit replacing the original CAIR NO_x opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x emission rate as the original CAIR NO_x opt-in unit, and the original CAIR NO_x opt-in unit shall no longer be treated as a CAIR opt-in unit or a CAIR NO_x unit.

§ 96.185 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 96.122;

(2) The certification in § 96.183(a)(2);

(3) The unit's baseline heat input under § 96.184(c);

(4) The unit's baseline NO_x emission rate under § 96.184(d);

(5) A statement whether the unit is to be allocated CAIR NO_x allowances under § 96.188(c) (subject to the conditions in §§ 96.184(h) and 96.186(g));

(6) A statement that the unit may withdraw from the CAIR NO_x Annual Trading Program only in accordance with § 96.186; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.187.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.102 and, upon recordation by the Administrator under subpart FF or GG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_x allowances to or from the compliance account of the source that includes a CAIR NO_x opt-in unit covered by the CAIR opt-in permit.

§ 96.186 Withdrawal from CAIR NO_x Annual Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_x opt-in unit may withdraw from the CAIR NO_x Annual Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_x opt-in unit of the acceptance of the withdrawal of the CAIR NO_x opt-in unit in accordance with paragraph (d) of this section.

(a) Requesting withdrawal. In order to withdraw a CAIR opt-in unit from the CAIR NO_x Annual Trading Program, the CAIR designated representative of the CAIR NO_x opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of December 31 of a specified calendar year, which date must be at least 4 years after December 31 of the year of entry into the CAIR NO_x Annual Trading Program under § 96.184(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) Conditions for withdrawal. Before a CAIR NO_x opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_x Annual Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x opt-in unit must meet the requirement to hold CAIR NO_x allowances under § 96.106(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x opt-in unit CAIR NO_x allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under § 96.188 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x opt-in unit may submit a CAIR NO_x allowance transfer for any remaining CAIR NO_x allowances to another CAIR NO_x Allowance Tracking System in accordance with subpart GG of this part.

(c) Notification.

(1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_x allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x opt-in unit of the acceptance of the withdrawal of the CAIR NO_x opt-in unit as of midnight on December 31 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x opt-in unit that the CAIR NO_x opt-in unit's request to withdraw is denied. Such CAIR NO_x opt-in unit shall continue to be a CAIR NO_x opt-in unit.

(d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_x opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_x opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x Annual Trading Program concerning any control periods for which the unit is a CAIR NO_x opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR NO_x opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) Ability to reapply to the CAIR NO_x Annual Trading Program. Once a CAIR NO_x opt-in unit withdraws from the CAIR NO_x Annual Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.183 for such CAIR NO_x opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.184.

(g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_x opt-in unit shall not be eligible to withdraw from the CAIR NO_x Annual Trading Program if the CAIR designated representative of the CAIR NO_x opt-in unit requests, and the permitting authority issues a CAIR NO_x opt-in permit providing for, allocation to the CAIR NO_x opt-in unit of CAIR NO_x allowances under § 96.188(c).

§ 96.187 Change in regulatory status.

(a) Notification. If a CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_x opt-in unit's regulatory status, within 30 days of such change.

(b) Permitting authority's and Administrator's actions.

(1) If a CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, the permitting authority will revise the CAIR NO_x opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.123 as of the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104.

(2) (i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_x opt-in unit that becomes a CAIR NO_x unit under § 96.104, CAIR NO_x allowances equal in amount to and allocated for the same or a prior control period as:

(A) Any CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under § 96.188 for any control period after the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104; and

(B) If the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under §

96.104 is not December 31, the CAIR NO_x allowances allocated to the CAIR NO_x opt-in unit under § 96.188 for the control period that includes the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.

(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_x unit that becomes a CAIR NO_x unit under § 96.104 contains the CAIR NO_x allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.

(3) (i) For every control period after the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, the CAIR NO_x opt-in unit will be treated, solely for purposes of CAIR NO_x allowance allocations under § 96.142, as a unit that commences operation on the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104 and will be allocated CAIR NO_x allowances under § 96.142.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104 is not January 1, the following amount of CAIR NO_x allowances will be allocated to the CAIR NO_x opt-in unit (as a CAIR NO_x unit) under § 96.142 for the control period that includes the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104:

(A) The amount of CAIR NO_x allowances otherwise allocated to the CAIR NO_x opt-in unit (as a CAIR NO_x unit) under § 96.142 for the control period multiplied by;

(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x opt-in unit becomes a CAIR NO_x unit under § 96.104, divided by the total number of days in the control period; and

(C) Rounded to the nearest whole allowance as appropriate.

§ 96.188 NO_x allowance allocations to CAIR NO_x opt-in units.

(a) Timing requirements.

(1) When the CAIR opt-in permit is issued under § 96.184(e), the permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g), in accordance with paragraph (b) or (c) of this section.

(2) By no later than October 31 of the control period in which a CAIR opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g) and October 31 of each year thereafter, the permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_x opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) Calculation of allocation. For each control period for which a CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances, the permitting authority will allocate in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_x allowance allocation will be the lesser of:

(i) The CAIR NO_x opt-in unit's baseline heat input determined under § 96.184(c); or

(ii) The CAIR NO_x opt-in unit's heat input, as determined in accordance with subpart HH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g).

(2) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x allowance allocations will be the lesser of:

(i) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.184(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period for which CAIR NO_x allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_x emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x opt-in unit of CAIR NO_x allowances under this paragraph (subject to the conditions in §§ 96.184(h) and 96.186(g)), the permitting authority will allocate to the CAIR NO_x opt-in unit as follows:

(1) For each control period in 2009 through 2014 for which the CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_x allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x allowance allocations will be the lesser of:

(A) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.184(d); or

(B) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period in which the CAIR NO_x opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g).

(iii) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(2) For each control period in 2015 and thereafter for which the CAIR NO_x opt-in unit is to be allocated CAIR NO_x allowances,

(i) The heat input (in mmBtu) used for calculating the CAIR NO_x allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x allowance allocation will be the lesser of:

(A) 0.15 lb/mmBtu;

(B) The CAIR NO_x opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.184(d); or

(C) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x opt-in unit at any time during the control period for which CAIR NO_x allowances are to be allocated.

(iii) The permitting authority will allocate CAIR NO_x allowances to the CAIR NO_x opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(d) Recordation.

(1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_x opt-in unit, the CAIR NO_x allowances allocated by the permitting authority to the CAIR NO_x opt-in unit under paragraph (a)(1) of this section.

(2) By December 1 of the control period in which a CAIR opt-in unit enters the CAIR NO_x Annual Trading Program under § 96.184(g) and December 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x opt-in unit, the CAIR NO_x allowances allocated by the permitting authority to the CAIR NO_x opt-in unit under paragraph (a)(2) of this section.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Rule 1200-03-27-.11 CAIR NO_X Ozone Season Trading Program is amended by deleting it in its entirety and substituting instead the following:

1200-03-27-.11 Reserved. CAIR NO_x Ozone Season Trading Program

(1) The provisions of this rule supersede the provisions of 1200-03-27-.06 (NO_x Budget Trading Program for State Implementation Programs) as follows:

(a) The provisions of this rule supersede all requirements of 1200-03-27-.06 for the control period beginning in 2009, and for each control period thereafter.

(b) The provisions of 1200-03-27-.06 shall not apply to the control period beginning in 2009 and any control period thereafter.

(2) The provisions of 40 CFR Part 96 concerning the CAIR NO_x Ozone Season Trading Program are hereby adopted by reference with the following revisions:

(a) The provisions of Sec. 96.302 regarding the term "commence commercial operation" and "commence operation" are revised to read as follows:

§ 96.302 Definitions.

1. Commence commercial operation means, with regard to a unit:

(i) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.305 and § 96.384(h).

(I) For a unit that is a CAIR NO_x Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in this subpart and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(II) For a unit that is a CAIR NO_x Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in this subpart and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in this subpart, or in subpart (ii) of this part, as appropriate.

(ii) Notwithstanding subpart (i) of this part and except as provided in § 96.305, for a unit that is not a CAIR NO_x Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in subpart (i) of this part, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under § 96.304.

(I) For a unit with a date for commencement of commercial operation as defined in this subpart and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.

(II) For a unit with a date for commencement of commercial operation as defined in this subpart and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in subpart (i) of this part, or this part, as appropriate.

(iii) Notwithstanding subparts (i) and (ii) of this part, for a unit identified in part (2)(b)3. of this rule, the unit's date of commencement of operation shall be the unit's date of commencement of commercial operation.

2. Commence operation means:

(i) For units identified under part (2)(b)1. of this rule:

(I) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.384(h).

(II) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in item (I) of this subpart, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(III) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in item (I) of this subpart, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in items (I) or (II) of this subpart, or this item, as appropriate, except as provided in § 96.384(h).

(ii) Notwithstanding subpart (i) of this part, and solely for purposes of 40 CFR Part 96, subpart HHHH, for a unit identified in part (2)(b)3. of this rule, on the later of November 15, 1990 or the date the unit commences operation as defined in subpart (i) of this part and that subsequently becomes such a CAIR NO_x Ozone

Season unit, the unit's date for commencement of operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under part (2)(b)3. of this rule.

(I) For a unit with a date of commencement of operation as defined in this subpart, and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(II) For a unit with a date for commencement of operation as defined in this subpart, and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in subpart (i) of this part, or this subpart, as appropriate.

(b) The provisions of Sec. 96.304 as adopted for Tennessee are revised to read as follows:

Sec. 96.304 Applicability.

The following units in a State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this rule:

1. Except as provided in part 2. of this subparagraph:

(i) Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(ii) If a stationary boiler or stationary combustion turbine that, under subpart (i) of this part, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in subpart (i) of this part on the first date on which it both combusts fossil fuel and serves such generator.

2. The units in a State that meet the requirements set forth in item 2.(i)(I), 2.(ii)(I), or 2.(ii)(II) of this part shall not be CAIR NO_x Ozone Season units:

(i) (I) Any unit that is a CAIR NO_x Ozone Season unit under subpart 1.(i) or (ii) of this part:

I. Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

II. Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(II) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of item 2.(i)(I) of this subparagraph for at least one calendar year, but

~~subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of subitem 2.(i)(I)II. of this subparagraph.~~

~~(ii) (I) Any unit that is a CAIR NO_x Ozone Season unit under subpart 1.(i) or (ii) of this subparagraph commencing operation before January 1, 1985:~~

~~I. Qualifying as a solid waste incineration unit; and~~

~~II. With an average annual fuel consumption of non-fossil fuel for 1985–1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).~~

~~(II) Any unit that is a CAIR NO_x Ozone Season unit under subpart 1.(i) or (ii) of this subparagraph commencing operation on or after January 1, 1985:~~

~~I. Qualifying as a solid waste incineration unit; and~~

~~II. With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).~~

~~(III) If a unit qualifies as a solid waste incineration unit and meets the requirements of item 2.(ii)(I) or (II) of this subparagraph for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.~~

~~3. Any stationary boiler or stationary combustion turbine that is not a unit under parts 1. and 2. of this subparagraph, as follows:~~

~~(i) The stationary boiler or stationary combustion turbine meets either requirement of item (I) or (II) of this subpart:~~

~~(I) The stationary boiler or stationary combustion turbine serves a generator with a nameplate capacity greater than 25 MWe at any time on or after January 1, 1995, and sells any amount of electricity; or~~

~~(II) The stationary boiler's or stationary combustion turbine's maximum design heat input is greater than 250 mmBtu/hr.~~

~~(ii) The stationary boiler or stationary combustion turbine combusts, or will combust during any year, fossil fuel in the following amounts:~~

~~(I) Alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or~~

(II) Alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year.

(c) The provisions of Sec. 96.340 as adopted for Tennessee are revised to read as follows:

Sec. 96.340 State trading budgets.

1. The State trading budget for annual allocations of CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(b)1. of this rule for the control periods in 2009 through 2014 is 22,842 tons/season, and for the control period in 2015 and thereafter is 19,035 tons/season.

2. The State trading budget for annual allocations of CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(b)3. of this rule for the control period in 2009 and thereafter is 5,666 tons/season.

(d) The provisions of Sec. 96.342 as adopted for Tennessee are revised to read as follows:

Sec. 96.342 CAIR NO_x Ozone Season allowance allocations.

1. NO_x Ozone Season allowance allocations for CAIR NO_x Ozone Season units identified in part (2)(b)1. of this rule:

(i) (I) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations under subpart (ii) of this part for each CAIR NO_x Ozone Season unit identified in part (2)(b)1. of this rule will be:

I. For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

A. If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

B. If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

C. If the unit is not subject to section (i)(I)I.A. or B. of this subpart, the unit's control period heat input for such year is multiplied by 40 percent.

II. For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(II) I. A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under subitem (i)(I)I. of this part, and a unit's total tons of NO_x emissions during a control period in a calendar year under item (iii)(III) of this part, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data

~~reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.~~

~~II. A unit's converted control period heat input for a calendar year specified under subitem (i)(I)II. of this part equals:~~

~~A. Except as provided in section (i)(II)II.B. or C. of this part, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;~~

~~B. For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or~~

~~C. For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,414 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.~~

~~(ii) (I) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x Ozone Season units identified in parts (2)(b)1. and (2)(b)2. of this rule that have a baseline heat input (as determined under subpart (i) of this part) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under part (b)1. of this paragraph (except as provided in subpart (iv) of this part).~~

~~(II) The permitting authority will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under item (ii)(I) of this part in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under item (ii)(I) of this part by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.~~

~~(iii) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units~~

identified in part (2)(b)1. of this rule that are not allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part because the units do not yet have a baseline heat input under subpart (i) of this part or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under subpart (ii) of this part for the control period are already allocated, in accordance with the following procedures:

(I) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340.

(II) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x Ozone Season allowances are sought must be submitted on or before February 1 before such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(III) In a CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions during the control period immediately before such control period.

(IV) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

I. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of items (iii)(II) and (III) of this part.

II. On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.

III. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.

IV. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under subitem (iii)(IV)II. of this part, and rounded to the nearest whole allowance as appropriate.

V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit identified in parts (2)(b)1. and (2)(b)2. of this rule that was allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under subpart (ii) of this part, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.

2. NO_x Ozone Season allowance allocations for CAIR NO_x Ozone Season units identified in part (2)(b)3. of this rule:

(i) For all CAIR NO_x Ozone Season units identified in part (2)(b)3. of this rule, the heat input used for calculating NO_x allowance allocations for each CAIR Ozone Season NO_x unit shall be:

(I) The heat input (in mmBtu) used for calculating NO_x Ozone Season allowance allocations shall be the unit's heat input for the control period that is four years before the control period for which the NO_x allocation is being calculated.

(II) A unit's control period heat input and a unit's total tons of NO_x emissions during a control period in a calendar year under subpart 4.(iii) of this subparagraph, will be determined in accordance with 40 CFR part 75, to the extent the unit was otherwise subject to the requirements of 40 CFR part 75 for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of 40 CFR part 75 for the year.

(ii) For all CAIR NO_x Ozone Season units identified in part (2)(b)3. of this rule, the permitting authority will allocate CAIR NO_x Ozone Season allowances in the amounts specified in the State Implementation Plan.

(iii) For each control period in 2009 and thereafter, the permitting authority will

allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units identified in part (2)(b)2. of this rule that are not allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part because the units do not yet have a baseline heat input under subpart (i) of this part or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under subpart (ii) of this part for the control period are already allocated, in accordance with the following procedures:

(I) The permitting authority will establish a separate new unit set-aside for each control period. The set-aside for CAIR NO_x Ozone Season units identified in part (2)(b)2. of this rule shall be separate from the set-aside for CAIR NO_x Ozone Season Units identified in parts (2)(b)1. and (2)(b)2. of this rule. For CAIR NO_x Ozone Season Units identified in part (2)(b)2. of this rule, the allocation set-aside for new source growth will be the NO_x allowances remaining in the state trading program budget for CAIR NO_x Ozone Season units identified in part (2)(b)2. of this rule after allocations are set for all CAIR NO_x Ozone Season units under part (b)2. of this paragraph. For CAIR NO_x Ozone Season Units identified in part (2)(b)2. of this rule, the new unit set-aside will be established as follows:

I. For each control period from 2009 until 2018, the new unit set-aside is established as the State emission budget established in subparagraph (b)2. of this rule minus the number of NO_x allowances allocated in item (ii)(I) of this part.

II. For the control periods following 2018, the new unit set-aside will be established in a state implementation plan to be submitted to EPA for approval.

(II) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(III) In a CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding any of the following emission rates:

I. 0.15 lb/mmBtu;

II. The allowable NO_x emission rate under any state or federal construction or operating permit;

III. The allowable NO_x emission rate under any provision in Tennessee's state implementation plan.

IV. The emission rates indicated in subitems I. through III. above shall be converted to tons by multiplying the emission rate by the heat input indicated in subpart 2.(i) of this subparagraph (or, for units with less than four years of heat input data, the unit's

maximum design heat input), dividing by 2,000, and rounding to the nearest whole number as appropriate.

(IV) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under item (iii)(II) of this part and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

I. The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of items (iii)(II) and (III) of this part.

II. On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) in all allowance allocation requests accepted under subitem (iii)(IV)I. of this part for the control period.

III. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under subitem (iii)(IV)II. of this part, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part.

IV. If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under subitem (iii)(IV)II. of this part , then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under subitem (iii)(IV)I. of this part the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under subitem (iii)(IV)I. of this part), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under, and rounded to the nearest whole allowance as appropriate.

V. The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x Ozone Season unit covered by the request.

(iv) If, after completion of the procedures under item (iii)(IV) of this part for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under subpart (ii) of this part an amount of CAIR NO_x Ozone Season allowances using the following formula and rounding to the nearest whole NO_x allowance as appropriate.

Unit's share of NO_x allowances remaining in allocation set-aside = (Total NO_x allowances remaining in allocation set-aside) x (Unit's NO_x allowance allocation) ÷ (State trading program budget excluding allocation set-aside)

where:

"Total NO_x allowances remaining in allocation set-aside" is the total number of NO_x allowances remaining in the allocation set-aside for the unit type for the control period to which the allocation set-aside applies;

"Unit's NO_x allowance allocation" is the number of NO_x allowances allocated under item 2.(ii) of this subparagraph to the unit for the control period to which the allocation set-aside applies; and

"State trading program budget excluding allocation set-aside" is the State trading program budget apportioned to the unit type for the control period to which the allocation set-aside applies minus the allocation set-aside.

(v) By July 31, 2009 and July 31 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations for any NOx allowances remaining in the applicable set-aside for the control period in the year of the applicable submission deadline.

(3) PART 96--CAIR NO_x Ozone Season Trading Program

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Subpart AAAA—CAIR NO_x Ozone Season Trading Program General Provisions

§ 96.301 Purpose.

This subpart and subparts BBBB through IIII establish the model rule comprising general provisions and the designated representative, permitting, allowance, monitoring, and opt-in provisions for the State Clean Air Interstate Rule (CAIR) NO_x Ozone Season Trading Program, under section 110 of the Clean Air Act and § 51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides. The owner or operator of a unit or a source shall comply with the requirements of this subpart and subparts BBBB through IIII as a matter of federal law only if the State with jurisdiction over the unit and the source incorporates by reference such subparts or otherwise adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), of this chapter, the State submits to the Administrator one or more revisions of the State implementation plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of such subparts in accordance with § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter, then the State authorizes the Administrator to assist the State in implementing the CAIR NO_x Ozone Season Trading Program by carrying out the functions set forth for the Administrator in such subparts.

§ 96.302 Definitions.

The terms used in this subpart and subparts BBBB through IIII shall have the meanings set forth in this section as follows:

Account number means the identification number given by the Administrator to each CAIR NO_x Ozone Season Allowance Tracking System account.

Acid Rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.

Acid Rain Program means a multistate sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means, with regard to CAIR NO_x Ozone Season allowances, the determination by a permitting authority or the Administrator of the amount of such CAIR NO_x Ozone Season allowances to be initially credited to a CAIR NO_x Ozone Season unit, a new unit set-aside, or other entity.

Allowance transfer deadline means, for a control period, midnight of November 30 (if it is a business day), or midnight of the first business day thereafter (if November 30 is not a business day) immediately following the control period and is the deadline by which a CAIR NO_x Ozone Season allowance transfer must be submitted for recordation in a CAIR NO_x Ozone Season source's compliance account in order to be used to meet the source's CAIR NO_x Ozone Season emissions limitation for such control period in accordance with § 96.354.

Alternate CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with subparts BBBB and IIII of this part, to act on behalf of the CAIR designated representative in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the alternate CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the alternate designated representative under the Acid Rain Program. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the alternate Hg designated representative under the Hg Budget Trading Program.

Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system, or other emissions monitoring system approved for use under subpart HHHH of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart HHHH of this part.

Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.

CAIR authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with subparts BBBB, FFFF, and IIII of this part, to transfer and otherwise dispose of CAIR NO_x Ozone Season allowances held in the general account and, with regard to a compliance account, the CAIR designated representative of the source.

CAIR designated representative means, for a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source, the natural person who is authorized by the owners and operators of

~~the source and all such units at the source, in accordance with subparts BBBB and IIII of this part, to represent and legally bind each owner and operator in matters pertaining to the CAIR NO_x Ozone Season Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR NO_x source, then this natural person shall be the same person as the CAIR designated representative under the CAIR NO_x Annual Trading Program. If the CAIR NO_x Ozone Season source is also a CAIR SO_2 source, then this natural person shall be the same person as the CAIR designated representative under the CAIR SO_2 Trading Program. If the CAIR NO_x Ozone Season source is also subject to the Acid Rain Program, then this natural person shall be the same person as the designated representative under the Acid Rain Program. If the CAIR NO_x Ozone Season source is also subject to the Hg Budget Trading Program, then this natural person shall be the same person as the Hg designated representative under the Hg Budget Trading Program.~~

~~CAIR NO_x Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of this part and § 51.123(o)(1) or (2) of this chapter or established by the Administrator in accordance with subparts AA through II of part 97 of this chapter and §§51.123(p) and 52.35 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.~~

~~CAIR NO_x Ozone Season allowance means a limited authorization issued by a permitting authority or the Administrator under provisions of a State implementation plan that are approved under §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter, or under subpart EEEE of part 97 or §97.388 of this chapter, to emit one ton of nitrogen oxides during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the CAIR NO_x Ozone Season Trading Program or a limited authorization issued by a permitting authority for a control period during 2003 through 2008 under the NO_x Budget Trading Program in accordance with §51.121(p) of this chapter to emit one ton of nitrogen oxides during a control period, provided that the provision in §51.121(b)(2)(ii)(E) of this chapter shall not be used in applying this definition and the limited authorization shall not have been used to meet the allowance-holding requirement under the NO_x Budget Trading Program. An authorization to emit nitrogen oxides that is not issued under provisions of a State implementation plan approved under §51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), (dd), or (ee) of this chapter or subpart EEEE of part 97 or §97.388 of this chapter or under the NO_x Budget Trading Program as described in the prior sentence shall not be a CAIR NO_x Ozone Season allowance.~~

~~CAIR NO_x Ozone Season allowance deduction or deduct CAIR NO_x Ozone Season allowances means the permanent withdrawal of CAIR NO_x Ozone Season allowances by the Administrator from a compliance account, e.g., in order to account for a specified number of tons of total nitrogen oxides emissions from all CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source for a control period, determined in accordance with subpart HHHH of this part, or to account for excess emissions.~~

~~CAIR NO_x Ozone Season Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of CAIR NO_x Ozone Season allowances under the CAIR NO_x Ozone Season Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.~~

~~CAIR NO_x Ozone Season Allowance Tracking System account means an account in the CAIR NO_x Ozone Season Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of CAIR NO_x Ozone Season allowances.~~

~~CAIR NO_x Ozone Season allowances held or hold CAIR NO_x Ozone Season allowances means the CAIR NO_x Ozone Season allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts FFFF, GGGG, and IIII of this part, in a CAIR NO_x Ozone Season Allowance Tracking System account.~~

~~CAIR NO_x Ozone Season emissions limitation means, for a CAIR NO_x Ozone Season source, the tonnage equivalent, in NO_x emissions in a control period, of the CAIR NO_x Ozone Season allowances available for deduction for the source under §96.354(a) and (b) for the control period.~~

~~CAIR NO_x Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts~~

~~AAAA through IIII of this part and § 51.123(aa)(1) or (2) (and (bb)(1)), (bb)(2), or (dd) of this chapter or established by the Administrator in accordance with subparts AAAA through IIII of part 97 of this chapter and §§51.123(ee) and 52.35 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.~~

~~CAIR NO_x Ozone Season source means a source that includes one or more CAIR NO_x Ozone Season units.~~

~~CAIR NO_x Ozone Season unit means a unit that is subject to the CAIR NO_x Ozone Season Trading Program under § 96.304 and, except for purposes of § 96.305 and subpart EEEE of this part, a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part.~~

~~CAIR NO_x source means a source that is subject to the CAIR NO_x Annual Trading Program.~~

~~CAIR permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under subpart CCCC of this part, including any permit revisions, specifying the CAIR NO_x Ozone Season Trading Program requirements applicable to a CAIR NO_x Ozone Season source, to each CAIR NO_x Ozone Season unit at the source, and to the owners and operators and the CAIR designated representative of the source and each such unit.~~

~~CAIR SO_2 source means a source that is subject to the CAIR SO_2 Trading Program.~~

~~CAIR SO_2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of this part and § 51.124(o)(1) or (2) of this chapter or established by the Administrator in accordance with subparts AAA through III of part 97 of this chapter and §§51.124(r) and 52.36 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.~~

~~Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, et seq.~~

~~Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite.~~

~~Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.~~

~~Coal-fired means:~~

~~(1) Except for purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year; or~~

~~(2) For purposes of subpart EEEE of this part, combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during a specified year.~~

~~Cogeneration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine:~~

~~(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and~~

~~(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after the calendar year in which the unit first produces electricity—~~

~~(i) For a topping-cycle cogeneration unit,~~

~~(A) Useful thermal energy not less than 5 percent of total energy output; and~~

~~(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total~~

~~energy input, if useful thermal energy produced is less than 15 percent of total energy output.~~

~~(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.~~

~~Combustion turbine means:~~

~~(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and~~

~~(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated duct burner, heat recovery steam generator and steam turbine.~~

~~Commence commercial operation means, with regard to a unit:~~

~~(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in § 96.305 and § 96.384(h).~~

~~(i) For a unit that is a CAIR NO_x Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.~~

~~(ii) For a unit that is a CAIR NO_x Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.~~

~~(2) Notwithstanding paragraph (1) of this definition and except as provided in § 96.305, for a unit that is not a CAIR NO_x Ozone Season unit under § 96.304 on the later of November 15, 1990 or the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of commercial operation shall be the date on which the unit becomes a CAIR NO_x Ozone Season unit under § 96.304.~~

~~(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of commercial operation of the unit, which shall continue to be treated as the same unit.~~

~~(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of commercial operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.~~

~~Commence operation means:~~

~~(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in § 96.384(h).~~

(2) For a unit that undergoes a physical change (other than replacement of the unit by a unit at the same source) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

(3) For a unit that is replaced by a unit at the same source (e.g., repowered) after the date the unit commences operation as defined in paragraph (1) of this definition, such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1), (2), or (3) of this definition as appropriate, except as provided in § 96.384(h).

Common stack means a single flue through which emissions from 2 or more units are exhausted.

Compliance account means a CAIR NO_X Ozone Season Allowance Tracking System account, established by the Administrator for a CAIR NO_X Ozone Season source under subpart FFFF or IIII of this part, in which any CAIR NO_X Ozone Season allowance allocations for the CAIR NO_X Ozone Season units at the source are initially recorded and in which are held any CAIR NO_X Ozone Season allowances available for use for a control period in order to meet the source's CAIR NO_X Ozone Season emissions limitation in accordance with § 96.354.

Continuous emission monitoring system or CEMS means the equipment required under subpart HHHH of this part to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of nitrogen oxides emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of continuous emission monitoring systems required under subpart HHHH of this part:

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in standard cubic feet per hour (scfh);

(2) A nitrogen oxides concentration monitoring system, consisting of a NO_X pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X emissions, in parts per million (ppm);

(3) A nitrogen oxides emission rate (or NO_X diluent) monitoring system, consisting of a NO_X pollutant concentration monitor, a diluent gas (CO_2 or O_2) monitor, and an automated data acquisition and handling system and providing a permanent, continuous record of NO_X concentration, in parts per million (ppm), diluent gas concentration, in percent CO_2 or O_2, and NO_X emission rate, in pounds per million British thermal units (lb/mmBtu);

(4) A moisture monitoring system, as defined in § 75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O;

(5) A carbon dioxide monitoring system, consisting of a CO_2 pollutant concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(6) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2 in percent O_2.

Control period or ozone season means the period beginning May 1 of a calendar year, except as provided in §96.306(c)(2), and ending on September 30 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the CAIR designated representative and as determined by

the Administrator in accordance with subpart HHHH of this part.

Excess emissions means any ton of nitrogen oxides emitted by the CAIR NO_x Ozone Season units at a CAIR NO_x Ozone Season source during a control period that exceeds the CAIR NO_x Ozone Season emissions limitation for the source.

Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.

Fossil-fuel-fired means, with regard to a unit, combusting any amount of fossil fuel in any calendar year.

Fuel oil means any petroleum-based fuel (including diesel fuel or petroleum derivatives such as oil tar) and any recycled or blended petroleum products or petroleum by-products used as a fuel whether in a liquid, solid, or gaseous state.

General account means a CAIR NO_x Ozone Season Allowance Tracking System account, established under subpart FFFF of this part, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/mmBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the CAIR designated representative and determined by the Administrator in accordance with subpart HHHH of this part and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in mmBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in mmBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:

(1) For the life of the unit;

(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.

Maximum design heat input means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

Monitoring system means any monitoring system that meets the requirements of subpart HHHH of this part, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.

Most stringent State or Federal NO_x emissions limitation means, with regard to a unit, the lowest NO_x

~~emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.~~

~~Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings) as of such installation as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount of such completion as specified by the person conducting the physical change.~~

~~Oil-fired means, for purposes of subpart EEEE of this part, combusting fuel oil for more than 15.0 percent of the annual heat input in a specified year and not qualifying as coal-fired.~~

~~Operator means any person who operates, controls, or supervises a CAIR NO_x Ozone Season unit or a CAIR NO_x Ozone Season source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

~~Owner means any of the following persons:~~

~~(1) With regard to a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit at a source, respectively:~~

~~(i) Any holder of any portion of the legal or equitable title in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit;~~

~~(ii) Any holder of a leasehold interest in a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit; or~~

~~(iii) Any purchaser of power from a CAIR NO_x Ozone Season unit at the source or the CAIR NO_x Ozone Season unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such CAIR NO_x Ozone Season unit; or~~

~~(2) With regard to any general account, any person who has an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account and who is subject to the binding agreement for the CAIR authorized account representative to represent the person's ownership interest with respect to CAIR NO_x Ozone Season allowances.~~

~~Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the CAIR NO_x Ozone Season Trading Program in accordance with subpart CCCC of this part or, if no such agency has been so authorized, the Administrator.~~

~~Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.~~

~~Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.~~

~~Recordation, record, or recorded means, with regard to CAIR NO_x Ozone Season allowances, the movement of CAIR NO_x Ozone Season allowances by the Administrator into or between CAIR NO_x Ozone Season Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.~~

~~Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in § 75.22 of this chapter.~~

~~Replacement, replace, or replaced means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).~~

~~Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:~~

~~(1) Atmospheric or pressurized fluidized bed combustion;~~

~~(2) Integrated gasification combined cycle;~~

~~(3) Magnetohydrodynamics;~~

~~(4) Direct and indirect coal-fired turbines;~~

~~(5) Integrated gasification fuel cells; or~~

~~(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.~~

~~Serial number means, for a CAIR NO_x Ozone Season allowance, the unique identification number assigned to each CAIR NO_x Ozone Season allowance by the Administrator.~~

~~Sequential use of energy means:~~

~~(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or~~

~~(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.~~

~~Solid waste incineration unit means a stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine that is a "solid waste incineration unit" as defined in section 129(g)(1) of the Clean Air Act.~~

~~Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."~~

~~State means one of the States or the District of Columbia that adopts the CAIR NO_x Ozone Season Trading Program pursuant to § 51.123(aa)(1) or (2), (bb), or (dd) of this chapter.~~

~~Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:~~

~~(1) In person;~~

~~(2) By United States Postal Service; or~~

~~(3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.~~

Title V operating permit means a permit issued under title V of the Clean Air Act and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the Clean Air Act and part 70 or 71 of this chapter.

Ton means 2,000 pounds. For the purpose of determining compliance with the CAIR NO_x Ozone Season emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with subpart HHHH of this part, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary, fossil-fuel-fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heating application (e.g., space heating or domestic hot water heating); or

(3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 96.303 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows.

Btu—British thermal unit
CO_2—carbon dioxide
H_2O—water
Hg—mercury
hr—hour
kW—kilowatt electrical
kWh—kilowatt hour

lb—pound
mmBtu—million Btu
MWe—megawatt electrical
MWh—megawatt hour
NO_x—nitrogen oxides
O_2—oxygen
ppm—parts per million
scfh—standard cubic feet per hour
SO_2—sulfur dioxide
yr—year

§ 96.304 Applicability

(a) Except as provided in paragraph (b) of this section:

(1) The following units in a State shall be CAIR NO_x Ozone Season units, and any source that includes one or more such units shall be a CAIR NO_x Ozone Season source, subject to the requirements of this subpart and subparts BBBB through HHHH of this part: Any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.

(2) If a stationary boiler or stationary combustion turbine that, under paragraph (a)(1) of this section, is not a CAIR NO_x Ozone Season unit begins to combust fossil fuel or to serve a generator with nameplate capacity of more than 25 MWe producing electricity for sale, the unit shall become a CAIR NO_x Ozone Season unit as provided in paragraph (a)(1) of this section on the first date on which it both combusts fossil fuel and serves such generator.

(b) The units in a State that meet the requirements set forth in paragraph (b)(1)(i), (b)(2)(i), or (b)(2)(ii) of this section shall not be CAIR NO_x Ozone Season units:

(1) (i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section:

(A) Qualifying as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continuing to qualify as a cogeneration unit; and

(B) Not serving at any time, since the later of November 15, 1990 or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale.

(ii) If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and meets the requirements of paragraphs (b)(1)(i) of this section for at least one calendar year, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a cogeneration unit or January 1 after the first calendar year during which the unit no longer meets the requirements of paragraph (b)(1)(i)(B) of this section.

(2) (i) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation before January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for 1985-1987 exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(ii) Any unit that is a CAIR NO_x Ozone Season unit under paragraph (a)(1) or (2) of this section commencing operation on or after January 1, 1985:

(A) Qualifying as a solid waste incineration unit; and

(B) With an average annual fuel consumption of non-fossil fuel for the first 3 calendar years of operation exceeding 80 percent (on a Btu basis) and an average annual fuel consumption of non-fossil fuel for any 3 consecutive calendar years after 1990 exceeding 80 percent (on a Btu basis).

(iii) If a unit qualifies as a solid waste incineration unit and meets the requirements of paragraph (b)(2)(i) or (ii) of this section for at least 3 consecutive calendar years, but subsequently no longer meets all such requirements, the unit shall become a CAIR NO_x Ozone Season unit starting on the earlier of January 1 after the first calendar year during which the unit first no longer qualifies as a solid waste incineration unit or January 1 after the first 3 consecutive calendar years after 1990 for which the unit has an average annual fuel consumption of fossil fuel of 20 percent or more.

§ 96.305 Retired unit exemption.

(a) (1) Any CAIR NO_x Ozone Season unit that is permanently retired and is not a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part shall be exempt from the CAIR NO_x Ozone Season Trading Program, except for the provisions of this section, §96.302, §96.303, §96.304, § 96.306(c)(4) through (7), § 96.307, §96.308, and subparts BBBB and EEEE through GGGG of this part.

(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the CAIR NO_x Ozone Season unit is permanently retired. Within 30 days of the unit's permanent retirement, the CAIR designated representative shall submit a statement to the permitting authority otherwise responsible for administering any CAIR permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.

(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under subpart CCCC of this part covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.

(b) Special provisions.

(1) A unit exempt under paragraph (a) of this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect.

(2) The permitting authority will allocate CAIR NO_x Ozone Season allowances under subpart EEEE of this part to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year

period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the CAIR designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the CAIR NO_x Ozone Season Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the CAIR designated representative of the source submits a complete CAIR permit application under § 96.322 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the CAIR designated representative submits a CAIR permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the CAIR designated representative is required under paragraph (b)(5) of this section to submit a CAIR permit application for the unit; or

(iii) The date on which the unit resumes operation, if the CAIR designated representative is not required to submit a CAIR permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under subpart HHHH of this part, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences commercial operation on the first date on which the unit resumes operation.

§ 96.306 Standard requirements.

(a) Permit requirements.

(1) The CAIR designated representative of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete CAIR permit application under §96.322 in accordance with the deadlines specified in § 96.321; and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a CAIR permit application and issue or deny a CAIR permit.

(2) The owners and operators of each CAIR NO_x Ozone Season source required to have a title V operating permit and each CAIR NO_x Ozone Season unit required to have a title V operating permit at the source shall have a CAIR permit issued by the permitting authority under subpart CCCC of this part for the source and operate the source and the unit in compliance with such CAIR permit.

(3) Except as provided in subpart IIII of this part, the owners and operators of a CAIR NO_x Ozone Season source that is not otherwise required to have a title V operating permit and each CAIR NO_x Ozone Season unit that is not otherwise required to have a title V

operating permit are not required to submit a CAIR permit application, and to have a CAIR permit, under subpart CCCC of this part for such CAIR NO_x Ozone Season source and such CAIR NO_x Ozone Season unit.

(b) Monitoring, reporting, and recordkeeping requirements.

(1) The owners and operators, and the CAIR designated representative, of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of subpart HHHH of this part.

(2) The emissions measurements recorded and reported in accordance with subpart HHHH of this part shall be used to determine compliance by each CAIR NO_x Ozone Season source with the CAIR NO_x Ozone Season emissions limitation under paragraph (c) of this section.

(c) Nitrogen oxides ozone season emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall hold, in the source's compliance account, CAIR NO_x Ozone Season allowances available for compliance deductions for the control period under § 96.354(a) in an amount not less than the tons of total nitrogen oxides emissions for the control period from all CAIR NO_x Ozone Season units at the source, as determined in accordance with subpart HHHH of this part.

(2) A CAIR NO_x Ozone Season unit shall be subject to the requirements under paragraph (c)(1) of this section for the control period starting on the later of May 1, 2009 or the deadline for meeting the unit's monitor certification requirements under § 96.370(b)(1), (2), (3), or (7) and for each control period thereafter.

(3) A CAIR NO_x Ozone Season allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the CAIR NO_x Ozone Season allowance was allocated.

(4) CAIR NO_x Ozone Season allowances shall be held in, deducted from, or transferred into or among CAIR NO_x Ozone Season Allowance Tracking System accounts in accordance with subparts FFFF, GGGG, and IIII of this part.

(5) A CAIR NO_x Ozone Season allowance is a limited authorization to emit one ton of nitrogen oxides in accordance with the CAIR NO_x Ozone Season Trading Program. No provision of the CAIR NO_x Ozone Season Trading Program, the CAIR permit application, the CAIR permit, or an exemption under § 96.305 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A CAIR NO_x Ozone Season allowance does not constitute a property right.

(7) Upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from a CAIR NO_x Ozone Season source's compliance account is incorporated automatically in any CAIR permit of the source.

(d) Excess emissions requirements. If a CAIR NO_x Ozone Season source emits nitrogen oxides during any control period in excess of the CAIR NO_x Ozone Season emissions limitation, then:

(1) The owners and operators of the source and each CAIR NO_x Ozone Season unit at the source shall surrender the CAIR NO_x Ozone Season allowances required for deduction under § 96.354(d)(1) and pay any fine, penalty, or assessment or comply with any other

remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(2) Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(e) Recordkeeping and reporting requirements.

(1) Unless otherwise provided, the owners and operators of the CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under § 96.313 for the CAIR designated representative for the source and each CAIR NO_x Ozone Season unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under § 96.313 changing the CAIR designated representative.

(ii) All emissions monitoring information, in accordance with subpart HHHH of this part, provided that to the extent that subpart HHHH of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the CAIR NO_x Ozone Season Trading Program.

(iv) Copies of all documents used to complete a CAIR permit application and any other submission under the CAIR NO_x Ozone Season Trading Program or to demonstrate compliance with the requirements of the CAIR NO_x Ozone Season Trading Program.

(2) The CAIR designated representative of a CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit at the source shall submit the reports required under the CAIR NO_x Ozone Season Trading Program, including those under subpart HHHH of this part.

(f) Liability.

(1) Each CAIR NO_x Ozone Season source and each CAIR NO_x Ozone Season unit shall meet the requirements of the CAIR NO_x Ozone Season Trading Program.

(2) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season source or the CAIR designated representative of a CAIR NO_x Ozone Season source shall also apply to the owners and operators of such source and of the CAIR NO_x Ozone Season units at the source.

(3) Any provision of the CAIR NO_x Ozone Season Trading Program that applies to a CAIR NO_x Ozone Season unit or the CAIR designated representative of a CAIR NO_x Ozone Season unit shall also apply to the owners and operators of such unit.

(g) Effect on other authorities. No provision of the CAIR NO_x Ozone Season Trading Program, a CAIR permit application, a CAIR permit, or an exemption under § 96.305 shall be construed as exempting or excluding the owners and operators, and the CAIR designated representative, of a CAIR NO_x Ozone Season source or CAIR NO_x Ozone Season unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the Clean Air Act.

§ 96.307 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the CAIR NO_x Ozone Season Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the CAIR NO_x Ozone Season Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 96.308 Appeal procedures.

The appeal procedures for decisions of the Administrator under the CAIRNO_x Ozone Season Trading Program are set forth in part 78 of this chapter.

Subpart BBBB—CAIR Designated Representative for CAIR NO_x Ozone Season Sources

§ 96.310 Authorization and responsibilities of CAIR designated representative.

(a) Except as provided under § 96.311, each CAIR NO_x Ozone Season source, including all CAIR NO_x Ozone Season units at the source, shall have one and only one CAIR designated representative, with regard to all matters under the CAIR NO_x Ozone Season Trading Program concerning the source or any CAIR NO_x Ozone Season unit at the source.

(b) The CAIR designated representative of the CAIR NO_x Ozone Season source shall be selected by an agreement binding on the owners and operators of the source and all CAIR NO_x Ozone Season units at the source and shall act in accordance with the certification statement in § 96.313(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, the CAIR designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the CAIR NO_x Ozone Season source represented and each CAIR NO_x Ozone Season unit at the source in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the CAIR designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No CAIR permit will be issued, no emissions data reports will be accepted, and no CAIR NO_x Ozone Season Allowance Tracking System account will be established for a CAIR NO_x Ozone Season unit at a source, until the Administrator has received a complete certificate of representation under § 96.313 for a CAIR designated representative of the source and the CAIR NO_x Ozone Season units at the source.

(e) (1) Each submission under the CAIR NO_x Ozone Season Trading Program shall be submitted, signed, and certified by the CAIR designated representative for each CAIR NO_x Ozone Season source on behalf of which the submission is made. Each such submission shall include the following certification statement by the CAIR designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate,

and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 96.311 Alternate CAIR designated representative.

(a) A certificate of representation under § 96.313 may designate one and only one alternate CAIR designated representative, who may act on behalf of the CAIR designated representative. The agreement by which the alternate CAIR designated representative is selected shall include a procedure for authorizing the alternate CAIR designated representative to act in lieu of the CAIR designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under § 96.313, any representation, action, inaction, or submission by the alternate CAIR designated representative shall be deemed to be a representation, action, inaction, or submission by the CAIR designated representative.

(c) Except in this section and §§ 96.302, 96.310(a) and (d), 96.312, 96.313, 96.315, 96.351, and 96.382 whenever the term "CAIR designated representative" is used in subparts AAAA through IIII of this part, the term shall be construed to include the CAIR designated representative or any alternate CAIR designated representative.

§ 96.312 Changing CAIR designated representative and alternate CAIR designated representative; changes in owners and operators.

(a) Changing CAIR designated representative. The CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.

(b) Changing alternate CAIR designated representative. The alternate CAIR designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under § 96.313. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate CAIR designated representative and the owners and operators of the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source.

(c) Changes in owners and operators.

(1) In the event an owner or operator of a CAIR NO_x Ozone Season source or a CAIR NO_x Ozone Season unit is not included in the list of owners and operators in the certificate of representation under §96.313, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the CAIR designated representative and any alternate CAIR designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a CAIR NO_x Ozone

Season source or a CAIR NO_x Ozone Season unit, including the addition of a new owner or operator, the CAIR designated representative or any alternate CAIR designated representative shall submit a revision to the certificate of representation under § 96.313 amending the list of owners and operators to include the change.

§ 96.313 Certificate of representation.

(a) A complete certificate of representation for a CAIR designated representative or an alternate CAIR designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the CAIR NO_x Ozone Season source, and each CAIR NO_x Ozone Season unit at the source, for which the certificate of representation is submitted, including identification and nameplate capacity of each generator served by each such unit.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR designated representative and any alternate CAIR designated representative.

(3) A list of the owners and operators of the CAIR NO_x Ozone Season source and of each CAIR NO_x Ozone Season unit at the source.

(4) The following certification statements by the CAIR designated representative and any alternate CAIR designated representative—

(i) "I certify that I was selected as the CAIR designated representative or alternate CAIR designated representative, as applicable, by an agreement binding on the owners and operators of the source and each CAIR NO_x Ozone Season unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each CAIR NO_x Ozone Season unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a CAIR NO_x Ozone Season unit, or where a utility or industrial customer purchases power from a CAIR NO_x Ozone Season unit under a life-of the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'CAIR designated representative' or 'alternate CAIR designated representative', as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each CAIR NO_x Ozone Season unit at the source; and CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of CAIR NO_x Ozone Season allowances by contract, CAIR NO_x Ozone Season allowances and proceeds of transactions involving CAIR NO_x Ozone Season allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the CAIR designated representative and any alternate CAIR designated

representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 96.314 Objections concerning CAIR designated representative.

(a) Once a complete certificate of representation under § 96.313 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under § 96.313 is received by the Administrator.

(b) Except as provided in § 96.312(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the CAIR designated representative shall affect any representation, action, inaction, or submission of the CAIR designated representative or the finality of any decision or order by the permitting authority or the Administrator under the CAIR NO_X Ozone Season Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any CAIR designated representative, including private legal disputes concerning the proceeds of CAIR NO_X Ozone Season allowance transfers.

§ 96.315 Delegation by CAIR designated representative and alternate CAIR designated representative.

(a) A CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(b) An alternate CAIR designated representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under this part.

(c) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (a) or (b) of this section, the CAIR designated representative or alternate CAIR designated representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:

(1) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR designated representative or alternate CAIR designated representative;

(2) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of each such natural person (referred to as an "agent");

(3) For each such natural person, a list of the type or types of electronic submissions under paragraph (a) or (b) of this section for which authority is delegated to him or her; and

(4) The following certification statements by such CAIR designated representative or alternate CAIR designated representative:

(i) "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR designated representative or alternate CAIR designated representative, as appropriate, and

before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d) shall be deemed to be an electronic submission by me."

(ii) "Until this notice of delegation is superseded by another notice of delegation under 40 CFR 96.315(d), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.315 is terminated."

(d) A notice of delegation submitted under paragraph (c) of this section shall be effective, with regard to the CAIR designated representative or alternate CAIR designated representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR designated representative or alternate CAIR designated representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(e) Any electronic submission covered by the certification in paragraph (c)(4)(i) of this section and made in accordance with a notice of delegation effective under paragraph (d) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

Subpart CCCC—Permits

§ 96.320 General CAIR NO_x Ozone Season Trading Program permit requirements.

(a) For each CAIR NO_x Ozone Season source required to have a title V operating permit or required, under subpart IIII of this part, to have a title V operating permit or other federally enforceable permit, such permit shall include a CAIR permit administered by the permitting authority for the title V operating permit or the federally enforceable permit as applicable. The CAIR portion of the title V permit or other federally enforceable permit as applicable shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter or the permitting authority's regulations for other federally enforceable permits as applicable, except as provided otherwise by §96.305, this subpart, and subpart IIII of this part.

(b) Each CAIR permit shall contain, with regard to the CAIR NO_x Ozone Season source and the CAIR NO_x Ozone Season units at the source covered by the CAIR permit, all applicable CAIR NO_x Ozone Season Trading Program, CAIR NO_x Annual Trading Program, and CAIR SO_2 Trading Program requirements and shall be a complete and separable portion of the title V operating permit or other federally enforceable permit under paragraph (a) of this section.

§ 96.321 Submission of CAIR permit applications.

(a) Duty to apply. The CAIR designated representative of any CAIR NO_x Ozone Season source required to have a title V operating permit shall submit to the permitting authority a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_x Ozone Season unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2009 or the date on which the CAIR NO_x Ozone Season unit commences commercial operation, except as provided in § 96.383(a).

(b) Duty to Reapply. For a CAIR NO_x Ozone Season source required to have a title V operating permit, the CAIR designated representative shall submit a complete CAIR permit application under § 96.322 for the source covering each CAIR NO_x Ozone Season unit at the source to renew the CAIR permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal, except as provided in §96.383(b).

§ 96.322 Information requirements for CAIR permit applications.

A complete CAIR permit application shall include the following elements concerning the CAIR NO_x Ozone

Season source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the CAIR NO_x Ozone Season source;

(b) Identification of each CAIR NO_x Ozone Season unit at the CAIR NO_x Ozone Season source; and

(c) The standard requirements under § 96.306.

§ 96.323 CAIR permit contents and term.

(a) Each CAIR permit will contain, in a format prescribed by the permitting authority, all elements required for a complete CAIR permit application under § 96.322.

(b) Each CAIR permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF, GGGG, or IIII of this part, every allocation, transfer, or deduction of a CAIR NO_x Ozone Season allowance to or from the compliance account of the CAIR NO_x Ozone Season source covered by the permit.

(c) The term of the CAIR permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the CAIR permit with issuance, revision, or renewal of the CAIR NO_x Ozone Season source's title V operating permit or other federally enforceable permit as applicable.

§ 96.324 CAIR permit revisions.

Except as provided in § 96.323(b), the permitting authority will revise the CAIR permit, as necessary, in accordance with the permitting authority's title V operating permits regulations or the permitting authority's regulations for other federally enforceable permits as applicable addressing permit revisions.

Subpart DDDD [Reserved]

Subpart EEEE—CAIR NO_x Ozone Season Allowance Allocations

§ 96.340 State trading budgets.

(a) Except as provided in paragraph (b) of this section, the State trading budgets for annual allocations of CAIR NO_x Ozone Season allowances for the control periods in 2009 through 2014 and in 2015 and thereafter are respectively as follows:

State	State trading budget for 2009–2014 (tons)	State trading budget for 2015 and thereafter (tons)
Alabama	32,182	26,818
Arkansas	11,515	9,596
Connecticut	2,559	2,559
Delaware	2,226	1,855
District of Columbia	112	94
Florida	47,912	39,926
Illinois	30,701	28,981
Indiana	45,952	39,273
Iowa	14,263	11,886
Kentucky	36,045	30,587
Louisiana	17,085	14,238
Maryland	12,834	10,695
Massachusetts	7,551	6,293
Michigan	28,971	24,142
Mississippi	8,714	7,262
Missouri	26,678	22,231

New Jersey	6,654	5,545
New York	20,632	17,193
North Carolina	28,392	23,660
Ohio	45,664	39,945
Pennsylvania	42,171	35,143
South Carolina	15,249	12,707
Tennessee	22,842	19,035
Virginia	15,994	13,328
West Virginia	26,859	26,525
Wisconsin	17,987	14,989

(b) If a permitting authority issues additional CAIR NO_x Ozone Season allowance allocations under §51.123(aa)(2)(iii)(A) of this chapter, the amount in the State trading budget for a control period in a calendar year will be the sum of the amount set forth for the State and for the year in paragraph (a) of this section and the amount of additional CAIR NO_x Ozone Season allowance allocations issued under §51.123(aa)(2)(iii)(A) of this chapter for the year.

§ 96.341 Timing requirements for CAIR NO_x Ozone Season allowance allocations.

(a) By October 31, 2006, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with §96.342(a) and (b), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By October 31, 2009 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.

(c) By July 31, 2009 and July 31 of each year thereafter, the permitting authority will submit to the Administrator the CAIR NO_x Ozone Season allowance allocations, in a format prescribed by the Administrator and in accordance with § 96.342(c), (a), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

§ 96.342 CAIR NO_x Ozone Season allowance allocations.

(a) (1) The baseline heat input (in mmBtu) used with respect to CAIR NO_x Ozone Season allowance allocations under paragraph (b) of this section for each CAIR NO_x Ozone Season unit will be:

(i) For units commencing operation before January 1, 2001 the average of the 3 highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as follows:

(A) If the unit is coal-fired during the year, the unit's control period heat input for such year is multiplied by 100 percent;

(B) If the unit is oil-fired during the year, the unit's control period heat input for such year is multiplied by 60 percent; and

(C) If the unit is not subject to paragraph (a)(1)(i)(A) or (B) of this section, the unit's control period heat input for such year is multiplied by 40 percent.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2) (i) A unit's control period heat input, and a unit's status as coal-fired or oil-fired, for a calendar year under paragraph (a)(1)(i) of this section, and a unit's total tons of NO_x emissions during a control period in a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh, if the unit is coal-fired for the year, or 6,675 Btu/kWh, if the unit is not coal-fired for the year, and divided by 1,000,000 Btu/mmBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/mmBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/mmBtu.

(b) (1) For each control period in 2009 and thereafter, the permitting authority will allocate to all CAIR NO_x Ozone Season units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of CAIR NO_x Ozone Season allowances equal to 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the tons of NO_x emissions in the State trading budget under § 96.340 (except as provided in paragraph (d) of this section).

(2) The permitting authority will allocate CAIR NO_x Ozone Season allowances to each CAIR NO_x Ozone Season unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of CAIR NO_x Ozone Season allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such CAIR NO_x Ozone Season unit to the total amount of baseline heat input of all such CAIR NO_x Ozone Season units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2009 and thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to CAIR NO_x Ozone Season units in a State that are not allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section because the units do not yet have a baseline heat input under paragraph (a) of this section or because the units have a baseline heat input but all CAIR NO_x Ozone Season allowances available under paragraph (b) of this section for the control period are already allocated, in accordance with the following

procedures:

(1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated CAIR NO_x Ozone Season allowances equal to 5 percent for a control period in 2009 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340.

(2) The CAIR designated representative of such a CAIR NO_x Ozone Season unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated CAIR NO_x Ozone Season allowances, starting with the later of the control period in 2009 or the first control period after the control period in which the CAIR NO_x Ozone Season unit commences commercial operation and until the first control period for which the unit is allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section. A separate CAIR NO_x Ozone Season allowance allocation request for each control period for which CAIR NO_x allowances are sought must be submitted on or before February 1 of such control period and after the date on which the CAIR NO_x Ozone Season unit commences commercial operation.

(3) In a CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section, the CAIR designated representative may request for a control period CAIR NO_x Ozone Season allowances in an amount not exceeding the CAIR NO_x Ozone Season unit's total tons of NO_x emissions during the control period immediately before such control period.

(4) The permitting authority will review each CAIR NO_x Ozone Season allowance allocation request under paragraph (c)(2) of this section and will allocate CAIR NO_x Ozone Season allowances for each control period pursuant to such request as follows:

(i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after February 1 before the control period, the permitting authority will determine the sum of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each CAIR NO_x Ozone Season unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the CAIR NO_x Ozone Season allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of CAIR NO_x Ozone Season allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The permitting authority will notify each CAIR designated representative that submitted an allowance allocation request of the amount of CAIR NO_x Ozone Season allowances (if any) allocated for the control period to the CAIR NO_x

Ozone Season unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated CAIR NO_x Ozone Season allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each CAIR NO_x Ozone Season unit that was allocated CAIR NO_x Ozone Season allowances under paragraph (b) of this section an amount of CAIR NO_x Ozone Season allowances equal to the total amount of such remaining unallocated CAIR NO_x Ozone Season allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for a control period during 2009 through 2014, and 97 percent for a control period during 2015 and thereafter, of the amount of tons of NO_x emissions in the State trading budget under § 96.340, and rounded to the nearest whole allowance as appropriate.

Subpart FFFF—CAIR NO_x Ozone Season Allowance Tracking System

§ 96.350 [Reserved]

§ 96.351 Establishment of accounts.

(a) Compliance accounts. Except as provided in § 96.384(e), upon receipt of a complete certificate of representation under § 96.313, the Administrator will establish a compliance account for the CAIR NO_x Ozone Season source for which the certificate of representation was submitted, unless the source already has a compliance account.

(b) General accounts—

(1) Application for general account.

(i) Any person may apply to open a general account for the purpose of holding and transferring CAIR NO_x Ozone Season allowances. An application for a general account may designate one and only one CAIR authorized account representative and one and only one alternate CAIR authorized account representative who may act on behalf of the CAIR authorized account representative. The agreement by which the alternate CAIR authorized account representative is selected shall include a procedure for authorizing the alternate CAIR authorized account representative to act in lieu of the CAIR authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the CAIR authorized account representative and any alternate CAIR authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the CAIR authorized account representative and any alternate CAIR authorized account representative to represent their ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account;

(D) The following certification statement by the CAIR authorized account representative and any alternate CAIR authorized account representative: "I certify that I was selected as the CAIR authorized account representative or the alternate CAIR authorized account representative, as applicable, by an agreement that is binding on all

persons who have an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the CAIR NO_x Ozone Season Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the CAIR authorized account representative and any alternate CAIR authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Authorization of CAIR authorized account representative and alternate CAIR authorized account representative.

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The CAIR authorized account representative and any alternate CAIR authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account in all matters pertaining to the CAIR NO_x Ozone Season Trading Program, notwithstanding any agreement between the CAIR authorized account representative or any alternate CAIR authorized account representative and such person. Any such person shall be bound by any order or decision issued to the CAIR authorized account representative or any alternate CAIR authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate CAIR authorized account representative shall be deemed to be a representation, action, inaction, or submission by the CAIR authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the CAIR authorized account representative or any alternate CAIR authorized account representative for the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances held in the general account. Each such submission shall include the following certification statement by the CAIR authorized account representative or any alternate CAIR authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for

submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) Changing CAIR authorized account representative and alternate CAIR authorized account representative; changes in persons with ownership interest.

(i) The CAIR authorized account representative for a general account maybe changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

(ii) The alternate CAIR authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate CAIR authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate CAIR authorized account representative and the persons with an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account.

(iii) (A) In the event a person having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account is not included in the list of such persons in the application for a general account, such person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the CAIR authorized account representative and any alternate CAIR authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to CAIR NO_x Ozone Season allowances in the general account, including the addition of a new person, the CAIR authorized account representative or any alternate CAIR authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the CAIR NO_x Ozone Season allowances in the general account to include the change.

(4) Objections concerning CAIR authorized account representative or alternate CAIR authorized account representative.

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization,

~~or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account shall affect any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative or the finality of any decision or order by the Administrator under the CAIR NO_x Ozone Season Trading Program.~~

~~(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the CAIR authorized account representative or any alternate CAIR authorized account representative for a general account, including private legal disputes concerning the proceeds of CAIR NO_x Ozone Season allowance transfers.~~

~~(5) Delegation by CAIR authorized account representative and alternate CAIR authorized account representative.~~

~~(i) A CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.~~

~~(ii) An alternate CAIR authorized account representative may delegate, to one or more natural persons, his or her authority to make an electronic submission to the Administrator provided for or required under subparts FFFF and GGGG of this part.~~

~~(iii) In order to delegate authority to make an electronic submission to the Administrator in accordance with paragraph (b)(5)(i) or (ii) of this section, the CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate, must submit to the Administrator a notice of delegation, in a format prescribed by the Administrator, that includes the following elements:~~

~~(A) The name, address, e-mail address, telephone number, and facsimile transmission number (if any) of such CAIR authorized account representative or alternate CAIR authorized account representative;~~

~~(B) The name, address, e-mail address, telephone number, and, facsimile transmission number (if any) of each such natural person (referred to as an "agent");~~

~~(C) For each such natural person, a list of the type or types of electronic submissions under paragraph (b)(5)(i) or (ii) of this section for which authority is delegated to him or her;~~

~~(D) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: "I agree that any electronic submission to the Administrator that is by an agent identified in this notice of delegation and of a type listed for such agent in this notice of delegation and that is made when I am a CAIR authorized account representative or alternate CAIR authorized representative, as appropriate, and before this notice of delegation is superseded by another notice of delegation under 40 CFR 96.351(b)(5)(iv) shall be deemed to be an electronic submission by me."; and~~

~~(E) The following certification statement by such CAIR authorized account representative or alternate CAIR authorized account representative: "Until this notice of delegation is superseded by another notice of~~

delegation under 40 CFR 96.351(b)(5)(iv), I agree to maintain an e-mail account and to notify the Administrator immediately of any change in my e-mail address unless all delegation of authority by me under 40 CFR 96.351(b)(5) is terminated.".

(iv) A notice of delegation submitted under paragraph (b)(5)(iii) of this section shall be effective, with regard to the CAIR authorized account representative or alternate CAIR authorized account representative identified in such notice, upon receipt of such notice by the Administrator and until receipt by the Administrator of a superseding notice of delegation submitted by such CAIR authorized account representative or alternate CAIR authorized account representative, as appropriate. The superseding notice of delegation may replace any previously identified agent, add a new agent, or eliminate entirely any delegation of authority.

(v) Any electronic submission covered by the certification in paragraph (b)(5)(iii)(D) of this section and made in accordance with a notice of delegation effective under paragraph (b)(5)(iv) of this section shall be deemed to be an electronic submission by the CAIR designated representative or alternate CAIR designated representative submitting such notice of delegation.

(c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 96.352 Responsibilities of CAIR authorized account representative.

Following the establishment of a CAIR NO_x Ozone Season Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of CAIR NO_x Ozone Season allowances in the account, shall be made only by the CAIR authorized account representative for the account.

§ 96.353 Recordation of CAIR NO_x Ozone Season allowance allocations.

(a) By September 30, 2007, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(a), for the control periods in 2009, 2010, 2011, 2012, 2013, and 2014.

(b) By December 1, 2009, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(b), for the control period in 2015.

(c) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority in accordance with § 96.341(b), for the control period in the sixth year after the year of the applicable deadline for recordation under this paragraph.

(d) By September 1, 2009 and September 1 of each year thereafter, the Administrator will record in the CAIR NO_x Ozone Season source's compliance account the CAIR NO_x Ozone Season allowances allocated for the CAIR NO_x Ozone Season units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with § 96.341(c), for the control period in the year of the applicable deadline for recordation under this paragraph.

(e) Serial numbers for allocated CAIR NO_x Ozone Season allowances. When recording the allocation of CAIR NO_x Ozone Season allowances for a CAIR NO_x Ozone Season unit in a compliance account, the Administrator will assign each CAIR NO_x Ozone Season allowance a unique identification number that will include digits identifying the year of the control period for

which the CAIR NO_x Ozone Season allowance is allocated.

§ 96.354 Compliance with CAIR NO_x emissions limitation.

(a) Allowance transfer deadline. The CAIR NO_x Ozone Season allowances are available to be deducted for compliance with a source's CAIR NO_x Ozone Season emissions limitation for a control period in a given calendar year only if the CAIR NO_x Ozone Season allowances:

(1) Were allocated for the control period in the year or a prior year, and;

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a CAIR NO_x Ozone Season allowance transfer correctly submitted for recordation under § 96.360 and §96.361 by the allowance transfer deadline for the control period.

(b) Deductions for compliance. Following the recordation, in accordance with § 96.361, of CAIR NO_x Ozone Season allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account CAIR NO_x Ozone Season allowances available under paragraph (a) of this section in order to determine whether the source meets the CAIR NO_x Ozone Season emissions limitation for the control period, as follows:

(1) Until the amount of CAIR NO_x Ozone Season allowances deducted equals the number of tons of total nitrogen oxides emissions, determined in accordance with subpart HHHH of this part, from all CAIR NO_x Ozone Season units at the source for the control period; or

(2) If there are insufficient CAIR NO_x Ozone Season allowances to complete the deductions in paragraph (b)(1) of this section, until no more CAIR NO_x Ozone Season allowances available under paragraph (a) of this section remain in the compliance account.

(c) (1) Identification of CAIR NO_x Ozone Season allowances by serial number. The CAIR authorized account representative for a source's compliance account may request that specific CAIR NO_x Ozone Season allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the CAIR NO_x Ozone Season source and the appropriate serial numbers.

(2) First-in, first-out. The Administrator will deduct CAIR NO_x Ozone Season allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case of a partial identification of CAIR NO_x Ozone Season allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:

(i) Any CAIR NO_x Ozone Season allowances that were allocated to the units at the source, in the order of recordation; and then

(ii) Any CAIR NO_x Ozone Season allowances that were allocated to any entity and transferred and recorded in the compliance account pursuant to subpart GGGG of this part, in the order of recordation.

(d) Deductions for excess emissions.

(1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the CAIR NO_x Ozone Season source has excess emissions, the Administrator will deduct from the source's compliance account an amount of CAIR NO_x Ozone Season allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of tons of the source's

excess emissions.

(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the CAIR NO_x Ozone Season source or the CAIR NO_x Ozone Season units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violations, as ordered under the Clean Air Act or applicable State law.

(e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraphs (b) and (d) of this section and subpart IIII.

(f) Administrator's action on submissions.

(1) The Administrator may review and conduct independent audits concerning any submission under the CAIR NO_x Ozone Season Trading Program and make appropriate adjustments of the information in the submissions.

(2) The Administrator may deduct CAIR NO_x Ozone Season allowances from or transfer CAIR NO_x Ozone Season allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section, and record such deductions and transfers.

§ 96.355 Banking.

(a) CAIR NO_x Ozone Season allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.

(b) Any CAIR NO_x Ozone Season allowance that is held in a compliance account or a general account will remain in such account unless and until the CAIR NO_x Ozone Season allowance is deducted or transferred under § 96.354, § 96.356, or subpart GG of this part.

§ 96.356 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any CAIR NO_x Ozone Season Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the CAIR authorized account representative for the account.

§ 96.357 Closing of general accounts.

(a) The CAIR authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §§96.360 and 96.361 for any CAIR NO_x Ozone Season allowances in the account to one or more other CAIR NO_x Ozone Season Allowance Tracking System accounts.

(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any CAIR NO_x Ozone Season allowances, the Administrator may notify the CAIR authorized account representative for the account that the account will be closed following 20 business days after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of CAIR NO_x Ozone Season allowances into the account under §§96.360 and 96.361 or a statement submitted by the CAIR authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart GGGG—CAIR NO_x Ozone Season Allowance Transfers

§ 96.360 Submission of CAIR NO_x Ozone Season allowance transfers.

A CAIR authorized account representative seeking recordation of a CAIR NO_x Ozone Season allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the CAIR

NO_x Ozone Season allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each CAIR NO_x Ozone Season allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the CAIR authorized account representative of the transferor account and the date signed.

§ 96.361 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a CAIR NO_x Ozone Season allowance transfer, the Administrator will record a CAIR NO_x Ozone Season allowance transfer by moving each CAIR NO_x Ozone Season allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under § 96.360; and

(2) The transferor account includes each CAIR NO_x Ozone Season allowance identified by serial number in the transfer.

(b) A CAIR NO_x Ozone Season allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any CAIR NO_x Ozone Season allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under § 96.354 for the control period immediately before such allowance transfer deadline.

(c) Where a CAIR NO_x Ozone Season allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 96.362 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a CAIR NO_x Ozone Season allowance transfer under § 96.361, the Administrator will notify the CAIR authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a CAIR NO_x Ozone Season allowance transfer that fails to meet the requirements of § 96.361(a), the Administrator will notify the CAIR authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a CAIR NO_x Ozone Season allowance transfer for recordation following notification of non-recordation.

Subpart HHHH—Monitoring and Reporting

§ 96.370 General requirements.

The owners and operators, and to the extent applicable, the CAIR designated representative, of a CAIR NO_x Ozone Season unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in § 96.302 and in § 72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "CAIR NO_x Ozone Season unit," "CAIR designated

representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in § 96.302. The owner or operator of a unit that is not a CAIR NO_x Ozone Season unit but that is monitored under § 75.72(b)(2)(ii) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a CAIR NO_x Ozone Season unit.

(a) Requirements for installation, certification, and data accounting. The owner or operator of each CAIR NO_x Ozone Season unit shall:

(1) Install all monitoring systems required under this subpart for monitoring NO_x mass emissions and individual unit heat input (including all systems required to monitor NO_x emission rate, NO_x concentration, stack gas moisture content, stack gas flow rate, CO_2 or O_2 concentration, and fuel flow rate, as applicable, in accordance with §§ 75.71 and 75.72 of this chapter);

(2) Successfully complete all certification tests required under § 96.371 and meet all other requirements of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and

(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.

(b) Compliance deadlines. Except as provided in paragraph (e) of this section, the owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.

(1) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation before July 1, 2007, by May 1, 2008.

(2) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on an annual basis under § 96.374(d), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) May 1, 2008.

(3) For the owner or operator of a CAIR NO_x Ozone Season unit that commences commercial operation on or after July 1, 2007 and that reports on a control period basis under § 96.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation; or

(ii) If the compliance date under paragraph (b)(3)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(3)(i) of this section.

(4) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the applicable deadline under paragraph (b)(1), (2), (6), or (7) of this section and that reports on an annual basis under § 96.374(d), by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls.

(5) For the owner or operator of a CAIR NO_x Ozone Season unit for which construction of a new stack or flue or installation of add-on NO_x emission controls is completed after the

applicable deadline under paragraph (b)(1), (3), (6), or (7) of this section and that reports on a control period basis under §96.374(d)(2)(ii), by the later of the following dates:

(i) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue or add-on NO_x emissions controls; or

(ii) If the compliance date under paragraph (b)(5)(i) of this section is not during a control period, May 1 immediately following the compliance date under paragraph (b)(5)(i) of this section.

(6) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a unit for which a CAIR NO_x Ozone Season opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, by the date specified in § 96.384(b).

(7) Notwithstanding the dates in paragraphs (b)(1), (2), and (3) of this section, for the owner or operator of a CAIR NO_x Ozone Season opt-in unit, by the date on which the CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part enters the CAIR NO_x Ozone Season Trading Program as provided in § 96.384(g).

(c) Reporting data. The owner or operator of a CAIR NO_x Ozone Season unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for NO_x concentration, NO_x emission rate, stack gas flow rate, stack gas moisture content, fuel flow rate, and any other parameters required to determine NO_x mass emissions and heat input in accordance with §75.31(b)(2) or (c)(3) of this chapter, section 2.4 of appendix D to part 75 of this chapter, or section 2.5 of appendix E to part 75 of this chapter, as applicable.

(d) Prohibitions.

(1) No owner or operator of a CAIR NO_x Ozone Season unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this subpart without having obtained prior written approval in accordance with § 96.375.

(2) No owner or operator of a CAIR NO_x Ozone Season unit shall operate the unit so as to discharge, or allow to be discharged, NO_x emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(3) No owner or operator of a CAIR NO_x Ozone Season unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NO_x mass emissions discharged into the atmosphere or heat input, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter.

(4) No owner or operator of a CAIR NO_x Ozone Season unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by an exemption under § 96.305 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this

subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The CAIR designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with §96.371(d)(3)(i).

(e) Long-term cold storage. The owner or operator of a CAIR NOX Ozone Season unit is subject to the applicable provisions of part 75 of this chapter concerning units in long-term cold storage.

§ 96.371 Initial certification and recertification procedures.

(a) The owner or operator of a CAIRNO_x Ozone Season unit shall be exempt from the initial certification requirements of this section for a monitoring system under § 96.370(a)(1) if the following conditions are met:

(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and

(2) The applicable quality-assurance and quality-control requirements of § 75.21 of this chapter and appendix B, appendix D, and appendix E to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.

(b) The recertification provisions of this section shall apply to a monitoring system under §96.370(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) If the Administrator has previously approved a petition under § 75.17(a) or (b) of this chapter for apportioning the NO_x emission rate measured in a common stack or a petition under § 75.66 of this chapter for an alternative to a requirement in § 75.12 or § 75.17 of this chapter, the CAIR designated representative shall resubmit the petition to the Administrator under § 96.375(a) to determine whether the approval applies under the CAIR NO_x Ozone Season Trading Program.

(d) Except as provided in paragraph (a) of this section, the owner or operator of a CAIR NO_x Ozone Season unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (i.e., a continuous emission monitoring system and an excepted monitoring system under appendices D and E to part 75 of this chapter) under § 96.370(a)(1). The owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under § 75.19 of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (e) or (f) of this section respectively.

(1) Requirements for initial certification. The owner or operator shall ensure that each continuous monitoring system under §96.370(a)(1)(including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under § 75.20 of this chapter by the applicable deadline in § 96.370(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with § 75.20 of this chapter is required.

(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system under § 96.370(a)(1) that may significantly affect the ability of the system to accurately measure or record NO_x mass emissions or heat input rate or to meet the quality assurance and quality-control requirements of § 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with § 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a

replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system whose accuracy is potentially affected by the change, in accordance with § 75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include: replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site. Any fuel flow meter systems, and any excepted NO_x monitoring system under appendix E to part 75 of this chapter, under § 96.370(a)(1) are subject to the recertification requirements in § 75.20(g)(6) of this chapter.

(3) Approval process for initial certification and recertification. Paragraphs (d)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under §96.370(a)(1). For recertifications, replace the words "certification" and "initial certification" with the word "recertification", replace the word "certified" with the word "recertified," and follow the procedures in §§ 75.20(b)(5) and (g)(7) of this chapter in lieu of the procedures in paragraph (d)(3)(v) of this section.

(i) Notification of certification. The CAIR designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with § 96.373.

(ii) Certification application. The CAIR designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in § 75.63 of this chapter.

(iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with § 75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the CAIR NO_x Ozone Season Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (d)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.

(iv) Certification application approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (d)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the CAIR NO_x Ozone Season Trading Program.

(A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.

(B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the CAIR

designated representative must submit the additional information required to complete the certification application. If the CAIR designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (d)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.

(C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (d)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under § 75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (d)(3)(v) of this section for each monitoring system that is disapproved for initial certification.

(D) Audit decertification. The permitting authority or, for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator may issue a notice of disapproval of the certification status of a monitor in accordance with § 96.372(b).

(v) Procedures for loss of certification. If the permitting authority or the Administrator issues a notice of disapproval of a certification application under paragraph (d)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (d)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under § 75.20(a)(4)(iii), §75.20(g)(7), or § 75.21(e) of this chapter and continuing until the applicable date and hour specified under § 75.20(a)(5)(i) or (g)(7) of this chapter:

(1) For a disapproved NO_x emission rate (i.e., NO_x-diluent) system, the maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.

(2) For a disapproved NO_x pollutant concentration monitor and disapproved flow monitor, respectively, the maximum potential concentration of NO_x and the maximum potential flow rate, as defined in sections 2.1.2.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(3) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(4) For a disapproved fuel flow meter system, the maximum

potential fuel flow rate, as defined in section 2.4.2.1 of appendix D to part 75 of this chapter.

(5) For a disapproved excepted NO_x monitoring system under appendix E to part 75 of this chapter, the fuel-specific maximum potential NO_x emission rate, as defined in § 72.2 of this chapter.

(B) The CAIR designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (d)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's or the Administrator's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(e) Initial certification and recertification procedures for units using the low mass emission excepted methodology under § 75.19 of this chapter. The owner or operator of a unit qualified to use the low mass emissions (LME) excepted methodology under § 75.19 of this chapter shall meet the applicable certification and recertification requirements in §§ 75.19(a)(2) and 75.20(h) of this chapter. If the owner or operator of such a unit elects to certify a fuel flowmeter system for heat input determination, the owner or operator shall also meet the certification and recertification requirements in § 75.20(g) of this chapter.

(f) Certification/recertification proceduresfor alternative monitoring systems. The CAIR designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of § 75.20(f) of this chapter.

§ 96.372 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D or subpart H of, or appendix D or appendix E to, part 75 of this chapter.

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §96.371 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority or, for a CAIR NO_x Ozone Season opt-in unit or a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the Administrator will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority or the Administrator revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in § 96.371 for each disapproved monitoring system.

§ 96.373 Notifications.

The CAIR designated representative for a CAIR NO_x Ozone Season unit shall submit written notice to the

permitting authority and the Administrator in accordance with § 75.61 of this chapter.

§ 96.374 Recordkeeping and reporting.

(a) General provisions. The CAIR designated representative shall comply with all recordkeeping and reporting requirements in this section, the applicable recordkeeping and reporting requirements under §75.73 of this chapter, and the requirements of § 96.310(e)(1).

(b) Monitoring plans. The owner or operator of a CAIR NO_x Ozone Season unit shall comply with requirements of § 75.73(c) and (e) of this chapter and, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, §§ 96.383 and 96.384(a).

(c) Certification applications. The CAIR designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under § 96.371, including the information required under § 75.63 of this chapter.

(d) Quarterly reports. The CAIR designated representative shall submit quarterly reports, as follows:

(1) If the CAIR NO_x Ozone Season unit is subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation or if the owner or operator of such unit chooses to report on an annual basis under this subpart, the CAIR designated representative shall meet the requirements of subpart H of part 75 of this chapter (concerning monitoring of NO_x mass emissions) for such unit for the entire year and shall report the NO_x mass emissions data and heat input data for such unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(ii) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that quarter is the third or fourth quarter of 2007 or the first quarter of 2008, in which case reporting shall commence in the quarter covering May 1, 2008 through June 30, 2008;

(iii) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and

(iv) Notwithstanding paragraphs (d)(1)(i) and (ii) of this section, for a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NOX Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in §96.384(g).

(2) If the CAIR NO_x Ozone Season unit is not subject to an Acid Rain emissions limitation or a CAIR NO_x emissions limitation, then the CAIR designated representative shall either:

(i) Meet the requirements of subpart H of part 75 (concerning monitoring of NO_x mass emissions) for such unit for the entire year and report the NO_x mass emissions data and heat input data for such unit in accordance with paragraph (d)(1) of this section; or

(ii) Meet the requirements of subpart H of part 75 for the control period (including the requirements in §75.74(c) of this chapter) and report NO_x mass emissions data and heat input data (including the data described in § 75.74(c)(6) of this chapter) for such unit only for the control period of each year and report, in an electronic

quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(A) For a unit that commences commercial operation before July 1, 2007, the calendar quarter covering May 1, 2008 through June 30, 2008;

(B) For a unit that commences commercial operation on or after July 1, 2007, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under § 96.370(b), unless that date is not during a control period, in which case reporting shall commence in the quarter that includes May 1 through June 30 of the first control period after such date;

(C) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under subpart IIII of this part, the calendar quarter corresponding to the date specified in § 96.384(b); and

(D) Notwithstanding paragraphs (d)(2)(ii)(A) and (2)(ii)(B) of this section, for a CAIR NO_x Ozone Season opt-in unit under subpart IIII of this part, the calendar quarter corresponding to the date on which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program as provided in §96.384(g).

(3) The CAIR designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in § 75.73(f) of this chapter.

(4) For CAIR NO_x Ozone Season units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, CAIR SO_2 Trading Program, or Hg Budget Trading Program, quarterly reports shall include the applicable data and information required by subparts F through I of part 75 of this chapter as applicable, in addition to the NO_x mass emission data, heat input data, and other information required by this subpart.

(e) Compliance certification. The CAIR designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications;

(2) For a unit with add-on NO_x emission controls and for all hours where NO_x data are substituted in accordance with § 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter and the substitute data values do not systematically underestimate NO_x emissions; and

(3) For a unit that is reporting on a control period basis under paragraph (d)(2)(ii) of this section, the NO_x emission rate and NO_x concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NO_x emissions.

§ 96.375 Petitions.

(a) Except as provided in paragraph (b)(2) of this section, the CAIR designated representative of a CAIR NO_x Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under §75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.

(b) (1) The CAIR designated representative of a CAIR NO_x Ozone Season unit that is not subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart. Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

(2) The CAIR designated representative of a CAIR NO_x Ozone Season unit that is subject to an Acid Rain emissions limitation may submit a petition under § 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional continuous emission monitoring system required under § 75.72 of this chapter. Application of an alternative to any such requirement is in accordance with this subpart only to the extent that the petition is approved in writing by both the permitting authority and the Administrator.

Subpart IIII—CAIR NO_x Ozone Season Opt-in Units

§ 96.380 Applicability.

A CAIR NO_x Ozone Season opt-in unit must be a unit that:

(a) Is located in the State;

(b) Is not a CAIR NO_x Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;

(c) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(d) Has or is required or qualified to have a title V operating permit or other federally enforceable permit; and

(e) Vents all of its emissions to a stack and can meet the monitoring, recordkeeping, and reporting requirements of subpart HHHH of this part.

§ 96.381 General.

(a) Except as otherwise provided in §§ 96.301 through 96.304, §§ 96.306 through 96.308, and subparts BBBB and CCCC and subparts FFFF through HHHH of this part, a CAIR NO_x Ozone Season opt-in unit shall be treated as a CAIR NO_x Ozone Season unit for purposes of applying such sections and subparts of this part.

(b) Solely for purposes of applying, as provided in this subpart, the requirements of subpart HHHH of this part to a unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, such unit shall be treated as a CAIR NO_x Ozone Season unit before issuance of a CAIR opt-in permit for such unit.

§ 96.382 CAIR designated representative.

Any CAIR NO_x Ozone Season opt-in unit, and any unit for which a CAIR opt-in permit application is submitted and not withdrawn and a CAIR opt-in permit is not yet issued or denied under this subpart, located at the same source as one or more CAIR NO_x Ozone Season units shall have the same CAIR designated representative and alternate CAIR designated representative as such CAIR NO_x Ozone

Season units.

§ 96.383 Applying for CAIR opt-in permit.

(a) Applying for initial CAIR opt-in permit. The CAIR designated representative of a unit meeting the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 may apply for an initial CAIR opt-in permit at any time, except as provided under § 96.386 (f) and (g), and, in order to apply, must submit the following:

(1) A complete CAIR permit application under § 96.322;

(2) A certification, in a format specified by the permitting authority, that the unit:

(i) Is not a CAIR NO_x Ozone Season unit under § 96.304 and is not covered by a retired unit exemption under § 96.305 that is in effect;

(ii) Is not covered by a retired unit exemption under § 72.8 of this chapter that is in effect;

(iii) Vents all of its emissions to a stack; and

(iv) Has documented heat input for more than 876 hours during the 6 months immediately preceding submission of the CAIR permit application under § 96.322;

(3) A monitoring plan in accordance with subpart HHHH of this part;

(4) A complete certificate of representation under § 96.313 consistent with § 96.382, if no CAIR designated representative has been previously designated for the source that includes the unit; and

(5) A statement, in a format specified by the permitting authority, whether the CAIR designated representative requests that the unit be allocated CAIR NO_x Ozone Season allowances under §96.388(b) or §96.388(c) (subject to the conditions in §§96.384(h) and 96.386(g)). If allocation under §96.388(c) is requested, this statement shall include a statement that the owners and operators of the unit intend to repower the unit before January 1, 2015 and that they will provide, upon request, documentation demonstrating such intent.

(b) Duty to reapply.

(1) The CAIR designated representative of a CAIR NO_x Ozone Season opt-in unit shall submit a complete CAIR permit application under § 96.322 to renew the CAIR opt-in unit permit in accordance with the permitting authority's regulations for title V operating permits, or the permitting authority's regulations for other federally enforceable permits if applicable, addressing permit renewal.

(2) Unless the permitting authority issues a notification of acceptance of withdrawal of the CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading Program in accordance with § 96.386 or the unit becomes a CAIR NO_x Ozone Season unit under § 96.304, the CAIR NO_x Ozone Season opt-in unit shall remain subject to the requirements for a CAIR NO_x Ozone Season opt-in unit, even if the CAIR designated representative for the CAIR NO_x Ozone Season opt-in unit fails to submit a CAIR permit application that is required for renewal of the CAIR opt-in permit under paragraph (b)(1) of this section.

§ 96.384 Opt-in process.

The permitting authority will issue or deny a CAIR opt-in permit for a unit for which an initial application for

a CAIR opt-in permit under § 96.383 is submitted in accordance with the following:

(a) Interim review of monitoring plan. The permitting authority and the Administrator will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a CAIR opt-in permit under § 96.383. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NO_x emissions rate and heat input of the unit and all other applicable parameters are monitored and reported in accordance with subpart HHHH of this part. A determination of sufficiency shall not be construed as acceptance or approval of the monitoring plan.

(b) Monitoring and reporting.

(1) (i) If the permitting authority and the Administrator determine that the monitoring plan is sufficient under paragraph (a) of this section, the owner or operator shall monitor and report the NO_x emissions rate and the heat input of the unit and all other applicable parameters, in accordance with subpart HHHH of this part, starting on the date of certification of the appropriate monitoring systems under subpart HHHH of this part and continuing until a CAIR opt-in permit is denied under § 96.384(f) or, if a CAIR opt-in permit is issued, the date and time when the unit is withdrawn from the CAIR NO_x Ozone Season Trading Program in accordance with § 96.386.

(ii) The monitoring and reporting under paragraph (b)(1)(i) of this section shall include the entire control period immediately before the date on which the unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), during which period monitoring system availability must not be less than 90 percent under subpart HHHH of this part and the unit must be in full compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) To the extent the NO_x emissions rate and the heat input of the unit are monitored and reported in accordance with subpart HHHH of this part for one or more control periods, in addition to the control period under paragraph (b)(1)(ii) of this section, during which control periods monitoring system availability is not less than 90 percent under subpart HHHH of this part and the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements and which control periods begin not more than 3 years before the unit enters the CAIR NO_x Ozone Season Trading Program under §96.384(g), such information shall be used as provided in paragraphs (c) and (d) of this section.

(c) Baseline heat input. The unit's baseline heat input shall equal:

(1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's total heat input (in mmBtu) for the control period; or

(2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, the average of the amounts of the unit's total heat input (in mmBtu) for the control period under paragraphs (b)(1)(ii) and (b)(2) of this section.

(d) Baseline NO_x emission rate. The unit's baseline NO_x emission rate shall equal:

(1) If the unit's NO_x emissions rate and heat input are monitored and reported for only one control period, in accordance with paragraph (b)(1) of this section, the unit's NO_x emissions rate (in lb/mmBtu) for the control period;

(2) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit does not have add-on NO_x emission controls during any such control periods, the

average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for the control periods under paragraphs (b)(1)(ii) and (b)(2) of this section; or

(3) If the unit's NO_x emissions rate and heat input are monitored and reported for more than one control period, in accordance with paragraphs (b)(1) and (2) of this section, and the unit has add-on NO_x emission controls during any such control periods, the average of the amounts of the unit's NO_x emissions rate (in lb/mmBtu) for such control periods during which the unit has add-on NO_x emission controls.

(e) Issuance of CAIR opt-in permit. After calculating the baseline heat input and the baseline NO_x emissions rate for the unit under paragraphs (c) and (d) of this section and if the permitting authority determines that the CAIR designated representative shows that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 and meets the elements certified in § 96.383(a)(2), the permitting authority will issue a CAIR opt-in permit. The permitting authority will provide a copy of the CAIR opt-in permit to the Administrator, who will then establish a compliance account for the source that includes the CAIR NO_x Ozone Season opt-in unit unless the source already has a compliance account.

(f) Issuance of denial of CAIR opt-in permit. Notwithstanding paragraphs (a) through (e) of this section, if at any time before issuance of a CAIR opt-in permit for the unit, the permitting authority determines that the CAIR designated representative fails to show that the unit meets the requirements for a CAIR NO_x Ozone Season opt-in unit in § 96.380 or meets the elements certified in § 96.383(a)(2), the permitting authority will issue a denial of a CAIR opt-in permit for the unit.

(g) Date of entry into CAIR NO_x Ozone Season Trading Program. A unit for which an initial CAIR opt-in permit is issued by the permitting authority shall become a CAIR NO_x Ozone Season opt-in unit, and a CAIR NO_x Ozone Season unit, as of the later of May 1, 2009 or May 1 of the first control period during which such CAIR opt-in permit is issued.

(h) Repowered CAIR NO_x Ozone Season opt-in unit.

(1) If CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 96.388(c) and such unit is repowered after its date of entry into the CAIR NO_x Ozone Season Trading Program under paragraph (g) of this section, the repowered unit shall be treated as a CAIR NO_x Ozone Season opt-in unit replacing the original CAIR NO_x Ozone Season opt-in unit, as of the date of start-up of the repowered unit's combustion chamber.

(2) Notwithstanding paragraphs (c) and (d) of this section, as of the date of start-up under paragraph (h)(1) of this section, the repowered unit shall be deemed to have the same date of commencement of operation, date of commencement of commercial operation, baseline heat input, and baseline NO_x emission rate as the original CAIR NO_x Ozone Season opt-in unit, and the original CAIR NO_x Ozone Season opt-in unit shall no longer be treated as a CAIR NO_x Ozone Season opt-in unit or a CAIR NO_x Ozone Season unit.

§ 96.385 CAIR opt-in permit contents.

(a) Each CAIR opt-in permit will contain:

(1) All elements required for a complete CAIR permit application under § 96.322;

(2) The certification in § 96.383(a)(2);

(3) The unit's baseline heat input under § 96.384(c);

(4) The unit's baseline NO_x emission rate under § 96.384(d);

(5) A statement whether the unit is to be allocated CAIR NO_x Ozone Season allowances under §96.388(b) or §96.388(c) (subject to the conditions in §§96.384(h) and 96.386(g)).

(6) A statement that the unit may withdraw from the CAIR NO_x Ozone Season Trading Program only in accordance with § 96.386; and

(7) A statement that the unit is subject to, and the owners and operators of the unit must comply with, the requirements of § 96.387.

(b) Each CAIR opt-in permit is deemed to incorporate automatically the definitions of terms under § 96.302 and, upon recordation by the Administrator under subpart FFFF or GGGG of this part or this subpart, every allocation, transfer, or deduction of CAIR NO_x Ozone Season allowances to or from the compliance account of the source that includes a CAIR NO_x Ozone Season opt-in unit covered by the CAIR opt-in permit.

(c) The CAIR opt-in permit shall be included, in a format specified by the permitting authority, in the CAIR permit for the source where the CAIR NO_x Ozone Season opt-in unit is located and in a title V operating permit or other federally enforceable permit for the source.

§ 96.386 Withdrawal from CAIR NO_x Ozone Season Trading Program.

Except as provided under paragraph (g) of this section, a CAIR NO_x Ozone Season opt-in unit may withdraw from the CAIR NO_x Ozone Season Trading Program, but only if the permitting authority issues a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit in accordance with paragraph (d) of this section.

(a) Requesting withdrawal. In order to withdraw a CAIR NO_x Ozone Season opt-in unit from the CAIR NO_x Ozone Season Trading Program, the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit shall submit to the permitting authority a request to withdraw effective as of midnight of September 30 of a specified calendar year, which date must be at least 4 years after September 30 of the year of entry into the CAIR NO_x Ozone Season Trading Program under §96.384(g). The request must be submitted no later than 90 days before the requested effective date of withdrawal.

(b) Conditions for withdrawal. Before a CAIR NO_x Ozone Season opt-in unit covered by a request under paragraph (a) of this section may withdraw from the CAIR NO_x Ozone Season Trading Program and the CAIR opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period ending on the date on which the withdrawal is to be effective, the source that includes the CAIR NO_x Ozone Season opt-in unit must meet the requirement to hold CAIR NO_x Ozone Season allowances under § 96.306(c) and cannot have any excess emissions.

(2) After the requirement for withdrawal under paragraph (b)(1) of this section is met, the Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for any control period for which the withdrawal is to be effective. If there are no remaining CAIR NO_x Ozone Season units at the source, the Administrator will close the compliance account, and the owners and operators of the CAIR NO_x Ozone Season opt-in unit may submit a CAIR NO_x Ozone Season allowance transfer for any remaining CAIR NO_x Ozone Season allowances to another CAIR NO_x Ozone Season Allowance Tracking System in accordance with subpart GGGG of this part.

(c) Notification.

(1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of CAIR NO_x Ozone Season allowances required), the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit of the acceptance of the withdrawal of the CAIR NO_x Ozone Season opt-in unit as of midnight on September 30 of the calendar year for which the withdrawal was requested.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit that the CAIR NO_x Ozone Season opt-in unit's request to withdraw is denied. Such CAIR NO_x Ozone Season opt-in unit shall continue to be a CAIR NO_x Ozone Season opt-in unit.

(d) Permit amendment. After the permitting authority issues a notification under paragraph (c)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the CAIR permit covering the CAIR NO_x Ozone Season opt-in unit to terminate the CAIR opt-in permit for such unit as of the effective date specified under paragraph (c)(1) of this section. The unit shall continue to be a CAIR NO_x Ozone Season opt-in unit until the effective date of the termination and shall comply with all requirements under the CAIR NO_x Ozone Season Trading Program concerning any control periods for which the unit is a CAIR NO_x Ozone Season opt-in unit, even if such requirements arise or must be complied with after the withdrawal takes effect.

(e) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the CAIR NO_x Ozone Season opt-in unit's request to withdraw, the CAIR designated representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(f) Ability to reapply to the CAIR NO_x Ozone Season Trading Program. Once a CAIR NO_x Ozone Season opt-in unit withdraws from the CAIR NO_x Ozone Season Trading Program and its CAIR opt-in permit is terminated under this section, the CAIR designated representative may not submit another application for a CAIR opt-in permit under § 96.383 for such CAIR NO_x Ozone Season opt-in unit before the date that is 4 years after the date on which the withdrawal became effective. Such new application for a CAIR opt-in permit will be treated as an initial application for a CAIR opt-in permit under § 96.384.

(g) Inability to withdraw. Notwithstanding paragraphs (a) through (f) of this section, a CAIR NO_x Ozone Season opt-in unit shall not be eligible to withdraw from the CAIR NO_x Ozone Season Trading Program if the CAIR designated representative of the CAIR NO_x Ozone Season opt-in unit requests, and the permitting authority issues a CAIR opt-in permit providing for, allocation to the CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under § 96.388(c).

§ 96.387 Change in regulatory status.

(a) Notification. If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, then the CAIR designated representative shall notify in writing the permitting authority and the Administrator of such change in the CAIR NO_x Ozone Season opt-in unit's regulatory status, within 30 days of such change.

(b) Permitting authority's and Administrator's actions.

(1) If a CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under §96.304, the permitting authority will revise the CAIR NO_x Ozone Season opt-in unit's CAIR opt-in permit to meet the requirements of a CAIR permit under § 96.323, and remove the CAIR opt-in permit provisions as of the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304.

(2) (i) The Administrator will deduct from the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit that becomes a CAIR NO_x

~~Ozone Season unit under §96.304, CAIR NO_x Ozone Season allowances equal in amount to and allocated for the same or a prior control period as:~~

~~(A) Any CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for any control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304; and~~

~~(B) If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 is not September 30, the CAIR NO_x Ozone Season allowances allocated to the CAIR NO_x Ozone Season opt-in unit under § 96.388 for the control period that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, multiplied by the ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 divided by the total number of days in the control period and rounded to the nearest whole allowance as appropriate.~~

~~(ii) The CAIR designated representative shall ensure that the compliance account of the source that includes the CAIR NO_x Ozone Season unit that becomes a CAIR NO_x Ozone Season unit under § 96.304 contains the CAIR NO_x Ozone Season allowances necessary for completion of the deduction under paragraph (b)(2)(i) of this section.~~

~~(3) (i) For every control period after the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under §96.304, the CAIR NO_x Ozone Season opt-in unit will be allocated CAIR NO_x Ozone Season allowances under §96.342.~~

~~(ii) If the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304 is not September 30, the following amount of CAIR NO_x Ozone Season allowances will be allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 96.342 for the control period that includes the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304:~~

~~(A) The amount of CAIR NO_x Ozone Season allowances otherwise allocated to the CAIR NO_x Ozone Season opt-in unit (as a CAIR NO_x Ozone Season unit) under § 96.342 for the control period multiplied by;~~

~~(B) The ratio of the number of days, in the control period, starting with the date on which the CAIR NO_x Ozone Season opt-in unit becomes a CAIR NO_x Ozone Season unit under § 96.304, divided by the total number of days in the control period; and~~

~~(C) Rounded to the nearest whole allowance as appropriate.~~

~~§ 96.388 CAIR NO_x Ozone Season allowance allocations to CAIR NO_x Ozone Season opt-in units.~~

~~(a) Timing requirements.~~

~~(1) When the CAIR opt-in permit is issued under § 96.384(e), the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g), in accordance with paragraph (b) or (c) of this section.~~

(2) By no later than July 31 of the control period after the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g) and July 31 of each year thereafter, the permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit, and submit to the Administrator the allocation for the control period that includes such submission deadline and in which the unit is a CAIR NO_x Ozone Season opt-in unit, in accordance with paragraph (b) or (c) of this section.

(b) Calculation of allocation. For each control period for which a CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances, the permitting authority will allocate in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:

(i) The CAIR NO_x Ozone Season opt-in unit's baseline heat input determined under § 96.384(c); or

(ii) The CAIR NO_x Ozone Season opt-in unit's heat input, as determined in accordance with subpart HHHH of this part, for the immediately prior control period, except when the allocation is being calculated for the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g).

(2) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:

(i) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d) and multiplied by 70 percent; or

(ii) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.

(3) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (b)(1) of this section, multiplied by the NO_x emission rate under paragraph (b)(2) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.

(c) Notwithstanding paragraph (b) of this section and if the CAIR designated representative requests, and the permitting authority issues a CAIR opt-in permit (based on a demonstration of the intent to repower stated under §96.383(a)(5)) providing for, allocation to a CAIR NO_x Ozone Season opt-in unit of CAIR NO_x Ozone Season allowances under this paragraph (subject to the conditions in §§ 96.384(h) and 96.386(g)), the permitting authority will allocate to the CAIR NO_x Ozone Season opt-in unit as follows:

(1) For each control period in 2009 through 2014 for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,

(i) The heat input (in mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.

(ii) The NO_x emission rate (in lb/mmBtu) used for calculating CAIR NO_x Ozone Season allowance allocations will be the lesser of:

(A) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate

~~(in lb/mmBtu) determined under § 96.384(d); or~~

~~(B) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period in which the CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under § 96.384(g).~~

~~(iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(1)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(1)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.~~

~~(2) For each control period in 2015 and thereafter for which the CAIR NO_x Ozone Season opt-in unit is to be allocated CAIR NO_x Ozone Season allowances,~~

~~(i) The heat input (in mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocations will be determined as described in paragraph (b)(1) of this section.~~

~~(ii) The NO_x emission rate (in lb/mmBtu) used for calculating the CAIR NO_x Ozone Season allowance allocation will be the lesser of:~~

~~(A) 0.15 lb/mmBtu;~~

~~(B) The CAIR NO_x Ozone Season opt-in unit's baseline NO_x emissions rate (in lb/mmBtu) determined under § 96.384(d); or~~

~~(C) The most stringent State or Federal NO_x emissions limitation applicable to the CAIR NO_x Ozone Season opt-in unit at any time during the control period for which CAIR NO_x Ozone Season allowances are to be allocated.~~

~~(iii) The permitting authority will allocate CAIR NO_x Ozone Season allowances to the CAIR NO_x Ozone Season opt-in unit in an amount equaling the heat input under paragraph (c)(2)(i) of this section, multiplied by the NO_x emission rate under paragraph (c)(2)(ii) of this section, divided by 2,000 lb/ton, and rounded to the nearest whole allowance as appropriate.~~

~~(d) Recordation.~~

~~(1) The Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(1) of this section.~~

~~(2) By September 1, of the control period in which a CAIR NO_x Ozone Season opt-in unit enters the CAIR NO_x Ozone Season Trading Program under §96.384(g), and September 1 of each year thereafter, the Administrator will record, in the compliance account of the source that includes the CAIR NO_x Ozone Season opt-in unit, the CAIR NO_x Ozone Season allowances allocated by the permitting authority to the CAIR NO_x Ozone Season opt-in unit under paragraph (a)(2) of this section.~~

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

Chapter 1200-03-27 Nitrogen Oxides is amended by adding Rule 1200-03-27-.12 NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines to read as follows:

1200-03-27-.12 NO_X SIP Call Requirements for Stationary Boilers and Combustion Turbines

(1) Definitions. The terms used in this rule shall have the meanings set forth in this paragraph as follows:

(a) "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

(b) "Affected facility" means the group of all affected units at a facility.

(c) 1. "Affected unit" means any unit that has the following characteristics:

(i) The unit's maximum design heat input is greater than 250 MMBtu/hr; and

(ii) The unit combusts, or will combust during any year, fossil fuel in the following amounts:

(I) Alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or

(II) Alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year.

2. Notwithstanding part 1 of this subparagraph:

(i) Any unit subject to 40 CFR 97 subpart EEEEE (Transport Rule NO_X Ozone Season Trading Program) shall not be an affected unit; and

(ii) Any unit that serves a generator that produces power for sale shall not be an affected unit.

(d) "Allocate" or "allocation" means the determination by the Technical Secretary of the amount of allowances to be credited to an affected facility.

(e) "Allowance" (or "NO_X allowance") means a limited authorization issued by the Technical Secretary to emit one ton of nitrogen oxides ("NOx") during a control period of a specified calendar year or of any calendar year thereafter.

(f) "Boiler" means an enclosed fossil- or other-fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

(g) "Clean Air Act" or "CAA" means the Clean Air Act, 42 U.S.C. § 7401, et seq.

(h) "Combustion turbine" means:

1. An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and

2. If the enclosed device under part 1 of this subparagraph is combined cycle, any associated duct burner, heat recovery steam generator, and steam turbine.

(i) "Commence operation" means the later of November 15, 1990, or the date the unit begins any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber.

1. For a unit that commences operation as defined in this subparagraph, and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the date of commencement of operation of the unit, which shall continue to be treated as the same unit.

2. For a unit that commences operation as defined in this subparagraph, and that is subsequently replaced by a unit at the same source (e.g., repowered), such date shall remain the replaced unit's date of commencement of operation, and the replacement unit shall be treated as a separate unit with a separate date for commencement of operation.

(j) "Compliance deadline" means, for a control period, midnight of December 1 (if it is a business day), or midnight of the first business day thereafter (if December 1 is not a business day) immediately following the control period.

(k) "Control period" or "ozone season" means the period beginning May 1 of a calendar year and ending on September 30 of the same year, inclusive.

(l) "Emissions" means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Technical Secretary by the Responsible Official in accordance with paragraph (11) of this rule.

(m) "Excess emissions" means any ton of nitrogen oxides emitted by an affected facility during a control period that exceeds the total number of allowances allocated to an affected facility for a control period.

(n) "Existing affected unit" means the following units:

Packaging Corporation of America	Unit 17
Tate & Lyle, Loudon	Units 34 and 35
Resolute FP US, Inc.	Units 11 and 12
Eastman Chemical Company	Units 83-23 and 83-24; Units 253-25, Units 253-26, Units 253-27, Units 253-28, and Units 253-29; Units 325-30 and 325-31
The Valero Refining Company - Tennessee, LLC	Unit P049
TVA Cumberland	Startup Boilers A1 and A2

(o) "Fossil-fuel-fired" means, with regard to an affected unit, combusting any amount of fossil fuel (coal, natural gas, petroleum, or any form of solid, liquid, or gaseous fuel derived from such material) in any calendar year.

(p) "Heat input" means, with regard to a specified period of time, the product of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in pounds of fuel per unit of time), as measured and recorded in accordance with paragraph (11) of this rule. Heat input does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

(q) "Maximum design heat input" means the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady state basis as of the initial installation of the unit as specified by the manufacturer of the unit.

(r) "Most stringent state or federal NO_X emissions limitation" means, with regard to a unit, the lowest NO_X emissions limitation (in terms of lb/MMBtu) that is applicable to the unit under state or federal law, regardless of the averaging period to which the emissions limitation applies.

(s) "New affected unit" means any affected unit that is not an existing affected unit.

(t) "Operator" means any person who operates, controls, or supervises an affected unit or an affected facility and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.

(u) "Owner" means any of the following persons:

1. Any holder of any portion of the legal or equitable title in an affected facility or an affected unit; or

2. Any holder of a leasehold interest in an affected facility or an affected unit.

(v) "Receive" or "receipt of" means, when referring to the Technical Secretary or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official log, or by a notation made on the document, information, or correspondence, by the Technical Secretary or the Administrator in the regular course of business.

(w) "Replacement", "replace", or "replaced" means, with regard to a unit, the demolishing of a unit, or the permanent shutdown and permanent disabling of a unit, and the construction of another unit (the replacement unit) to be used instead of the demolished or shutdown unit (the replaced unit).

(x) "Responsible Official" has the same meaning as defined by Rule 1200-03-09-.02(11); however, a designated representative as defined by 40 CFR part 72, relative to actions, standards, requirements, or prohibitions under Title IV of the Clean Air Act or the regulations promulgated thereunder, including 40 CFR part 75, may also serve as the Responsible Official for any purposes under this rule.

(y) "Source" means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the Clean Air Act, a "source," including a "source" with multiple units, shall be considered a single "facility."

(z) 1. "Submit" or "serve" means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable rule:

(i) In person;

(ii) By United States Postal Service; or

(iii) By other means of dispatch or transmission and delivery.

2. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

(aa) "Technical Secretary" means the Technical Secretary of the Tennessee Air Pollution Control Board or a duly authorized representative.

(bb) "Ton" means 2,000 pounds. For the purpose of determining compliance with the ozone season NO_X emissions limitation, total tons of nitrogen oxides emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with paragraph (11) of this rule, but with any remaining fraction of a ton equal to or greater than 0.50 tons deemed to equal one ton and any remaining fraction of a ton less than 0.50 tons deemed to equal zero tons.

(cc) "Unit" means a stationary, fossil-fuel fired boiler or combustion turbine or other stationary, fossil-fuel-fired combustion device.

(2) Measurements, abbreviations, and acronyms. Measurements, abbreviations, and acronyms used in this rule are defined as follows:

Btu - British thermal unit
CO_2 - carbon dioxide
H_2O - water
hr - hour
lb - pound
MMBtu - million Btu
NO_X - nitrogen oxides
O_2 - oxygen
ppm - parts per million
scfh - standard cubic feet per hour
SO_2 - sulfur dioxide

(3) Applicability. Except as otherwise exempted by this rule, the provisions of this rule shall apply to each affected unit and each affected facility.

(4) Retired unit exemption.

(a) 1. Any affected unit that is permanently retired shall be exempt from this rule, except for the provisions of this paragraph and paragraphs (1), (2), (3), (6), subparagraphs (7)(c) through (f), and paragraphs (8) and (9) of this rule.

2. The exemption under part 1 of this subparagraph shall become effective the day on which the affected unit is permanently retired. Within 30 days of the unit's permanent retirement, the Responsible Official shall submit a report to the Technical Secretary and shall submit a copy of the statement to the Administrator. The report shall state, in a format prescribed by the Technical Secretary, that the unit was permanently retired on a specific date and that the unit will comply with the requirements of subparagraph (b) of this paragraph. The report shall include a signed statement by the Responsible Official certifying the truth, accuracy, and completeness of the information provided in the report.

(b) Special provisions.

1. An affected unit exempt under subparagraph (a) of this paragraph shall not emit any nitrogen oxides during a control period, starting on the date that the exemption takes effect.

2. For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under subparagraph (a) of this paragraph shall retain, at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the Technical Secretary or the Administrator. The owners and operators of the unit bear the burden of proof that the unit is permanently retired.

3. Owners and operators shall comply with the requirements of this rule during all periods for which the exemption is not in effect.

(c) An exempt unit shall lose its exemption on the date on which the unit resumes operation.

(d) For the purpose of applying the monitoring, recordkeeping, and reporting requirements of paragraph (11) of this rule, a unit that loses its exemption under subparagraph (a) of this paragraph shall be treated as a unit that commences operation on the first date on which the unit resumes operation.

(5) State emissions budget. The state emissions budget for allowance allocations to affected units is 5,666 tons per control period for the control period in 2017 and thereafter.

(6) Allowance allocations for affected units:

(a) For each control period in 2017 and thereafter, the Technical Secretary will allocate NOx allowances in the amounts specified in the State Implementation Plan to all existing affected units.

(b) For new affected units, the heat input (in MMBtu) used for calculating NO_X allowance allocations shall be determined in accordance with 40 CFR part 75, to the extent that the unit was subject to the requirements of 40 CFR part 75 for the year, or based on the best available data reported to the Technical Secretary for the unit.

(c) For each control period in 2017 and thereafter, the Technical Secretary will allocate allowances to new affected units in accordance with the following procedures:

1. The Technical Secretary will establish a new unit set-aside for each control period. For each control period, the new unit set-aside is established as the State emission budget established in paragraph (5) of this rule minus the number of NO_X allowances allocated in subparagraph (a) of this paragraph.

2. The Responsible Official of a new affected unit may request NO_X allowances from the Technical Secretary starting with the later of the control period in 2017 or the first control period in which the affected unit commences operation as provided in this part.

(i) The Responsible Official may request allowances for a control period in an amount not exceeding any of the following emission rates:

(I) The allowable NOx emission rate under any applicable provision of 40 CFR part 60;

(II) The allowable NO_X emission rate under any state or federal construction or operating permit; and

(III) The allowable NO_X emission rate under any provision in Tennessee's State Implementation Plan.

(ii) The emission rates indicated in items (i)(I) through (III) of this part shall be converted to tons as follows:

(I) For units with four years of heat input data, the emission rate shall be multiplied by the average of the three highest years of heat input (of the most recent four-year period) as indicated in subparagraph (b) of this paragraph divided by 2,000, and rounded to the nearest whole number as appropriate.

(II) For units with less than four years of heat input data, the emission rate shall be multiplied by the unit's maximum design heat input, divided by 2,000, and rounded to the nearest whole number as appropriate.

3. The Technical Secretary will review each allowance allocation request and allocate NO_X allowances for each control period as follows:

(i) The Technical Secretary will accept an allowance allocation request only if the request meets, or is adjusted by the Technical Secretary as necessary to meet, the requirements of part 2 of this subparagraph.

(ii) On or after February 1 before the control period, the Technical Secretary will determine the sum of NO_X allowances requested under subpart (i) of this part for the control period.

(iii) If the amount of NO_X allowances in the new unit set-aside for the control period is greater than or equal to the sum of NO_X allowances requested, then the

Technical Secretary will allocate the amount of NO_X allowances requested to each new affected unit.

(iv) If the amount of NO_X allowances in the new unit set-aside for the control period is less than the sum of NO_X allowances requested, then the Technical Secretary will allocate to each new affected unit the amount of allowances requested, multiplied by the amount of allowances in the new unit set-aside for the control period, divided by the sum of NO_X allowances requested, and rounded to the nearest whole allowance as appropriate.

(v) The Technical Secretary will notify each Responsible Official that submitted an allowance allocation request of the amount of allowances (if any) allocated for the control period to the affected unit covered by the request.

(vi) After completion of the procedures specified in subparts (i) through (v) of this part, the Technical Secretary will allocate NOx allowances remaining in the new unit set-aside to existing affected units, using the following formula and rounding to the nearest whole NOx allowance as appropriate:

Unit's share of NOx allowances = (Total NOx allowances remaining in new unit set-aside) x (Unit's NOx allowance allocation) ÷ (State trading program budget excluding new unit set-aside).

(d) Adjustment of allowance allocations for new and existing affected units. The Technical Secretary may, after appropriate notice and comment, adjust the allowance allocations for new and existing affected units as necessary to comply with applicable requirements promulgated by the Administrator or to provide additional allowances for new construction.

(7) NO_X emission requirements.

(a) As of the compliance deadline for a control period, the tons of total nitrogen oxides emissions for the control period from all affected units at an affected facility, as determined in accordance with paragraph (11) of this rule, shall not exceed the number of allowances allocated to the affected facility.

1. Allowances are available to an affected facility for a given control period only if the allowances were allocated to the affected facility for the same control period.

2. An affected unit shall be subject to the requirements of this paragraph for the control period starting on the later of May 1, 2017, or the deadline for meeting the unit's monitor certification requirements under paragraph (11) of this rule, and for each control period thereafter.

(b) Recordkeeping and reporting requirements.

1. The owners, operators, and Responsible Official of each affected facility and each affected unit shall comply with the recordkeeping and reporting requirements of this subparagraph.

2. The emissions measurements recorded and reported in accordance with paragraph (11) of this rule shall be used to determine compliance of each affected facility with the requirements of this paragraph.

3. Unless otherwise provided, the owners and operators of the affected facility shall maintain the following documents at the affected facility location for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the Technical Secretary or the Administrator.

(i) All emissions monitoring information, in accordance with paragraph (11) of this rule, provided that to the extent that paragraph (11) of this rule provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(ii) Copies of all reports, compliance certifications, and other submissions and all records made or required under this paragraph.

(iii) Copies of any other submission used to demonstrate compliance with this paragraph.

4. For the control period beginning in 2017 and each control period thereafter, the Responsible Official of an affected facility shall submit the following report no later than the compliance deadline:

(i) Affected facility name and address;

(ii) Responsible Official name and title;

(iii) Total number of allowances allocated to the affected facility for the control period;

(iv) The following information for each affected unit:

(I) Total NO_X emissions (in tons) for the control period; and

(II) Heat input for the control period.

(v) A signed statement by the Responsible Official certifying the truth, accuracy, and completeness of the information provided in the report.

(c) Excess emissions requirements. If an affected facility emits nitrogen oxides during any control period in excess of the number of allowances allocated to the affected facility, then:

1. The Technical Secretary may deduct allowances from the affected facility's allocation for the following control period, in an amount up to 3 times the number of tons of the facility's excess emissions;

2. The affected facility shall pay any fine, penalty, or assessment, or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable state law; and

3. Each ton of such excess emissions and each day of such control period shall constitute a separate violation of this rule, the Clean Air Act, and applicable state law.

(d) Liability.

1. Each affected facility and each affected unit shall meet the requirements of this rule.

2. Any provision of this rule that applies to an affected facility, an affected unit, or a Responsible Official shall also apply to the owners and operators of such affected facility or affected unit.

3. Any person who knowingly violates any requirement or prohibition of this rule shall be subject to enforcement pursuant to applicable state or federal law.

4. Any person who knowingly makes a false material statement in any record, submission, or report required by this rule shall be subject to criminal enforcement pursuant to the applicable state or federal law.

(e) Effect on other authorities. No provision of this rule shall be construed as exempting or excluding the owners and operators and the Responsible Official of an affected facility or an affected unit from compliance with any other provision of the applicable, approved State Implementation Plan, a federally enforceable permit, or the Clean Air Act.

(f) An allowance does not constitute a property right.

(8) Computation of time.

(a) Unless otherwise stated, any time period scheduled under this rule to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled under this rule to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period under this rule falls on a weekend or a state or federal holiday, the time period shall be extended to the next business day.

(9) Technical Secretary's action on submissions.

(a) The Technical Secretary may review and conduct independent audits concerning any submission under this rule and make appropriate adjustments of the information in the submissions.

(b) The Technical Secretary may deduct allowances from or transfer allowances to an affected facility based on the information in the submissions.

(10) The Technical Secretary may, at his or her sole discretion and on his or her own motion, correct any error in the allocation of any affected facility. Within 10 business days of making such correction, the Technical Secretary will notify the Responsible Official for the affected facility.

(11) Monitoring and Reporting

(a) Except as otherwise allowed in subparagraph (b) of this paragraph, the owners and operators, and to the extent applicable, the Responsible Official, of an affected unit shall comply with the applicable monitoring, recordkeeping, and reporting requirements provided in 40 CFR part 75 for each control period.

(b) Petitions. The Responsible Official of an affected unit may submit a petition to the Technical Secretary and the Administrator requesting approval of an alternative to any requirement of this paragraph. The application of any alternative to any requirement of this paragraph is granted only to the extent that the petition is approved in writing by both the Technical Secretary and the Administrator.

Authority: T.C.A. §§ 68-201-101 et seq. and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

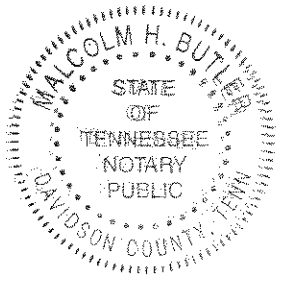
Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Ronne Adkins Commissioner's Designee, Dept. of Environment and Conservation	X				
Dr. John Benitez Licensed Physician with experience in health effects of air pollutants				X	
Karen Cisler Environmental Interests	X				
Dr. Wayne T. Davis Conservation Interests	X				
Stephen Gossett Working for Industry with technical experience				X	
Dr. Shawn A. Hawkins Working in field related to Agriculture or Conservation	X				
Richard Holland Working for Industry with technical experience	X				
L. Shawn Lindsey Working in Municipal Government				X	
Dr. Tricia Metts Involved with Institution of Higher Learning on air pollution evaluation and control				X	
Chris Moore Working in management in Private Manufacturing	X				
John Roberts Small Generator of Air Pollution representing Automotive Interests				X	
Amy Spann, PE Registered Professional Engineer	X				
Larry Waters County Mayor	X				
Jimmy West Commissioner's Designee, Dept. of Economic and Community Development	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 08/10/2016, 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: *03/30/16*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/15/16*



Date: August 10, 2016

Signature: Michelle W. Owenby

Name of Officer: Michelle W. Owenby

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: August 10, 2016

Notary Public Signature: Malcolm H. Butler

My commission expires on: January 11, 2017

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

Herbert H. Slatery III
Attorney General and Reporter

11/16/2016
Date

Department of State Use Only

Filed with the Department of State on: 11/21/2016

Effective on: 2/19/2017

Tre Hargett
Secretary of State

RECEIVED
2016 NOV 21 AM 10:00
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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Board of Pharmacy
DIVISION:	
SUBJECTS:	Long Term Care Pharmacy Practice; Transfer of Prescriptions; Fees; Collaborative Practice Agreements; and Pilot Programs.
STATUTORY AUTHORITY:	The additional funds raised pursuant to the proposed $10 fee increase would be used to provide a grant for the assistance of impaired practitioners pursuant to T.C.A. 63-1-136.
EFFECTIVE DATES:	February 20, 2017 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These rulemaking hearing rules contain new definitions for "automated dispensing system" and "institutional facility." The rules contain new definitions for "long term care facility" and "long term care pharmacy practice site," which pertain to the new rule chapter dealing with long-term care pharmacy practice. The rules would require pharmacy practice sites to maintain an additional type of record. Currently, the regulations only require that prescription records be maintained. The rules would also require that records regarding medication consultations provided to persons residing in Tennessee be maintained. The rules would create new rule chapter 1140-14 which apply to long term care pharmacy practice sites. The rules cover personnel, physical requirements, prescription orders and the distribution of drugs, the storage and dispensation of controlled substances, emergency and home care kits, take home and leave-of-absence drugs, recalls, automated dispensing machines, investigational drugs, and monthly inspections.

The rules would restrict the offering of financial incentives for the transfer of prescriptions from one pharmacy to another.

The rules would insert waiver provisions in many sections of the Board's rules.

The rules also include a number of fee changes: a fee of $22.50 for law enforcement access to the Controlled Substance Monitoring Database, which is mandated by statute (which allows for an alternative arrangement to be reached later); a fee of $22.50 for drug court access to the Controlled Substance Monitoring Database, which is mandated by statute (which would also allow for an alternative arrangement to be reached later); and a fee increase of $10 for pharmacists and pharmacy technicians.

The rules contain provisions applying to the collaborative practice of pharmacy and medicine. These rules contain definitions, set out the requirements for collaborative practice agreements, establish practice limitations for pharmacists engaged in collaborative practice, set educational and training standards for pharmacists who work under the agreements and establish quality assurance requirements.

The rules also contain a provision which would allow the Board to authorize pilot programs for a limited duration. Such programs might not comport with Board rules, but would be deemed in the best interest of public health, safety and welfare. that licensed providers will not allow persons placed on the Tennessee Department of Health's Abuse Registry or the Tennessee Sex Offender Registry to volunteer for a service or facility licensed by TDMHSAS (see 0940-05-06-.02(1)).

Various portions of the new rules address financial stewardship of a client's money and how that money is used to provide services (0940-05-06-.03(1); 0940-05-06-.03(2); 0940-05-06-.03(3); 0940-05-06-.03(4); 0940-05-06-.03(5); 0940-05-06-.03(6)).

Additional changes were made to address housekeeping matters and to ensure compliance with current best practices.

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.

The Board of Pharmacy received several comments before and at the hearing. Two stakeholders submitted written comments before the meeting (CVS, St. Jude's), but declined to present those comments at the hearing as they felt their concerns had been addressed by the Board's discussion of other comments.

The first comment presented was from the Pharmaceutical Research and Manufacturers of America (PhRMA). PhRMA submitted written comments before the hearing, but did not have a representative present at the meeting, so its comments were read into the record by counsel. PhRMA offered comments concerning the collaborative practice provisions of the proposed rules, specifically 1140-03-.17(5)(b) and (c). 1140-03-17(b) requires a collaborative practice agreement which grants a pharmacist prescriptive authority to specify the drugs or categories of drugs to be prescribed by the pharmacist ("formulary requirement"). 1140-03-.17(c) requires a pharmacist to notify a physician in writing, or make a note on a patient record accessible by both the pharmacist and the physician, of any "patient care services" provided by the pharmacist within 3 days of those services being rendered. PhRMA proposed that the formulary requirement in (b) be removed and replaced with a provision requiring prior notification of the physician before the initiation or modification of any drug therapy. Similarly, PhRMA also sought to replace the "3 day" notification requirement with one that would require the pharmacist to notify the physician prior to the rendering of any patient care services pursuant to a collaborative practice agreement. Counsel indicated to the Board that these provisions were the subject of extensive discussion between the Boards of Pharmacy, Medical Examiners, and Osteopathic Examiners during joint public meetings which were held prior to this rulemaking hearing. The Board felt that these issues had been adequately addressed during the collaborative meetings with its fellow Boards, and that the changes proposed by PhRMA "would not help anything that the Committee has already discussed ". The Board also felt that the model of collaborative practice in the proposed rules followed the recommendations of other organizations like the National Governor's Association, and advised PhRMA to consult with those authorities.

The Tennessee Pharmacists' Association ("TPA") presented the next set of comments. TPA presented 13 comments to the Board, which heard and discussed each item separately. The first comment from TPA sought clarification of the Board's proposed regulation of Automated Dispensing Systems. At several times in the rules, the term "device" was used instead of system, which in TPA's opinion created confusion as to whether the Board intended to license and regulate individual dispensing machines, or "systems" of dispensing machines (i.e., all the machines at Hospital X would be under one license, as opposed to all the machines in Hospital X would have their own license). TPA went on to assert that the licensing of individual devices would be expensive and overly burdensome, as some hospitals or other healthcare facilities utilized large numbers of automated dispensing machines. TPA asked that the fee be lowered. TPA asked the Board to license only "automated dispensing systems" and to use uniform language throughout the rules. The Board agreed in part with TPA's comments, and voted unanimously to amend the rules to use the term "system" instead of "device." They also clarified that facilities would only need to purchase a license for a system, rather than a license for each individual machine, and as such did not lower the fee for a system license.

The next comment from TPA focused on secure access to pharmacy practice sites. Current board rules require the placement of a key or other access device in a secure location, and requires all persons accessing the pharmacy by using that key (or other access device) to sign a paper log. TPA proposed adding language to expressly allow for the use of electronic access devices to access pharmacies, and for electronically-kept records to satisfy the record-keeping requirement. The Board voted unanimously in favor of accepting the language proposed by TPA.

Comment 3 from TPA was merely a statement of support for one of the Board's provisions regarding the prohibition on the offering of financial incentives for prescription transfers. Comment 4 from TPA proposed adding a clarifying phrase to the Board's rules regarding drug take-back programs. The phrase would state that all take-back was to be conducted in accordance with Board rules. The Board voted unanimously to accept TPA's proposed change.

TPA then moved to its Comments covering the collaborative practice rules. TPA's Comment 6 dealt with a proposed definition of "institutional pharmacy practice site" in 1140-03-.17(1). TPA felt that the original definition in the proposed rules conflicted with other Board rules, and that the definition did not include settings like academic healthcare facilities or other places where a pharmacist may be practicing in a healthcare facility that falls outside the traditional definition of "instutional." TPA proposed that the definition be amended to better reflect what encompassed institutional pharmacy practice sites. Counsel for the Department of Health responded that they did not believe a conflict with the rules as described by TPA existed, and that TPA's proposed definition was broad enough to include almost any facility or pharmacy under the proposed definition. Because of the exception in the rules elsewhere for use of controlled substances by a pharmacist (practicing pursuant to a collaborative agreement) in an institutional setting, Counsel felt that TPA's proposed definition would broaden the number of pharmacies that could be considered an institutional setting such that the exception for controlled substances would be rendered meaningless. The Board agreed with TPA, and voted unanimously to amend the definition.

TPA's Comment 7 dealt with the definition of "unencumbered" in 1140-03-.17(3). TPA believed that the definition as written would prevent pharmacists who were on probation or under some other sort of license restriction (e.g., a prohibition on working with controlled substances) from being party to a collaborative practice agreement. They also sought clarification as to whether a pharmacist who may have been disciplined (such as a counseling violation where a pharmacist might pay a civil penalty) would be considered to have an "encumbered" license. Clarification was provided, and the law would only apply to pharmacists on probation or some sort of license restriction relating to the delivery of healthcare services. TPA proposed that the definition be amended to allow the Board to consider requests from pharmacists with encumbered licenses seeking to take part in a collaborative agreement. This issue was debated at length by the Boards of Pharmacy, Medical Examiners and Osteopathic Examiners in their committee meetings to draft the collaborative practice rules. Counsel provided clarification for the Board members on this point. Additionally, a member of the Board of Medical Examiners commented that the members of the committee which drafted the Collaborative Practice rules were satisfied with the proposed definition of unencumbered after lengthy discussion at committee meetings. TPA expressed some satisfaction with these statements. Ultimately, the Board decided not to accept any of TPA's suggested amendatory language in Comment 7.

TPA's Comment 8 dealt with a requirement that a patient sign an "informed consent" before being treated pursuant to a collaborative practice agreement.TPA requested that this requirement be removed from the proposed rules. Clarification was provided as to the intent of this requirement, which was to require that a patient give some form of consent to their treatment under a particular healthcare model (in this case, collaborative practice by a healthcare team). St. Jude's Children's Research Hospital commented that they interpreted the term "informed consent" as applying to a specific procedure. They believed that the proposed regulation could be interpreted to require a pharmacist to obtain a separate consent from each patient prior to each instance of treatment. The Board of Medical Examiners commented that informed consent was given at the time of admission or on an initial visit, but believed that informed consent would need to be given at each location in a particular practice. St. Jude's commented that the terminology might be more at issue, rather than the intent. St. Jude's suggested using the term "general consent" instead of "informed consent." St. Thomas Medical Partners asked whether a pharmacist working in a physician's office would be part of the general consent to treatment given by someone visiting a physician's office. The Board answered that a pharmacist would be part of that general consent. Kroger also raised concerns about the implications of the term "informed consent," which might be interpreted to require them to provide extensive counseling, paperwork and other information to patients before administering routine services, especially with respect to chronic disease management. The Board voted to amend the rules to require a "general consent" to be treated by a healthcare team, including a pharmacist, and that consent is made a part of the patient record."

TPA's Comment 9 requested amendatory language for proposed rule provisions at 1140-03-.17(5)(a) which deal with obtaining signatures on the addendums of collaborative practice agreements. TPA asserted that the language as written could be interpreted to require that all persons who are party to a collaborative agreement would need to sign the agreement before it became effective. They believed that in a hospital or a large practice group that such a requirement could lead to delays in the implementation of collaborative practice agreements. The Tennessee Department of Health noted that the possible delays mentioned by TPA had already been discussed by the committee during its meetings to draft the collaborative practice rules and that a sentence had already been added to the regulations to allow hospitals or multi-specialty groups to have a single signatory for these agreements. As such, the Board did not amend the rules with respect to TPA's Comment 9, and TPA stated that it felt its concerns about this had been adequately responded to.

TPA's Comment 10 expressed concern about the requirement for quarterly quality assessments for parties engaging in collaborative practice. Additionally, TPA asserted that the requirement for review of 5% of all patients' charts who are treated pursuant to a collaborative practice agreement were duplicative of the quality assessment requirement and overly burdensome. TPA proposed amending the rule so that quality assessments took place annually instead of quarterly, and removing the "5% rule." St. Jude's also commented that the quality assessment was overly burdensome and that the "5% rule" was unclear as to its applicability. The Department of Health commented that the concerns raised by TPA and St. Jude's were discussed at length in the committee that drafted the collaborative practice rules. TPA proposed amendatory language which would expressly state that the collaborating healthcare providers were to determine what data would be measured by their quality assessments, but that would leave the "quarterly" and "5%" rules intact. The Board agreed with this proposal and voted to adopt the language.

TPA's Comment 11 focused on 1140-03-.17(6)(b), which as previously drafted would prohibit a pharmacist practicing under a collaborative agreement to "manage" controlled substances. TPA's proposed removing this provision on the grounds that the term "management" was over-inclusive. The Department commented that the intent of the provision was not to prohibit a pharmacist from collaborating with a prescriber to calculate dosages or engage in the sort of practice that pharmacists are currently doing across the state. St. Jude's sought clarification as to whether an outpatient clinic associated with a healthcare institution would be considered as falling within the exemption clause for institutional practice sites. The Department replied that based on the Board's vote to amend the definition of institutional practice site that such an outpatient clinic would fall within the definition of institutional facility. There was further discussion of the term "management," with various parties (including TPA, the Board of Pharmacy, the Board of Medical Examiners, and staff members of the Department of Health) offering comments and suggestions. A member of the Board of Medical Examiners who served on the committee that drafted the collaborative practice rules stated that he believed that "management" was purposely selected and intended to be broad in its effect. Kroger then commented that use of the term "management" might be interpreted to preclude activities such as counseling patients to reduce dosages of medication, and that it would interfere with community pharmacy practices aimed at reducing reliance on controlled substances. There was lengthy discussion of these points afterwards. Ultimately, the Board voted to amend the rules to prohibit the "prescribing" of controlled substances by pharmacists, rather than the "management."

TPA's Comment 12 sought clarification as to whether 1140-03-.17(12) would curtail the autonomy of the Board of Pharmacy by requiring them to adopt the guidelines, policies, etc. of the Boards of Medical Examiners and Osteopathic Examiners as such guidelines and policies apply to pharmacists engaged in collaborative practice. TPA sought that the provision be removed in its entirety. The Board responded that a similar rule was in place for advance practice nurses and physician assistants. The Department pointed out that this would apply only to pharmacists who are offering services that are authorized only pursuant to a collaborative practice agreement, and that such guidelines and policies would only apply in those instances. The Board did not vote to amend its rules in accordance with TPA's position. TPA was satisfied with the clarification that was provided.
TPA's Comment 5 focused on a prohibition on the mixing of lot numbers in automated dispensing machines. TPA believed that this goal was laudable, but not possible based on current technology. CVS Health commented that they were concerned by this provision as well, and sought modification of the provision to require the disposal of a cell in an automated dispensing machine any time it is found to contain a lot number that is the subject of a recall. The Board agreed with TPA's reasoning and voted to amend the rules to remove the prohibition on the mixing of lot numbers.

TPA's Comment 13 dealt with provisions affecting prescription labels. Currently, prescriptions dispensed by institutional pharmacy practice sites are exempt from complying with the Board's prescription label requirements. TPA proposed adding an additional exemption for long-term care pharmacy practice sites. Such sites were previously under the umbrella of "institutional pharmacy," but with these proposed rules long-term care will be regulated separately. As such, TPA asserted that an additional exemption would be required for long-term care pharmacies. The Board agreed with TPA and voted to amend the rules accordingly.

AlixaRx presented a comment dealing with emergency and home care kits (1140-14-.07(1)(a)(3)), specifically how they are sealed and how they are labeled for expiration. AlixaRx pointed out that the first part of the proposed rule seemed to contemplate the storage of emergency kits in automated and manual systems, while the latter part of the rule dealing with how such kits were to be sealed seemed to only allow for manual sealing of the kits. AlixaRx requested that the Board amend the rule to expressly allow kits to be sealed electronically in keeping with current technologies. The Board agreed and voted to amend the rule accordingly.

HCA acknowledged that many of their comments were already covered by TPA. HCA's first comment dealt with

automated dispensing systems (1140-04-.15) and the requirement that such machines be loaded by technicians under the "direct supervision" of a pharmacist. HCA stated that bar-coding technology obviated the need for "direct" supervision in healthcare facilities. The Board provided clarification that "direct supervision" was required when cartridges for automated dispensing machines were loaded, rather than when those cartridges were actually put into the machine. HCA responded that its machines did not use cartridges, but rather had drugs loaded directly into the machine using bar-code scanning technology. A former Board member present at the hearing commented that the Board had traditionally required that a pharmacist be in the same building as the machines when they were being loaded for the purposes of patient safety. The Board voted to amend the rules to allow for unit-dose packaging to be loaded into the machines. This would let a pharmacist exercise direct supervision over the unit-dose packaging process, and then that sealed packaging could be loaded into the machines without a pharmacist present. CVS pointed out that these provisions were also in the rule chapter dealing with long-term care pharmacies, and the Board voted to amend that section of the rules accordingly as well.

HCA also sought to have the rules amended to allow a contracted bonded courier to deliver drugs to an off-campus site on behalf of an institutional pharmacy. The Board and staff stated that they would prefer to preserve the same chain of custody for the drugs from the pharmacy to the end-point. HCA then sought an amendment to allow "the same licensed entity" to deliver drugs, as they have a wholly-owned courier service that they use internally. The Board responded that it was crucial that chain of custody from the pharmacy to the end-point be preserved. Additionally, Board staff indicated previous decisions by the Board when granting waivers where the Board expressed concerns about the use of courier services to deliver drugs rather than having the transfer be "pharmacist to pharmacist." The Board did not amend the rules.

CVS commented on a portion of the rules, 1140-11-.04, which dealt with timeframes for reporting to the CSMD. They sought for the timeframe to be widened to allow greater flexibility for reporting entites.The timeframes set by this rule are statutory requirements, and thus could not be changed. CVS also asked whether the Board's proposed rules dealing with emergency kits would override its current policy on emergency kits. The Board responded that they would.

There were also some comments from Board staff on the rules. Dr. Dilliard, the executive director of the Board, pointed to some provisions for inactive license fees that he believed should be eliminated, as the Board had stopped granting "inactive licenses" to individuals some time ago. However, that provision was outside the scope of the rules. Counsel for the Board also sought to replace the word "pecuniary" in 1140-02-.01 with "financial," which would be easier to understand. The Board voted to amend the rules accordingly. Dr. Scott Denaburg, a Board investigator, commented that 1140-01-.13(3), which dealt with special access to the pharmacy. Dr. Denaburg asked whether the Board would want a signature log of persons accessing the pharmacy via the use of a special key to be maintained by the pharmacy for 2 years. The Board found this to be appropriate and voted to amend the rules accordingly. Dr. Denaburg also pointed out that use of the word "timely" in its proposed rule provisions dealing with drug disposal might be considered vague, and sought clarification on what exactly the Board intended the word "timely" to mean. The Board found that "timely" allowed an appropriate amount of discretion for pharmacists, and that further meaning could be provided through policy statements. Other determinations could be made upon a case by case basis. The Board did not amend the rules in response to that comments. Dr. Denaburg's final comments dealt with grammatical changes to the rules, and he had an additional suggestion for Board Rule 1140-07-.07, but that section falls outside the scope of the rules and could not be changed.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

The proposed rules do not overlap, duplicate or conflict with other federal, state or local governmental rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.

These proposed rule amendments exhibit clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

These proposed rule amendments do not establish flexible compliance and/or reporting requirements for small businesses.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

The proposed rule amendments do not contain a schedule or deadline for compliance. Small businesses will be able to quickly comply with any new requirements of the rules, and will be assisted by the Board's staff in doing so.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

These proposed rule amendments do not consolidate or simplify compliance or reporting requirements for small businesses.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

These proposed rule amendments do not establish performance standards for small business as opposed to design or operation standards required for the proposed rules.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

These rule amendments do not create entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Pharmacy

Rulemaking hearing date: 12/18/2015

1. **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, and/or directly benefit from the proposed rule:**

   The proposed rules will impose few costs or benefits on affected businesses, which are pharmacies, hospitals, and other healthcare providers that hold licenses from the Board of Pharmacy. The proposed rules would also impose costs on law enforcement agencies seeking information from the Controlled Substance Monitoring Database.

2. **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:**

   The proposed rules create one additional record-keeping requirement for licensed pharmacies. Under current rules, licensed pharmacies are required to maintain records of the prescription orders they dispense to persons residing in Tennessee. The proposed rules would require pharmacy practice sites to also maintain records of medication assessments/consultations provided to persons residing in Tennessee. It is believed that the cost of maintaining these records will be minimal, as many pharmacies already maintain them for insurance purposes. The records will not need to be submitted or reported to the Board, merely kept at the practice site in such a way that they can be reviewed by a Board investigator if necessary. Basic computer and administrative skills will be required to maintain the records.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   The proposed rules may have some effect on small businesses and consumers. Among the proposed rules is a restriction on the offering of financial incentives for patients to switch their prescriptions between pharmacies. While these coupons have benefited some small businesses and consumers, they have an overall negative impact on the safe delivery of pharmacy services across the state. Constant transfer of prescriptions for the purpose of obtaining "gas points" or in-store discounts on non-pharmacy items complicates care delivery and hampers the formation of strong pharmacist-doctor-patient relationships.

   The payment of fees by law enforcement for CSMD reports may have some impact on those Departments, but the financial burden is not expected to be significant.

4. **Description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small business:**

   There is no less burdensome or intrusive method of restricting financial incentives for prescription transfers. Many of the other rule changes are relatively minor, and deal with "housekeeping" elements such as the correction of citations in the rules. The proposed rules also insert statements that the Board may waive portions of its rules for applicants upon a show of good cause where such a waiver is in the best interest of public health, safety, and welfare. There is no less burdensome or intrusive method to charge a fee for law enforcement access to the CSMD.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: There is no federal counterpart for these rules.

State: Many neighboring states forbid the offering of incentives for prescription transfers. Many states do not charge law enforcement for access to prescription monitoring programs.

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.

The proposed rules contain numerous exemptions that may be utilized by affected small businesses. It is unlikely the granting of an exemption will have a deleterious effect on the health, safety and welfare of Tennesseans. However, it would represent a departure from established norms of pharmacy practice, and as such is best utilized only on an as-needed basis. Granting exemptions for smaller law enforcement agencies should not have a significant impact on the Department or the citizens of Tennessee.

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 proposed rule amendments should not have a significant financial impact on local governments. The proposed rule amendments will require local law enforcement to pay for access to the Controlled Substance Monitoring Database, but the per capita expense is not expected to be significant.

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;

First, the proposed rules contain new definitions for "automated dispensing system" and "institutional facility." The proposed rules contain new definitions for "long term care facility" and "long term care pharmacy practice site," which pertain to the new rule chapter dealing with long-term care pharmacy practice.

Next, the proposed rules would require pharmacy practice sites to maintain an additional type of record. Currently, the regulations only require that prescription records be maintained. The proposed rules would also require that records regarding medication consultations provided to persons residing in Tennessee be maintained.

The proposed rules would additionally create new rule chapter 1140-14 which apply to long term care pharmacy practice sites. The proposed rules cover personnel, physical requirements, prescription orders and the distribution of drugs, the storage and dispensation of controlled substances, emergency and home care kits, take home and leave-of-absence drugs, recalls, automated dispensing machines, investigational drugs, and monthly inspections.

The proposed rules would also restrict the offering of financial incentives for the transfer of prescriptions from one pharmacy to another.

The proposed rules also insert waiver provisions in many sections of the Board's rules.

The proposed rules also include a number of fee changes: a fee of $22.50 for law enforcement access to the Controlled Substance Monitoring Database, which is mandated by statute (which allows for an alternative arrangement to be reached later); a fee of $22.50 for drug court access to the Controlled Substance Monitoring Database, which is mandated by statute (which would also allow for an alternative arrangement to be reached later); and a fee increase of $10 for pharmacists and pharmacy technicians.

Additionally, the proposed rules contain provisions applying to the collaborative practice of pharmacy and medicine. These proposed rules contain definitions, set out the requirements for collaborative practice agreements, establish practice limitations for pharmacists engaged in collaborative practice, set educational and training standards for pharmacists who work under the agreements and establish quality assurance requirements.

Lastly, the proposed rules also contain a provision which would allow the Board to authorize pilot programs for a limited duration. Such programs might not comport with Board rules, but would be deemed in the best interest of public health, safety and welfare.

(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 additional funds raised pursuant to the proposed $10 increase would be used to provide a grant for the assistance of impaired practitioners pursuant to T.C.A. §63-1-136.

(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 proposed rules will affect all licensees of the Board of Pharmacy. They will also affect law enforcement agencies that access the Controlled Substance Monitoring Database.

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

None.

(E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars ($500,000), whichever is less;

These rules should not result in any increase or decrease in state or local government revenues or expenditures.

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

Stefan Cange, Assistant General Counsel, Department of Health.

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

Stefan Cange, Assistant General Counsel, Department of Health.

(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, Department of Health, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Stefan.Cange@tn.gov.

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

None.

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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 11-14-16
Rule ID(s): 6369-6379
File Date: 11/22/16
Effective Date: 2/20/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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

Agency/Board/Commission:	Tennessee Board of Pharmacy
Division:	
Contact Person:	Stefan Cange, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Stefan.Cange@tn.gov

Revision Type (check all that apply):

X Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1140-01	Introductory Rules
Rule Number	**Rule Title**
1140-01-.01	Definitions
1140-01-.03	Application for a Pharmacist License
1140-01-.04	Pharmacy Internship
1140-01-.05	Licensing Examinations
1140-01-.07	Inactive Licenses and License Reinstatement
1140-01-.08	Application for Pharmacy Practice Site, Manufacturer, Outsourcing Facility, Oxygen Supplier and Wholesaler/Distributor Licenses
1140-01-.09	Renewal of Licenses
1140-01-.10	Fees
1140-01-.11	Controlled Substance Registration
1140-01-.13	Standards for Pharmacies and Prescription Department Security
1140-01-.15	Prescription Drugs Dispensed by Health Departments
1140-01-.16	Reserved

Chapter Number	**Chapter Title**
1140-02	Professional Conduct and Responsibilities

Rule Number	Rule Title
1140-02-.01	Pharmacists and Pharmacy Interns
1140-02-.02	Pharmacy Technicians

Chapter Number	Chapter Title
1140-03	Standards of Practice
Rule Number	**Rule Title**
1140-03-.01	Responsibilities for Pharmaceutical Care
1140-03-.02	Location of Practice
1140-03-.03	Medical and Prescription Orders
1140-03-.04	Facsimile and Electronic Medical and Prescription Orders
1140-03-.06	Labeling Requirements
1140-03-.08	Repackaging
1140-03-.10	Conditions for Delivery or Sale
1140-03-.11	Outdated and Deteriorated Drugs
1140-03-.13	Automated Dispensing Devices for Ambulatory Pharmacy Practice
1140-03-.14	Pharmacist in Charge
1140-03-.15	Reference Books
1140-03-.16	Automated Dispensing Devices for Pharmacy Practice
1140-03-.17	Collaborative Pharmacy Practice

Chapter Number	Chapter Title
1140-04	Institutional and Alternate or Alternative Infusion Pharmacy Practice Sites
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1140-04-.03	Physical Requirements
1140-04-.04	Prescription Orders
1140-04-.05	Distribution and Control of Drugs
1140-04-.06	Medication Carts
1140-04-.07	Floorstock Drugs
1140-04-.08	Controlled Drugs
1140-04-.09	Emergency and Home Care Kits
1140-04-.10	Unused Drugs, Devices, and Related Materials
1140-04-.11	Take-Home and Leave of Absence Drugs, Devices and Related Materials
1140-04-.12	Drugs Brought Into the Facility
1140-04-.14	Absence of Pharmacist
1140-04-.15	Automated Dispensing Devices in Institutional Practice Sites
1140-04-.16	Emergency Rooms
1140-04-.17	Investigational Drugs
1140-04-.18	Monthly Inspections

Chapter Number	Chapter Title
1140-05	Continuing Education
Rule Number	**Rule Title**
1140-05-.02	Reporting System
1140-05-.04	Falsification of Records

Chapter Number	Chapter Title
1140-07	Sterile Product Preparation in Pharmacy Practice
Rule Number	**Rule Title**
1140-07-.02	Standards
1140-07-.03	Personnel
1140-07-.04	Physical Requirements

Chapter Number	Chapter Title
1140-08	Civil Penalties
Rule Number	**Rule Title**
1140-08-.01	Civil Penalties

Chapter Number	Chapter Title
1140-09	Manufacturers, Outsourcing Facilities, Oxygen Suppliers and Wholesalers/Distributors
Rule Number	**Rule Title**
1140-09-.01	Manufacturer, Outsourcing Facility, Oxygen Supplier and Wholesaler/Distributor Licensing
1140-09-.02	Minimum Information Required
1140-09-.03	Minimum Qualifications
1140-09-.05	Minimum Requirements for General Operation

Chapter Number	Chapter Title
1140-11	Controlled Substance Monitoring Database
Rule Number	**Rule Title**
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1140-11-.02	Access to Database
1140-11-.03	Fees
1140-11-.04	Alternative Identification of Patients
1140-11-.05	Submission of Information
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1140-14-.03	Physical Requirements
1140-14-.04	Prescription Orders
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1140-14-.06	Controlled Drugs
1140-14-.07	Emergency and Home Care Kits
1140-14-.08	Unused Drugs, Devices and Related Materials
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_RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-01
INTRODUCTORY RULES

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1140-01-.01 DEFINITIONS.

~~(1) "ACPE" means the Accreditation Council for Pharmaceutical Education.~~

(1) "ACPE" means the Accreditation Council for Pharmaceutical Pharmacy Education.

(2) "Alternate or alternative infusion pharmacy practice site" means a pharmacy practice site where parenteral, enteral or respiratory therapies, and ancillary supplies, medications and equipment are provided to patients in a non-institutional setting.

(3) "Accreditation Council for Pharmacy Education (ACPE)" means the national organization for accreditation of professional degree programs in pharmacy and for accreditation of providers of continuing pharmacy education.

(4) "Automated Dispensing System" means a mechanical or electronic system outside the premises of an institutional or long-term care pharmacy that performs operations or activities, other than compounding or administration, relating to pharmacy services, including the storage, dispensing, or distribution of drugs and the collection, control, and maintenance of all transaction information, to provide security and accountability for such drugs.

(5)~~(4)~~ "Blood" means whole blood collected from a single donor and processed either for transfusion or further manufacturing.

(6)~~(5)~~ "Blood fraction/component" means that part of blood separated by physical or mechanical means.

(7)~~(6)~~ "Centralized Prescription Processing" is the filling or refilling of a lawful prescription order written by the patient's authorized prescriber by one (1) pharmacy licensed by the State of Tennessee at the request of another pharmacy licensed by the State of Tennessee for the delivery of the prescription drugs to the patient or patient's agent.

(8)~~(7)~~ "Certified pharmacy technician" means an individual who is certified by a national or state agency that offers a certification program that is recognized by the board.

(9)~~(8)~~ "Commercially available" means any marketed FDA-approved drug or biologic product not currently listed on any official shortage list recognized by the Board of Pharmacy.

(Rule 1140-01-.01, continued)

(10)~~(9)~~ "Component" means any active ingredient, or any added substance, inactive ingredient, excipient or pharmaceutic ingredient, intended for use in the compounding of a drug product, including those that may not appear on the product label.

(11)~~(10)~~ "Consultant pharmacist" means a pharmacist retained on a routine basis to consult with organizations, institutional facilities or patients in areas that pertain to the practice of pharmacy.

(12)~~(11)~~ "Contact hour" means any hour of completed continuing pharmaceutical education programming which is:

(a) accredited by ACPE (including, but not limited to, live programs, independent study courses, home correspondence courses, and audio or video cassettes); or

(b) approved by the board (including, but not limited to, attendance at state, district, or local pharmacy association meetings).

(13)~~(12)~~ "Continuing education unit" means ten (10) hours of participation in an ACPE approved or board-approved continuing pharmaceutical education program under responsible sponsorship, capable direction, and qualified instruction.

(14)~~(13)~~ "Drug sample" means a unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the prescription drug.

(15)~~(14)~~ "Electronic medical or prescription order" means a medical or prescription order which is transmitted by computer technology other than by electronic image transmission.

(16)~~(15)~~ "Facsimile (FAX) medical or prescription order" means a medical or prescription order which is transmitted by an electronic image transmission.

(17)~~(16)~~ "Foreign pharmacy graduate" means a person whose undergraduate pharmacy degree was conferred by any college or school of pharmacy not accredited by the ACPE but which is listed in the World Health Organization World Directory of Colleges and Schools of Pharmacy, or otherwise approved by the Foreign Pharmacy Graduate Examination Committee (FPGEC) certification program as established by the National Association of Boards of Pharmacy.

(18)~~(17)~~ "Hazardous product" means any substance that may be cytotoxic, genotoxic, oncogenic, mutagenic, teratogenic, or otherwise pose a potential health hazard.

~~(18) "Institutional facility" means any organization whose primary purpose is to provide a physical environment for patients to obtain health care services, and where patients spend a majority of their time within the facility, including but not limited to a(n):~~

~~(a) adult care facility;~~
~~(b) assisted living facility;~~
~~(c) correctional facility;~~
~~(d) developmental disability center;~~
~~(e) hospital;~~
~~(f) inpatient psychiatric center;~~
~~(g) intermediate care facility for the mentally retarded;~~
~~(h) mental health facility;~~
~~(i) nursing facility;~~
~~(j) personal care home;~~
~~(k) rehabilitation center;~~

(Rule 1140-01-.01, continued)

~~(l) residential drug or alcohol treatment center;~~
~~(m) rest home;~~
~~(n) retirement center;~~
~~(o) sub-acute care facility; and~~
~~(p) university health center.~~

(19) "Institutional facility" means any organization whose primary purpose is to provide a physical environment for patients to obtain acute or short-term health care services, including but not limited to a(n):

(a) hospital and associated clinics;

(b) developmental disability center;

(c) inpatient psychiatric center;

(d) sub-acute care facility; and

(e) university health center.

(20)~~(19)~~ "Institutional pharmacy practice site" means a pharmacy practice site serving patients within an institutional facility.

(21) "Long term care pharmacy practice site" means a pharmacy practice site serving patients within a long term care facility.

(22) "Long term care facility" means any organization whose primary purpose is to provide a physical environment for patients to obtain healthcare services, and where patients spend a majority of their time within the facility, including, but not limited to a(n):

(a) nursing home

(b) hospice or residential hospice; and

(c) assisted living facility.

(23) "Medication assessment" means a consultation between a pharmacist and a patient undertaken for the specific purpose of managing or discussing a course of drug therapy or treatment. Counseling as required by Board Rule 1140-03-.01 shall not be considered a medication assessment for the purposes of this part.

(243)~~(20)~~ "Medication order" means a prescription order for any prescription drug or device or related material issued by an authorized prescriber to authorized healthcare personnel in an institutional facility or institutional pharmacy practice site.

(254)~~(21)~~ "National Association of Boards of Pharmacy (NABP)" means the professional organization that represents the individual state boards of pharmacy.

(265)~~(22)~~ "Nuclear pharmacy practice site" means a pharmacy practice site providing radiopharmaceutical services.

(276)~~(23)~~ "Outsourcing facility" means a facility engaged in the compounding of sterile drugs which has elected to register as an outsourcing facility with the U.S. Food and Drug Administration and which complies with all relevant federal laws and regulations.

(Rule 1140-01-.01, continued)

(287)~~(24)~~ "Oxygen supplier" means any person who sells, delivers, distributes or wholesales medical gases which require a prescription or medical order prior to administration, dispensing or delivery and which are considered legend drugs pursuant to the federal Food, Drug, and Cosmetic Act to any person residing in this state.

(298)~~(25)~~ "Patient counseling" means communication by the pharmacist of information to the patient or caregiver in order to improve therapeutic outcome.

(30)~~(26)~~ "Pharmaceutical care" is the responsible provision of drug therapy through, among other things, pharmacists identifying potential and actual drug-related problems and resolving and preventing drug-related problems, for the purpose of achieving definite outcomes that improve a patient's quality of life. The outcomes include but are not limited to cure of a disease, elimination or reduction of a patient's symptomatology, arresting or slowing of a disease process and the preventing of a disease or symptomatology.

(310)~~(27)~~ "Pharmacy internship" is a period of practical pharmacy experience under the direct supervision of a licensed pharmacist and pursuant to the rules of the board.

(321)~~(28)~~ "Pharmacy practice site" means any place within this state where prescription drugs or prescription devices are dispensed and where pharmaceutical care is provided, and any place outside of the state where prescription drugs or prescription devices are dispensed and pharmaceutical care is provided to persons residing in this state.

(332)~~(29)~~ "Preceptor" means an individual who is currently licensed as a pharmacist and who meets the qualifications of a preceptor under the rules of the board and participates in the education of pharmacy interns.

(343)~~(30)~~ "Prescription department" means the area of a pharmacy practice site in which prescription drugs and devices and related materials are stocked and medical and prescription orders are compounded and dispensed.

(354)~~(31)~~ "Quality assurance" means a system for identifying problems in patient care that are resolved via administrative, clinical, or educational actions to ensure that final products and outcomes meet applicable specifications.

(365)~~(32)~~ "Radiopharmaceutical service" means, but is not limited to:

(a) the compounding, dispensing, labeling, and delivering of radiopharmaceuticals;

(b) the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews;

(c) the proper and safe storage and distribution of radiopharmaceuticals;

(d) the maintenance of radiopharmaceutical quality assurance;

(e) the responsibility for advising, where necessary or where regulated, of the diagnostic and therapeutic value, hazards, and use of radiopharmaceuticals; and

(f) the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of a nuclear pharmacy practice site.

(376)~~(33)~~ "Reciprocity" means to issue a license to an applicant who furnishes satisfactory proof of licensing by examination in another state or territory pursuant to the rules of the board.

(Rule 1140-01-.01, continued)

(387)~~(34)~~ "Shall" means that compliance is mandatory.

(398)~~(35)~~ "Sterile product" means any dosage form, drug product, or biological product devoid from all living microorganisms, including but not limited to bacteria and fungus.

(40)~~(36)~~ "Sterile manufacturing" means the production, propagation, processing, pooling, or repackaging of sterile products for wholesale or any other form of distribution, not pursuant to a prescription or medical order.

(41)~~(37)~~ "Third party pharmacy program" means any system of providing for the reimbursement of medical or prescription orders and/or pharmaceutical care services under a contractual arrangement or agreement between a provider of such services and the third party program administrator who is not the consumer of those services.

(42)~~(38)~~ "Third party pharmacy program administrator" means, but is not limited to, insurance companies, managed care organizations, health maintenance organizations, preferred provider organizations, pharmacy benefit managers, and pharmacy services administrative organizations.

(43)~~(39)~~ "Unit dose packaging" means that packaging which is designed to hold a quantity of a drug product intended for administration as a single dose.

(44)~~(40)~~ "USP" means the United States Pharmacopeia.

(45)~~(41)~~ "USP standards" means any applicable standard or standards published in the most current version of United States Pharmacopeia National Formulary guidelines, to the extent that such guidelines do not conflict with state law, rules, or Board Policy Statements and as those guidelines may, from time to time, be amended.

~~***Authority:*** *T.C.A. §§ 63-10-101, 63-10-102, 63-10-204, 63-10-216, 63-10-216, 63-10-301, 63-10-304, 63-10-304(b)(1), 63-10-404(5), (6), (14), (22), (26), (28), and (29), 63-10-504(b)(1), and Chapter 966 of the Public Acts of 2008 §1.*~~

Authority: T.C.A. §§ 63-10-101, 63-10-102, 6-10-204, 63-10-214, and 63-10-304.

Administrative History: *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed November 24, 2008; effective February 7, 2009. Amendment filed December 23, 2009; effective March 23, 2010. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Amendment filed July 11, 2014; effective October 9, 2014. Amendment filed March 24, 2015; effective June 22, 2015.*

1140-01-.02 VIOLATIONS CONSTITUTE UNPROFESSIONAL CONDUCT.

(1) Any person who violates any rule of the board may be deemed guilty of dishonorable, immoral, unethical or unprofessional conduct within the meaning of *T.C.A. § 63-10-305(6).*

Authority: *T.C.A. §§ 63-10-301, 63-10-304 and 63-10-305.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed August 14, 1974; effective September 13, 1974. Repeal filed January 11, 1977; effective February 10, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed January 19, 1988; effective April 27, 1988. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Repeal and new rule filed July 11, 2014; effective October 9, 2014.*

1140-01-.03 APPLICATION FOR A PHARMACIST LICENSE.

(1) An applicant for a license to engage in the practice of pharmacy shall submit the following to the Board office at time of application:

(a) A completed application on a form approved by the Board;

(b) Application and registration fees established in rule 1140-01-.10; and

(c) The result of a criminal background check, which the applicant shall pay for and cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials.

(d) Any application submitted which lacks required information or reflects a failure to meet any of the requirements for licensure will be returned to the applicant with written notification of the information that is lacking or the reason(s) the application does not meet the requirements for licensure and will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed sixty (60) days from date of written notification.

~~(2) For the purpose of *T.C.A. § 63-10-506(d),* a "recognized" college or school of pharmacy is a college or school of pharmacy which meets the minimum standards of the ACPE and appears in the ACPE "Annual Directory of Accredited Professional Programs of Colleges and Schools of Pharmacy."~~

(2) For the purpose of *T.C.A. § 63-10-306(d),* a "recognized" college or school of pharmacy is a college or school of pharmacy which meets the minimum standards of the ACPE and appears in the ACPE annual "Directory of Accredited Professional Programs of Colleges and Schools of Pharmacy."

~~(3) No applicant shall be eligible for a license if the applicant has engaged in conduct or suffers a condition which would constitute grounds for revocation or suspension of a license under *T.C.A. § 63-10-505,* unless the applicant can show cause why a license should be issued.~~

(3) No applicant shall be eligible for a license if the applicant has engaged in conduct or suffers a condition which would constitute grounds for revocation or suspension of a license under *T.C.A. § 63-10-305,* unless the applicant can show cause why a license should be issued.

(4) No license shall be issued to a reciprocal applicant from a state which denies reciprocal privileges to a pharmacist currently licensed and in good standing in Tennessee.

(Rule 1140-01-.03 continued)

(5) It shall be unlawful for any person to procure or attempt to procure a license or certificate of registration for such person or for any other person by making any false representations.

(6) An applicant initially licensed in another state and who wishes to obtain a Tennessee license may, in the discretion of the board, transfer to Tennessee the applicant's score on NAPLEX taken in another state. Provided, however, if the applicant has been licensed for twelve (12) or more months in another state, then the applicant shall apply for a license in Tennessee by reciprocity. No license shall be issued to a score transfer applicant from a state which denies score transfer privileges to a pharmacist currently licensed and in good standing in Tennessee.

(7) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§ 63-10-101, 63-10-102(a), 63-1-116, 63-10-202, 63-10-304, 63-10-306, 63-10-404(2), (13), (17), and (26), 63-10-404(2), (13), (17), and (26), 63-10-504(b)(1), 63-10-506, and 63-10-508.*~~

Authority: T.C.A. §§ 63-10-101, 63-1-116, 63-10-202, 63-10-204, 63-10-304, 63-10-306, and 63-10-308.

Administrative History: *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed December 17, 1984; effective March 16, 1985. Amendment filed October 30, 1991; effective December 14, 1991. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed January 4, 2012; effective April 3, 2012.*

1140-01-.04 PHARMACY INTERNSHIP.

(1) An applicant for an initial pharmacist license by examination must show, on affidavit forms prescribed by the board, that the applicant has acquired a minimum of one thousand seven hundred (1,700) hours of pharmacy internship (practical pharmacy experience) under the instruction of a pharmacist in good standing, subject to all of the following conditions.

(a) The one thousand seven hundred (1,700) hours must be acquired after enrollment in a recognized college or school of pharmacy; one thousand seven hundred (1,700) of these hours must be acquired in pharmacy programs or demonstration projects structured by the college or school of pharmacy.

(b) Pharmacy internship may be acquired in another state, provided that the preceptor's qualifications are certified by the appropriate authorities of such state.

(c) Foreign pharmacy graduates shall complete five hundred (500) hours of pharmacy internship in Tennessee within a period of six (6) consecutive months.

(d) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§ 63-10-202, 63-10-304 and 63-10-306.*~~

Authority: T.C.A. §§ 63-10-101, 63-10-102, 63-10-202, 63-10-204, and 63-10-304.

Administrative History: *Original rule filed June 7, 1974; effective July 7, 1974. Amendment filed September 23, 1975; effective October 23, 1975. Amendment filed January 11, 1977; effective February 10, 1977. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed*

(Rule 1140-01-.04, continued)
December 17, 1984; effective March 16, 1985. Amendment filed January 19, 1988; effective April 27, 1988. Repeal and new rule filed Mary 11, 1998; effective July 25, 1998. Repeal and new rule filed March 24, 2015; effective June 22, 2015.

1140-01-.05 LICENSING EXAMINATIONS.

(1) An applicant for an initial license to engage in the practice of pharmacy in the State of Tennessee shall take the National Association of Boards of Pharmacy (NABP) Multistate Pharmacy Jurisprudence Examination (MPJE®) and the NABP North American Pharmacy Licensing Examination (NAPLEX®), which shall be administered on the dates scheduled by the NABP. An applicant shall also meet the minimum acceptable passing scores on the NAPLEX® and MPJE® as established and nationally accepted.

~~(2) An applicant to obtain a pharmacy license by reciprocity shall successfully complete the MPJE®.~~

(2) An applicant to obtain a pharmacy license by reciprocity shall successfully complete the MPJE® by achieving (at least) the designated passing score on the exam.

(3) In addition to completing the requirements in paragraph (1) of this rule, a pharmacy foreign graduate shall successfully complete the foreign pharmacy equivalency examination, the Test of Spoken English (TSE®) examination and any other requirements established by the NABP.

(4) Any applicant who fails either the NAPLEX® or MPJE® may retake the examinations at any of the next examination dates scheduled by the NABP. If an applicant fails the NAPLEX® or MPJE® three (3) consecutive times, then the Board may require that applicant to take review courses prior to any following reexamination.

(5) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63,Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

Authority: *T.C.A. §§ 63-10-304 and 63-10-306.* ***Administrative History:*** *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed November 24, 2008; effective February 7, 2009.*

1140-01-.06 SUMMARY SUSPENSION OF LICENSE.

Pursuant to *T.C.A. § 4-5-320*, if the board finds that public health, safety or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.

~~***Authority:*** *T.C.A. §§ 4-5-320, 63-10-101, 63-10-102, 63-10-504(b)(1), 63-10-504(b)(2), and 63-10-505.~~

Authority: T.C.A. §§ 4-5-320, 63-10-101, 63-10-102, 63-10-304, and 63-10-305.

Administrative History: *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed November 15, 1989; effective December 30, 1989. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-01-.07 INACTIVE LICENSES AND LICENSE REINSTATEMENT.

(1) A pharmacist may apply for an inactive license by:

(Rule 1140-01-.07, continued)

(a) Completing the biennial license renewal application form; and

(b) Paying the biennial renewal fee for an inactive license.

(2) A pharmacist maintaining an active license to practice pharmacy in another state or jurisdiction is ineligible for inactive license status in Tennessee.

(3) A pharmacist seeking active status for an inactive, delinquent, suspended or revoked license must fulfill the following minimum requirements.

(a) If the license has been inactive, delinquent, suspended or revoked for less than one (1) year, the pharmacist shall:

1. Provide written notice to the board requesting an active license;

2. Satisfy all past due continuing pharmaceutical education as required by the board; and

3. Pay all cumulative license renewal fees and any applicable penalty fees for the period during which the license was inactive, delinquent, suspended or revoked.

(b) If the license has been inactive, delinquent, suspended or revoked from one (1) year to not more than five (5) consecutive years, the pharmacist shall:

1. Provide written notice to the board requesting an active license;

2. Satisfy all past due continuing pharmaceutical education as required by the board;

3. Successfully complete the jurisprudence examination;

4. Pay all cumulative license renewal fees and any applicable penalty fees for the period during which the license was inactive, delinquent, suspended or revoked; and

5. Complete a period of pharmacy internship in Tennessee as follows.

(i) If the license has been inactive, delinquent, suspended or revoked from one (1) year to not more than three (3) consecutive years, one hundred sixty (160) hours within ninety (90) consecutive days.

(ii) If the license has been inactive, delinquent, suspended or revoked for more than three (3) consecutive years but not more than five (5) consecutive years, three hundred twenty (320) hours within one hundred eighty (180) consecutive days.

(c) If the license has been inactive, delinquent, suspended or revoked for more than five (5) consecutive years, the pharmacist shall:

1. Provide written notice to the board requesting an active license;

2. Satisfy all past due continuing pharmaceutical education as required by the board;

3. Successfully complete the NAPLEX and jurisprudence examinations;

(Rule 1140-01-.07, continued)

4. Pay all cumulative license renewal fees and any applicable penalty fees for the period during which the license was inactive, delinquent, suspended or revoked; and

5. Complete a period of pharmacy internship of three hundred twenty (320) hours within one hundred eighty (180) consecutive days.

(d) Fulfill any other requirements which may be contained in any order of the board suspending or revoking the applicant's license.

(e) The board shall consider a written notice requesting reinstatement of an inactive, delinquent, suspended or revoked license within ninety (90) days of the notice being received by the director.

~~(f) The board shall consider a waiver upon request.~~

(f) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§ 63-10-101, 63-10-102, 63-10-210, 63-10-404(17), and 63-10-504(b)(1).*~~

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Administrative History: *Original rule certified June 7, 1974. Amendment filed June 7, 1974; effective July 7, 1974. Amendment filed September 23, 1975; effective October 23, 1975. Amendment filed January 11, 1977; effective February 10, 1977. Amendment filed April 11, 1979; effective July 30, 1979. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed January 26, 1987; effective April 29, 1987. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-01-.08 APPLICATION FOR PHARMACY PRACTICE SITE, MANUFACTURER, OUTSOURCING FACILITY, OXYGEN SUPPLIER AND WHOLESALER/DISTRIBUTOR LICENSES.

(1) Application for a license to operate as a pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor within the state of Tennessee shall be submitted to the office of the board at least thirty (30) days prior to the scheduled opening date. No pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor may open within the state of Tennessee until a license has been obtained; and such license will not be issued until an inspection by an authorized representative of the board has been made.

(2) An application for an existing pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor physically located within the state of Tennessee must be filed when the pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor changes name, location or ownership.

(a) Transactions constituting a change of ownership include, but are not limited to, the following:

1. A sole proprietor becomes a member of a partnership or corporation, which succeeds him as the new operator;

2. A partnership dissolves;

3. One partnership is replaced by another through the removal, addition or substitution of a partner;

4. Two (2) or more corporations merge and the originally-licensed corporation does not survive; and

5. Transfers between levels of government.

(b) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Two (2) or more corporations merge and the originally-licensed corporation survives; and

3. Corporate stock transfers or sales, even when a controlling interest.

(3) No out-of-state pharmacy practice site, manufacturer outsourcing facility, oxygen supplier or wholesaler/distributor shall conduct business in the state of Tennessee until such pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor obtains the required license from the board. In order to obtain a license for a pharmacy practice site, manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor physically located out-of-state the following standards must be met.

(a) Pharmacy practice site.

1. Submit an application for a license, which shall include the address of the pharmacy practice site, name of owner if a sole proprietorship, names of partners if a partnership or names and titles of all officers if a corporation and names of all pharmacists who practice at the site, together with the appropriate application fee. The director shall be notified in writing within thirty (30) days of any change in the information contained on the original application for a license, including names of pharmacists practicing at the site.

2. Comply with all statutorily authorized directions and requests for information from the board.

3. Maintain at all times a current permit, license or registration to conduct the pharmacy practice site in compliance with the laws of the state in which the site is physically located.

4. Submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which the pharmacy practice site is physically located. Thereafter, the pharmacy practice site shall submit to the director a copy of any subsequent inspection report conducted by the regulatory or licensing agency of the state in which the site is physically located.

~~5. Maintain records of prescription orders dispensed to persons residing in Tennessee.~~

5. Maintain records of prescription orders dispensed to and/or of medication assessments provided to persons residing in Tennessee.

6. All records of prescription orders prepared and dispensed to persons residing in Tennessee shall be readily retrievable from other records.

(Rule 1140-01-.08, continued)

7. During regular hours of operation, but not less than six (6) days per week nor for a minimum of forty (40) hours per week provide access to a pharmacist by a toll-free telephone service. A toll-free number shall be placed on the label affixed to the dispensing container for each prescription dispensed to a person residing in Tennessee.

8. Designate a pharmacist in charge who shall be responsible for compliance with the provisions in this section, and who shall hold a current Tennessee pharmacist license.

9. All out-of-state pharmacy practice sites shall comply with the requirements for patient counseling, patient profiling, drug regimen review and pharmaceutical care as set forth at 1140-03-.01.

(b) Manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor.

1. Submit an application for a license, which shall include the address of the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor, name of owner if a sole proprietorship, names of partners if a partnership or names and titles of all officers if a corporation, together with the appropriate application fee. The director shall be notified in writing within thirty (30) days of any change in the information contained on the original application for a license.

~~2. Submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor is physically located. Thereafter, the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor shall submit to the director a copy of any subsequent inspection report conducted by the regulatory or licensing agency of the state in which the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor is physically located. Inspection reports which are more than one (1) year old at the time of submission shall not satisfy the requirements of this part.~~

2. Submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor is physically located, or by the Food & Drug Administration. Thereafter, the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor shall submit to the director a copy of any subsequent inspection report conducted by the regulatory or licensing agency of the state in which the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor is physically located, or by the FDA.

3. Comply with the requirements contained in Chapter 1140-09 of the rules of the Board of Pharmacy.

(4) Representatives of a manufacturer, outsourcing facility or wholesaler/distributor conducting business in the state of Tennessee and who possesses and distributes controlled substances shall obtain a controlled substance registration from the Board of Pharmacy.

(5) Any entity licensed as or applying for licensure as manufacturer or outsourcing facility conducting business in the state of Tennessee and who manufactures, prepares, propagates, repackages, or processes sterile drug products or biological products using aseptic processing must register and possess a modifier as a sterile manufacturer with the Board of

(Rule 1140-01-.08, continued)

Pharmacy in accordance with this chapter. This section shall not apply to wholesalers/distributors of sterile products.

(6) It shall be unlawful for any person to procure or attempt to procure a license or certificate of registration for such person or for any other person by making any false representations.

(7) In determining whether to grant a license under this rule, the board shall require from the applicant proof satisfactory to the board that the:

(a) Applicant is of good moral character, or, if the applicant is a partnership or corporation, that the managing officers are of good moral character; and

(b) That the applicant is equipped as to land, buildings and equipment necessary to conduct the business for which the application has been submitted.

(8) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§ 53-11-301, 53-11-302, 53-14-104, 53-14-106, 53-14-107, 56-1-302(b)(1)(2), 63-10-101, 63-10-102(a), 63-10-203, 63-10-204, 63-10-210, 63-10-216, 63-10-306, 63-10-301, 63-10-304, 63-10-306, 63-10-404(18), (28), and (37), 63-10-504(b)(1), 63-10-504(b)(2), and 63-10-508.*~~

Authority: T.C.A. §§ 53-11-301, 53-14-104, 53-14-106, 53-14-107, 63-10-203, 63-10-204, 63-10-304, and 63-10-308.

Administrative History: *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed September 30, 1985; effective October 30, 1985. Amendment filed January 19, 1988; effective April 27, 1988. Amendment filed August 25, 1989; effective October 9, 1989. Amendment filed October 30, 1991; effective December 14, 1991. Amendment filed November 17, 1994; effective March 30, 1995. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Amendments filed July 11, 2014; effective October 9, 2014. Amendments filed March 24, 2015; effective June 22, 2015.*

1140-01-.09 RENEWAL OF LICENSES.

(1) All licenses and certificates of registration granted by the board shall be for a two (2) year period beginning on the date the license is initially granted. All licenses and certificates of registration shall be renewed on or before the last day of the two (2) year license cycle.

(2) A pharmacist or pharmacy technician serving in the uniformed services of the United States shall not be required to pay license or registration renewal fees during the period of active duty and the pharmacist shall not be required to complete continuing pharmacy education requirements during the period of active duty.

(3) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§ 53-11-301, 53-11-302, 56-1-302(b)(1)(2), 63-10-102(a), 63-10-404(17), 63-10-504(1) and (2), 63-10-304(b)(1) and 63-10-508.*~~

Authority: T.C.A. §§ 53-11-301, 53-11-302,63-10-204, 63-10-304, and 63-10-308.

Administrative History: *Original rule certified June 7, 1974. Repeal and new rule filed February 7, 1983; effective March 9, 1983. Amendment filed April 12, 1990; effective July 29, 1990. Amendment filed November 17, 1994; effective March 30, 1995. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed December 23, 2009; effective March 23, 2010.*

1140-01-.10 FEES.

(1) An applicant for examination for a license as a pharmacist shall pay a fee of fifty dollars ($50.00) plus cost of the examination and materials.

(2) An applicant for a reciprocal license or NAPLEX score transfer shall pay a fee of three hundred dollars ($300.00).

(3) Each person becoming licensed as a pharmacist shall pay a registration fee of one-hundred twenty-five dollars ($125.00). Each person licensed as a pharmacist who desires to continue in the practice of pharmacy shall biennially, on or before the last day of the month that the person's license shall expire, pay a renewal fee of one-hundred twenty-five dollars ($125.00). Each person licensed as a pharmacist and who wishes to obtain an inactive license shall biennially, on or before the last day of the month that the person's license shall expire, pay a renewal fee of sixty-three dollars ($63.00).

(4) Each person becoming registered as a pharmacy technician shall pay a registration fee of seventy-five dollars ($75.00). Each person who desires to continue to practice as a pharmacy technician shall biennially, on or before the last day of the month that the person's registration shall expire, pay a renewal fee of seventy-five dollars ($75.00).

(5) Any person, partnership, firm, corporation or agency owning or operating a pharmacy practice site or any establishment or institution where prescription drugs and devices and related materials are kept for the purpose of the compounding and dispensing of medical and prescription orders shall pay a registration fee of three-hundred dollars ($300.00) biennially. Any new pharmacy practice site to be opened or established, or any change in location, name or ownership of any existing pharmacy practice site, shall before active operation obtain a license from the Board of Pharmacy and shall pay a fee of three-hundred dollars($300.00).

(6) All manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors of prescription drugs and devices and related materials doing business in the state of Tennessee must be licensed by the Board of Pharmacy by paying a registration fee of five-hundred twenty-five dollars ($525.00), and thereafter a biennial renewal fee of five-hundred twenty-five dollars ($525.00).

(7) The fee for the Board of Pharmacy's publication of Pharmacy Drug Laws, Rules and Regulations shall be an amount which covers the cost of publication and shipping, as determined by the Board of Pharmacy. The Board may also publish Pharmacy Drug Laws, Rules and Regulations electronically, and may make an electronic publication freely available on the Board's website.

(8) The charge for a roster of Tennessee pharmacies, pharmacists and printing of mailing labels of Tennessee pharmacies and pharmacists shall be determined by the administration of the Department of Health.

(9) The fee for certification of license examination grades shall be twenty five dollars ($25.00).

(Rule 1140-01-.10, continued)

(10) The fee for any duplicate or revised license, registration, modifier or license wall certificate shall be twenty five dollars ($25.00).

(11) If any person fails to renew a license, such license may be reinstated upon complying with rule 1140-01-.07 and upon the payment of the appropriate renewal fee plus a penalty fee of ten dollars ($10.00) for each month or fraction thereof that payment for renewal is delinquent. In the event such renewal is not procured within six (6) months from the date on which the last renewal became delinquent, the board may refuse to issue the renewal.

(12) If any person fails to renew a license or registration certificate, such license or registration certificate may be reinstated upon complying with rule 1140-01-.07 and upon the payment of the appropriate renewal fee plus a penalty fee of ten dollars ($10.00) for each month or fraction thereof that payment for renewal is delinquent. In the event such renewal is not procured within six (6) months from the date on which the last renewal became delinquent, the board may refuse to issue the renewal.

(13) A penalty of fifty dollars ($50.00) may, in the discretion of the board, attach to each failure of a licensee or registration certificate holder to provide any required notice to the director as may be required by the rules of the board.

(14) Any licensee who wishes to modify the terms or conditions of a license to manufacture, obtain, possess, administer or dispense a prescription drug or device or controlled substance for the purpose of scientific research, chemical analysis, instruction or training of detection animals shall file those modifications with a non-refundable fee of five dollars ($5.00).

(15) Any person who holds a license to manufacture, obtain, possess, administer or dispense a prescription drug or device or controlled substance for the purpose of scientific research, chemical analysis, instruction or training of detection animals shall pay a renewal fee of one-hundred dollars ($100.00) biennially from the date of issuance.

(16) Any person, partnership, firm, corporation or agency owning or operating a pharmacy practice site or any other establishment licensed pursuant to this chapter, where sterile products are compounded, manufactured, prepared, propagated, repackaged, processed, stored, or distributed shall pay a registration fee of two-hundred and fifty dollars ($250.00), and thereafter a biennial renewal fee of two-hundred and fifty dollars ($250.00).

(17) Each automated dispensing system becoming registered with the Board shall pay a registration fee of three-hundred dollars ($300.00), and thereafter a biennial renewal fee of three-hundred dollars ($300.00).

(18) Each licensed practitioner, including pharmacy technicians, shall pay a fee of ten dollars ($10.00) in addition to any initial licensure or renewal fee. All fees collected pursuant to this paragraph shall be for the purpose of funding a peer assistance program.

(19) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§ 4-5-202, 63-10-102(a), 63-10-216, 63-10-301, 63-10-304, 63-10-306, 63-10-308, 63-10-404(17), 63-10-504(b)(1), 63-10-504(b)(2), and 63-10-508.*~~

Authority: T.C.A. §§ 4-5-202, 63-10-204, 63-10-216, 63-10-304, and 63-10-308.

(Rule 1140-01-.10, continued)

Administrative History: *Original rule certified June 7, 1974. Amendment filed June 7, 1974; effective July 7, 1974. Amendment filed December 15, 1977; effective January 16, 1978. Amendment filed September 26, 1978; effective December 29, 1978. Repeal and new rule file February 7, 1983; effective March 9, 1983. Amendment filed May 23, 1986; effective August 12, 1986. Amendment filed January 26, 1987; effective April 29, 1987. Amendment filed October 1, 1987; effective January 27, 1988. Amendment filed November 18, 1989; effective February 28, 1989. Amendment filed October 18, 1990; effective January 29, 1991. Amendment filed May 3, 1991; effective August 28, 1991. Amendment filed December 22, 1992; effective March 31, 1993. Amendment filed June 25, 1993; effective September 28, 1993. Amendment filed October 19, 1996; effective February 28, 1996. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Amendments filed July 11, 2014; effective October 9, 2014. Amendments filed March 24, 2015; effective June 22, 2015.*

1140-01-.11 CONTROLLED SUBSTANCE REGISTRATION.

No licensee may obtain, possess, administer, dispense, distribute, or manufacture any controlled substance in this state, and no representative of a manufacturer or wholesaler/distributor may distribute any controlled substance in this state, without obtaining a controlled substance registration from the board. Application for such registration shall be submitted on a form prescribed by the board, and shall be accompanied by a fee of forty dollars ($40.00) and thereafter a biennial renewal fee of forty dollars ($40.00).

Authority: *T.C.A. §§ 53-10-303, 63-10-102, 63-10-102(a), 63-10-404, 63-10-404(6), 63-10-504, 63-10-504(b)(1) and (2), and 63-10-508.* ***Administrative History:*** *Original rule filed October 30, 1991; effective December 14, 1991. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed July 11, 2014; effective October 9, 2014.*

1140-01-.12 STERILE PRODUCT REGISTRATION.

(1) No licensee may compound, manufacture, prepare, propagate, or process any sterile product to be dispensed, sold, traded, or otherwise distributed in or from this state without first obtaining a sterile compounding modifier registration from the Board of Pharmacy.

(2) A registration modifier to compound and dispense sterile products into or from this state may be suspended by the Board of Pharmacy, upon information that the registrant has:

(a) Knowingly furnished false or fraudulent material information in any application filed before the Board of Pharmacy; or

(b) Been convicted of a felony under any state or federal law relating to drugs or to the practice of pharmacy; or

(c) Had any of its licenses, permits, or registrations granted by the Food and Drug Administration (FDA), the Drug Enforcement Administration (DEA), the Department of Health and Human Services (DHHS), or any other federal agency or subdivision thereof, suspended, revoked, or voluntarily surrendered; or

(d) Been enjoined from operation by the court of any state or a federal court; or

(e) Been identified by the Commissioner of Health or the Commissioner's designee, the Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), or an investigator of the Board of Pharmacy as a source of adulterated, misbranded, or otherwise unsafe sterile products which have been, or pose an imminent risk of being dispensed, sold, traded, or otherwise distributed.

(Rule 1140-01-.12, continued)

(3) An order of suspension issued by the Board of Pharmacy may contain additional directives or requirements necessary to protect public health, safety and welfare, including but not limited to:

(a) The quarantine or disposal of any sterile product compounded, manufactured, prepared, propagated or processed at the facility.

(b) The initiation of a recall of any sterile product compounded, manufactured, prepared, propagated or processed at the facility where such products or any label, container, packaging, or dosage form associated with such products may be adulterated, misbranded, contaminated, or otherwise unsafe.

(c) An order of suspension issued by the Board of Pharmacy may contain exceptions or allowances necessary to protect individual patients or the public health.

(4) Any order of suspension issued by the Board of Pharmacy pursuant to this chapter shall follow the procedures required by the Uniform Administrative Procedures Act, including those procedures required by T.C.A. § 4-5-320(d) where appropriate.

Authority: *T.C.A. §§ 63-10-301, 63-10-304, 63-10-305, and 63-10-306.* ***Administrative History:*** *Original rule filed July 11, 2014; effective October 9, 2014.*

1140-01-.13 STANDARDS FOR PHARMACIES AND PRESCRIPTION DEPARTMENT SECURITY.

A license to operate a new or remodeled pharmacy practice site, or an existing pharmacy practice site which changes location or ownership, will not be issued unless the pharmacy practice site meets the following standards.

(1) The pharmacy practice site and equipment therein shall be maintained in a clean, sanitary, orderly and well-lighted condition, and all persons working in the pharmacy practice site shall be required to keep themselves and their apparel in a clean and sanitary condition.

(2) All new or relocated pharmacies opening after July 1, 1998 shall provide a consultation area which offers sufficient privacy to the patient before a license will be issued. All existing pharmacies shall be in compliance with this requirement on or before January 1, 2000.

~~(3) The prescription department at the pharmacy practice site shall meet the following standards.~~

(3) If the practice site is a dispensing pharmacy, the prescription department at the pharmacy practice site shall meet the following standards.

(a) The department shall have necessary counters and storage space.

(b) The department shall have a representative stock of prescription drugs and devices and related materials sufficient to compound and dispense medical and prescription orders as indicated by experience.

(c) The department shall have the apparatus and equipment needed to compound and dispense medical and prescription orders properly.

(d) The department shall occupy a space of not less than one hundred eighty (180) square feet.

(e) The department shall have hot and cold running water and immediate area refrigeration.

(Rule 1140-01-.13, continued)

(f) The department shall have a physical barrier sufficient to protect against unauthorized entry and pilferage of prescription drugs and devices and related materials.

(g) Keys or other access devices to the physical barriers shall be subject to the following standards.

1. Only pharmacists practicing at the pharmacy and pharmacists authorized by the pharmacist in charge shall be in possession of any keys or other access devices.

~~2. The pharmacist in charge shall place a key or other access device in a sealed envelope bearing the signature of the pharmacist in charge affixed across the seal and placed in a safe or vault in a secured place outside of the department. The key or access device may be used to allow emergency entrance to the department.~~

2. The pharmacist in charge shall place a key or other access device in a sealed device or vault in a secured place outside of the department, unless the pharmacy practice utilizes an electronic access device which is capable of restricting and preventing unauthorized access into the pharmacy. The key or access device may be used to allow emergency entrance to the department. A written or electronic record of persons accessing the pharmacy department using the key or other access device must be maintained on the premises of that pharmacy practice site for a period of 2 years.

(h) Access to the department is restricted to pharmacists, pharmacy interns and pharmacy technicians who are practicing at the pharmacy. Other persons designated by the pharmacist in charge may be allowed access but only during hours that a pharmacist is on duty.

(i) Notwithstanding any rule or regulation to the contrary, a pharmacy which was established before June 6, 1945, and which serves food, and which has continuously had a soda fountain, may allow a customer to go through the pharmacy area to the restroom, and not be required to have a gate or door to separate the pharmacy from the restroom or other parts of the establishment.

(4) All licenses and certificates of registration for a pharmacy practice site shall at all times be conspicuously displayed at the practice site.

(5) If a pharmacy practice site is located in a mercantile establishment (such as a discount store, grocery store, department store, or other similar establishment), then such pharmacy practice site shall be:

(a) open for business during the same hours as the mercantile establishment, unless the pharmacy practice site is capable of being closed-off by physical barrier from floor to ceiling; and

(b) under the supervision of a pharmacist at all times; except as provided in rule 1140-03-.07.

(6) The pharmacist shall not at any time be denied access to the prescription department of a pharmacy practice site located in a mercantile establishment; provided, however, that entry of the pharmacist at times when the pharmacy is closed to the public may be subject to reasonable and prudent conditions.

(Rule 1140-01-.13, continued)

(7) A pharmacy practice site where prescription drugs and devices and related materials are received, stored, compounded and dispensed shall not be opened for business or any other reason unless a licensed pharmacist is present. Furthermore, no medical or prescription order shall be dispensed except during the presence and under the direct supervision of a pharmacist.

(8) Nothing in this rule applies to a pharmacy practice site or prescription department operating in an institutional facility.

(9) In cases of practical difficulty or undue hardship, the board may permit exceptions to the standards specified in this rule.

~~***Authority:*** *T.C.A. §§ 63-10-404(28), 63-10-504(b)(1), and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed May 11, 1998; effective July 25, 1998. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. Rule filed July 11, 2014 and was previously numbered 1140-01-.12, but was changed effective October 10, 2014 with an addition of a new 1140-01-.12. Rule was renumbered 1140-01-.13.*

1140-01-.14 STANDARDS FOR MANUFACTURERS, OUTSOURCING FACILITIES, OXYGEN SUPPLIERS AND WHOLESALERS/DISTRIBUTORS.

No license to operate a new or remodeled manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor location within the state of Tennessee, or an existing manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor location which changes location or ownership, will be issued unless the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor meets the standards set forth in Chapter 1140-09 of the rules of the Board of Pharmacy.

~~***Authority:*** *T.C.A. §§ 63-10-301, 63-10-304 and 63-10-306.*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed May 11, 1998; effective July 25, 1998. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired effective July 31, 2014. The rule reverted to its previous status. The rule reverted to its previous status. Rule previously was previously numbered 1140-01-.13, but was renumbered 1140-01-.14. with the addition of a new 1140-01-.12. Rule was filed July 11, 2014; effective October 9, 2014. Repeal and new rule filed March 24, 2015; effective June 22, 2015.*

~~**1140-01-.15 PRESCRIPTION DRUGS DISPENSED BY HEALTH DEPARTMENTS.**~~

~~For purposes of *T.C.A. § 63-10-405*, the following drugs are hereby approved as not subject to abuse:~~

~~(1) Tuberculosis Control Agents:~~

~~(a) Capreomycin Injection~~

~~(b) Cycloserine Capsules~~

~~(c) Ethambutol Tablets~~

~~(d) Ethionamide Tablets~~

(Rule 1140-01-.15, continued)

~~(e) Isoniazid Tablets~~

~~(f) Para-Aminosalicyclate Tablets~~

~~(g) Pyrazinamide Tablets~~

~~(h) Rifampin Capsules~~

~~(i) Streptomycin Injection~~

~~(j) Tuberculin Skin Test (Mantoux only)~~

~~(k) Rifampin/Isoniazid~~

~~(l) Ofloxacin~~

~~(m) Rifampin-isoniazid-pyrazinamide~~

~~(2) Venereal Disease Control Agents:~~

~~(a) Ampicillin Capsules~~

~~(b) Doxycycline Capsules~~

~~(c) Erythromycin Tablets~~

~~(d) Penicillin~~

~~1. Benzathine Penicillin G Injection~~

~~2. Procaine Penicillin G Injection~~

~~(e) Probenecid Tablets~~

~~(f) Spectinomycin Injection~~

~~(g) Tetracycline Capsules~~

~~(h) Ceftriaxone~~

~~(i) Ciprofloxacin~~

~~(j) Lidocaine Injection~~

~~(k) Azithromycin~~

~~(l) Acyclovir Tablets, Ointments~~

~~(m) Trichloroacetic Acid~~

~~(n) Salicylic Acid~~

~~(o) Podophyllin/Salicylic Acid~~

~~(p) Aldara (Imiquimod)~~

(Rule 1140-01-.15, continued)

~~(3) Biologicals/Immunizations:~~

~~(a) Antiserums~~

~~(b) Antitoxins~~

~~(c) Immune Serum Globulin~~

~~(d) Toxoids~~

~~(e) Vaccines~~

~~(f) Antigens~~

~~(4) Reproductive Health Agents:~~

~~(a) Metronidazole Tablets~~

~~(b) Oral Contraceptives~~

~~(c) Podophyllin~~

~~(d) Prenatal Vitamins~~

~~(e) Triple Sulfa Vaginal Cream/Tabs~~

~~(f) Vaginal Antifungal Cream/Tabs~~

~~1. Clotrimazole~~

~~2. Miconazole~~

~~3. Nystatin~~

~~4. Terconazole (Terazole)~~

~~(g) Amino-Cerv~~

~~(h) Nitrofurantoin~~

~~(i) Ibuprofen, 600 mg Tablets~~

~~(j) Metronidazole (vaginal jell)~~

~~(k) Fluconazole Tablets~~

~~(l) Clindamycin Vaginal Cream~~

~~(m) Premarin Tablets (for use in estrogen trials for the evaluation of atypical cells in certain inflammatory atrophic pap smears)~~

~~(n) Medroxyprogesterone Acetate Injectable (Depo Provera®)~~

~~(o) Norelgestromin/ethinyl estradiol transdermal system (Ortho Evra®)~~

~~(p) Etonogestrel/ethinyl estradiol vaginal ring (Nuvaring®)~~

(Rule 1140-01-.15, continued)

~~(5) Child Health Agents:~~

~~(a) Fluoride Tablets and Drops~~

~~(b) Lindane Cream, Lotion, Shampoo~~

~~(c) Mebendazole Tablets~~

~~(d) Pyrantel Pamoate Liquid~~

~~(e) Sulfadiazine Tablets~~

~~(f) Trimethoprim and Sulfamethoxazole~~

~~(g) Permethrin~~

~~(h) Crotamiton~~

~~(i) Nystatin Oral Suspension~~

~~(j) Nystatin Triamcinolone Cream~~

~~(k) Ibuprofen, Suspension Liquid~~

~~(6) Emergency Agents:~~

~~(a) Aminophylline Injection~~

~~(b) Benztropine Injection~~

~~(c) Diphenhydramine Injection~~

~~(d) Epinephrine Injection~~

~~(e) Glucagon Injection~~

~~(f) Hydralazine Injection~~

~~(g) Hydrocortisone Sodium Succinate~~

~~(h) Insulin, Regular~~

~~(i) Intravenous Fluids~~

~~(j) Oxygen~~

~~(k) Phenylephrine Injection~~

~~(l) Sodium Bicarbonate Injection~~

~~(m) Atropine Injection~~

~~(n) Nitroglycerin Sublingual Tablets~~

~~(o) Dexamethasone Injection~~

(Rule 1140-01-.15, continued)

~~(p) Norepinephrine~~

~~(7) Antihypertensive Agents:~~

~~(a) Methyldopa~~

~~(b) Reserpine~~

~~(c) Hydrochlorothiazide~~

~~(d) Hydralazine~~

~~(e) Propranolol~~

~~(f) Potassium Supplements~~

~~(g) Nicotine Patches~~

~~***Authority:*** *T.C.A. §§ 63-10-404(14), 63-10-205, 63-10-304, 63-10-304(b)(1), 63-10-405, 63-10-504(b), 63-10-504(b)(1), and 63-10-504(b)(2).* ***Administrative History:*** *Original rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002. Amendment filed November 24, 2008; effective February 7, 2009. Amendment filed December 23, 2009; effective March 23, 2010. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired. Rule reverted on July 31, 2014 to its previous status. Rule was previously numbered 1140-01-.14 but was renumbered 1140-01-.15 with the addituion of a new 1140-01-.12. Rule filed July 11, 2014; October 9, 2014.~~

1140-01-.15~~6~~ ~~RESERVED.~~ Pilot Programs.

A licensee of the Board who wishes to undertake a temporary pilot program for the purpose of studying or investigating the impact of a public health initiative, or who wishes to address a recognized health emergency or crisis in the State shall submit a written application for such program to the executive director on a form approved by the Board, who may present such application to the Board for approval. The Board may authorize such a program to take place for a predetermined, temporary amount of time. A program authorized pursuant to this part may deviate from the Board's rules if the Board determines such deviation is crucial to the proposed program and in the best interest of the public health, safety and welfare.

Authority: T.C.A. §§ 63-10-301, 63-10-304, 63-10-305, and 63-10-308.

~~***Authority:*** *T.C.A. §§ 63-10-301, 63-10-304, 63-10-3-5, and 63-10-308.* ***Administrative History:*** *Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rule filed January 31, 2014 expired. The rule reverted to reserved status on July 31, 2014. The rule reverted to its previous status. Rule was previously numbered 1140-01-.15, but renumbered 1140-01-.16 with the addition of a new 1140-01-.12. Rule filed July 11, 2014; effective October 9, 2014.~~

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-02
PROFESSIONAL CONDUCT AND RESPONSIBILITIES

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1140-02-.01 Pharmacists and Pharmacy Interns 1140-02-.02 Pharmacy Technicians

1140-02-.01 PHARMACISTS AND PHARMACY INTERNS.

(1) A pharmacist shall hold the health and safety of patients to be the first consideration and shall render to each patient the full measure of the pharmacist's ability as an essential health practitioner.

(2) A pharmacist shall not knowingly condone or assist in the dispensing, promoting, or distributing of drugs or devices which are not of good quality, which do not meet standards by law, or which lack therapeutic value for the patient.

(3) A pharmacist shall always strive to perfect and enlarge the pharmacist's professional knowledge and shall utilize and make available this knowledge as may be required in accordance with the pharmacist's best professional judgment.

(4) A pharmacist shall observe the law, uphold the dignity and honor of the profession, and accept its ethical principles. A pharmacist shall not engage in any activity that will bring discredit to the profession, and shall expose, without fear or favor, illegal or unethical conduct in the profession.

(5) A pharmacist shall seek at all times only fair and reasonable remuneration for the pharmacist's services. A pharmacist shall never agree to or participate in transactions with practitioners of other health professions or any other person under which fees are divided, or which may cause financial or other exploitation in connection with the rendering of the pharmacist's professional services.

(6) A pharmacist shall respect the confidential and personal nature of professional and patient records. Except where the best interest of a patient requires or the law demands, a pharmacist shall not disclose such information to anyone without proper patient authorization.

(7) A pharmacist shall not agree to practice under terms or conditions which tend to interfere with or impair the proper exercise of professional judgment and skill, which tend to cause a deterioration of the quality of professional service and patient care, or which require the pharmacist to consent to unethical conduct.

(8) A pharmacist shall not make publication or circulation of any statement tending to deceive, misrepresent, or mislead anyone, nor be a party or accessory to any fraudulent or deceptive practice or transaction in pharmacy.

(9) A pharmacist shall not enter into any agreement with anyone for the compounding of secret formula or coded medical or prescription orders.

(10) A pharmacist shall, by utilizing education, skill, experience, and professional judgment, make every reasonable effort to prevent the abuse of drugs which the pharmacist dispenses.

(11) A pharmacist shall provide pharmaceutical service:

(a) which is as complete as the public may reasonably expect;

(b) without discriminating in any manner between patients or groups of patients; and

(c) without compromising the kind or extent of services or facilities made available.

(12) A pharmacist shall recognize the Tennessee Board of Pharmacy as the governing body of the practice of pharmacy in the State of Tennessee, and report to the board any violations of pharmacy laws or rules which may come to the pharmacists attention. The pharmacist at all times shall refrain from discussing these matters with nonmembers of the profession.

(13) The following functions must be performed personally by a pharmacist or by a pharmacy intern under the personal supervision and in the presence of a pharmacist:

(a) Certification of medical and prescription orders;

(b) Performance of final verification of the product prior to dispensing;

(c) Initialing of medical and prescription orders noting appropriate comments;

(d) Providing patient counseling;

(e) Proving direct patient care services;

(f) Providing drug information to patients, care givers, and health care providers;

(g) Supervision of compounding;

(h) Evaluation and establishment of criteria for selection of drug product(s) and supplier(s); and

(i) Daily opening and closing of a pharmacy practice site.

(14) A pharmacist and pharmacy intern shall wear appropriate identification showing name and appropriate title.

(15) A pharmacist shall immediately notify the board office in writing of a change in location of primary practice site and permanent residence.

(16) A pharmacist shall conspicuously display the pharmacist's license and certificate of registration at the pharmacist's primary practice site, unless it is an institutional pharmacy practice site, in which case, the pharmacist's license and certificate of registration shall be maintained at the site.

(17) A pharmacist convicted of any crime, including driving under the influence of alcohol or controlled substances, shall report such conviction to the board within ten (10) days of the conviction becoming final. For purposes of this reporting requirement, a conviction includes pretrial or judicial diversion.

(18) A pharmacist shall incent or induce the transfer of a prescription absent the exercise of professional judgment.

(19)~~(18)~~ A pharmacist shall comply with lawful order(s) of the board.

~~***Authority:*** *T.C.A. §§ 63-10-404(26),(27), and (29), 63-10-304(b)(1) and (c), 63-10-504(b)(1), and 63-10-504(b)(1)(C).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed December 23, 2009; effective March 23, 2010.*

1140-02-.02 PHARMACY TECHNICIANS.

(1) Any person acting as a pharmacy technician shall register with the Board by submitting a complete application on a form prescribed by the Board accompanied by the following:

(a) An affidavit signed by both the applicant and employer attesting that the applicant has read and understands the laws and rules relative to pharmacy technicians and the practice of pharmacy in Tennessee. (A copy of this affidavit shall be retained at the applicant's place of employment);

(b) Registration fee established in rule 1140-01-.10; and

(c) The result of a criminal background check, which the applicant shall pay for and cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's registration application materials.

(d) Any application submitted which lacks required information or reflects a failure to meet any of the requirements for registration will be returned to the applicant with written notification of the information that is lacking or the reason(s) the application does not meet the requirements for registration and will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed sixty (60) days from date of written notification.

(2) The following individuals are exempt from registration as a pharmacy technician:

(a) Any individual performing tasks that may be performed by a pharmacy technician who is classified by the employer as a probationary employee. The exemption shall not exceed ninety (90) days from the date of employment.

(b) A student enrolled in a formal pharmacy technician training program while performing experiential rotations as a part of the academic curriculum. The student shall wear a school-issued identification badge.

(3) The pharmacist in charge at each pharmacy practice site is responsible for compliance with the provisions of this chapter by pharmacy technicians at that pharmacy practice site.

~~(4) A registered pharmacy technician may, in the presence of and under the supervision of a pharmacist, perform those tasks associated with the preparation and dispensing process except those tasks identified in Rule 1140-02-.01(13) that must be personally performed by a pharmacist or pharmacy intern under the personal supervision and in the presence of a pharmacist.~~

(4) A registered pharmacy technician may, under the supervision of a pharmacist, perform those tasks associated with the preparation and dispensing process except those tasks identified in Rule 1140-02-.01(13) that must be personally performed by a pharmacist or pharmacy intern under the personal supervision and in the presence of a pharmacist.

(5) Certified pharmacy technicians may also:

(a) Receive new or transferred oral medical and prescription orders;

(b) Receive and transfer copies of oral medical and prescription orders between pharmacy practice sites; and

(Rule 1140-02-.02, continued)

~~(c) Verify the contents of unit dose carts prepared by other registered technicians when an additional verification by use of bar code technology or a licensed health care professional is performed prior to administration to the patient.~~

(c) Verify the contents of unit dose carts/automated dispensing systems prepared by other registered technicians when an additional verification by use of bar code technology or a licensed health care professional is performed prior to administration to the patient.

(6) No prescription drugs and devices and related materials may be released to a patient without verification by a pharmacist of the functions performed by a pharmacy technician.

(7) Pharmacy Technician to Pharmacist Ratio

(a) The pharmacy technician to pharmacist ratio shall not exceed 2:1; however the ratio may be increased up to a maximum of 4:1 by the pharmacist in charge based upon public safety considerations but only if the additional pharmacy technicians are certified pharmacy technicians. However, the pharmacist in charge may request a modification of the ratio from the Board in writing which addresses:

1. the pharmacy technician's experience, skill, knowledge and training; and

2. the workload at the practice site; and

3. detailed information regarding the numbers of pharmacy technicians and the specific duties and responsibilities of each of the pharmacy technicians; and

4. justification that patient safety and quality of pharmacy services and care can be maintained at the pharmacy.

(b) Requested modifications of the established ratios may not be implemented until the written request is considered and approved by the Board.

(8) Pharmacy technicians must wear appropriate identification showing name and appropriate title (e.g. pharmacy technician, certified pharmacy technician).

(9) All pharmacy technician functions shall be performed under the supervision of a pharmacist, who shall direct and verify the accuracy of all pharmacy technician functions.

(10) A registered technician shall maintain his or her registration certificate at the pharmacy practice site; additionally, all certified technicians shall display in like manner evidence of certification. Pharmacy technicians shall possess at all times, while on duty, proof of registration and proof of certification, if applicable.

(11) All registered technicians shall immediately notify the board in writing of any change of address or employer.

(12) For purposes of this rule, a pharmacy intern is not considered to be a pharmacy technician.

(13) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1and 10, and Tenn. Code Ann. Title 4, Chapter 5.

(Rule 1140-02-.02, continued)

~~***Authority:*** *T.C.A. §§ 63-1-116, 63-10-304, 63-10-304(b)(1), (e), and (j), 63-10-306, 63-10-404(30), 63-10-504(b)(1), 63-10-504(b)(1)(C), 63-10-506, and 63-10-508.*~~

Authority: T.C.A. §§ 63-1-116, 63-10-204, 63-10-304, 63-10-306, and 63-10-308.

Administrative History: *Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002. Amendment filed December 23, 2009; effective March 23, 2010. Amendment filed January 4, 2012; effective April 3, 2012.*

RULES
OF
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CHAPTER 1140-03
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1140-03-.01 RESPONSIBILITIES FOR PHARMACEUTICAL CARE.

(1) Patient counseling

(a) Upon the receipt of a medical or prescription order and following a review of the patient's record, a pharmacist shall personally counsel the patient or caregiver "face-to-face" if the patient or caregiver is present. If the patient or caregiver is not present, a pharmacist shall make a reasonable effort to counsel through alternative means.

(b) Alternative forms of patient information may be used to supplement, but not replace, face-to-face patient counseling.

(c) Patient counseling, as described herein, shall also be required for outpatients of hospitals or other institutional facilities dispensing medical and prescription orders and for patients when medications are dispensed on discharge from the hospital or other institutional facility.

~~(d) Patient counseling as described in this rule shall not be required for inpatients of an institutional facility.~~

(d) Patient counseling as described in this rule shall not be required for inpatients of an institutional or long term care facility.

(e) Patient counseling shall cover matters, which in the exercise of the pharmacist's professional judgement, the pharmacist deems significant including:

1. the name and description of the medication;

2. the dosage form, dose, route of administration, and duration of drug therapy;

3. special directions and precautions for preparation, administration, and use by the patient;

4. common side effects or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(Rule 1140-03-.01, continued)

5. techniques for self-monitoring drug therapy;

6. proper storage;

7. prescription refill information; and

8. action to be taken in the event of a missed dose.

(f) Upon the receipt of a request for a refill of a medical or prescription order, a pharmacist or a person designated by the pharmacist shall offer for the pharmacist to personally counsel the patient or caregiver. Counseling as described in (e) above is not required unless requested by the patient or deemed necessary in the professional judgment of the pharmacist.

(g) A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such counseling.

(2) Patient Profiling.

(a) A patient's record system shall be maintained by all pharmacy practice sites for patients for whom medical and prescription orders are dispensed. The patient's record system shall provide for the immediate retrieval of information necessary for the pharmacist to identify previously dispensed medical and prescription orders at the time a medical or prescription order is presented.

(b) In order to effectively counsel patients, the pharmacist or a person designated by the pharmacist shall, through communication with the patient, caregiver, or agent make a reasonable effort to obtain, record, and maintain the following information for each patient of the individual pharmacy practice site.

1. Name, address, telephone number.

2. Date of birth (age), gender.

3. An individual history where significant, including disease state or states, known allergies and drug reactions, and a comprehensive list of medications and relevant devices.

4. Pharmacist's comments as deemed relevant. This may be done manually or by computer.

(3) Drug Regimen Review.

(a) A pharmacist shall be responsible for a reasonable review of a patient's record prior to dispensing each medical or prescription order. The review shall include evaluating the medical and prescription order for:

1. over-utilization or under-utilization;

2. therapeutic duplication;

3. drug-disease contraindication;

4. drug-drug interactions;

(Rule 1140-03-.01, continued)

5. incorrect drug dosage or duration of drug treatment;

6. drug-allergy interactions;

7. clinical abuse/misuse.

(b) Upon recognizing any of the above, the pharmacist shall take appropriate steps to avoid or resolve the problem.

(4) Implementation of Pharmaceutical Care.

(a) As a necessary health care provider, pharmacists shall carry out, in addition to the responsibilities in paragraphs (1) through (3) of this rule, those professional acts, professional decisions and professional services necessary to maintain a patient's pharmacy-related care and to implement and accomplish the medical and prescription orders of licensed practitioners, including but not limited to:

~~1. Developing relationships with licensed practitioners to enable the pharmacist to accomplish comprehensive management of a patient's pharmacy related care and to enhance a patient's wellness, quality of life and optimize outcomes; and~~

1. Developing a working and collaborative relationship with licensed practitioners to enable the pharmacist to accomplish comprehensive management of a patient's pharmacy related care and to enhance a patient's wellness, quality of life and optimize outcomes; and

2. Communicating to the health care provider any knowledge of unexpected or adverse response to drug therapy, or resolving unexpected or adverse response; and

3. Having a pharmacist accessible at all times to patients and healthcare providers to respond to their questions and needs.

4. Where formally defined, providing patient care services consistent with a collaborative pharmacy practice agreement.

~~***Authority:*** *T.C.A. §§63-10-404(19),(22),(23),(26), and (34), 63-10-504(b)(1) and (2), 63-10-504(j), and 63-10-504(c).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.02 LOCATION OF PRACTICE.

~~A pharmacist may compound and dispense prescription drugs and devices and related materials only in a pharmacy practice site which is duly licensed by the board and which operates in compliance with Tennessee and federal laws and rules governing the practice of pharmacy. The practice of the knowledge skills of pharmacy is not pharmacy practice site dependent. However, any person practicing any aspect of the art and science of pharmacy must be licensed by the board.~~

(Rule 1140-03-.03, continued)

A pharmacist may compound and dispense prescription drugs and devices and related materials only in a pharmacy practice site which is duly licensed by the Board and which operates in compliance with Tennessee and federal laws and rules governing the practice of pharmacy. The practice of the knowledge skills of pharmacy is not pharmacy practice site dependent. However, any person practicing any aspect of the art and science of pharmacy must be licensed by the Board. Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(4),(8),(11),(14),(26), and (28), 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.03 MEDICAL AND PRESCRIPTION ORDERS.

(1) To the extent that a medical order contains an order for the compounding, dispensing or administration of a prescription drug or device or related material, the medical order shall be treated as a prescription order. Written medical and prescription orders must be signed by the prescriber. Verbal medical and prescription orders must be immediately reduced to writing (by hand or other means), dated, and initialed by the authorized individual accepting the medical and prescription orders.

(2) Each medical and prescription order when dispensed shall be serially numbered, filed numerically and maintained so as to be readily retrievable at the pharmacy practice site for at least two (2) years from the date the medical and prescription order was last dispensed. Institutional pharmacies shall not be required to serially number medical and prescription orders dispensed for administration to inpatients of that institution.

(3) A pharmacist upon initial dispensing of a medical or prescription order shall record on that medical or prescription order: the date such medical or prescription order was dispensed, the pharmacist's initials, and the amount of any product dispensed. If the pharmacist merely initials and dates a medical or prescription order the pharmacist shall be deemed to have dispensed the full face amount of the medical or prescription order.

(4) A pharmacist upon refilling a medical or prescription order shall enter on the back of that medical or prescription order: the date such medical or prescription order was refilled, the pharmacist's initials, and the amount of any product dispensed on such refill. If the pharmacist merely initials and dates the back of the medical or prescription order the pharmacist shall be deemed to have dispensed a refill for the full face amount of the medical or prescription order. As an alternative to recording refill information on the back of medical and prescription orders, an automated data processing system may be used for the storage and retrieval of refill information for medical and prescription orders, subject to the following conditions:

(a) Any such computerized system must provide on-line retrieval (via CRT display or hard-copy printout) of the original medical or prescription order information and the complete refill history of all medical and prescription orders which are currently authorized for refilling. This shall include all the information contained in and required to be entered on each such medical or prescription order. This data must include at least the medical or prescription order serial number; date of issuance of the medical or prescription order; patient's name (and address on controlled substance medical and prescription orders); prescriber's name (and address and DEA registration number on controlled substance medical and prescription orders); product name, strength, dosage form, and

(Rule 1140-03-.03, continued)

quantity prescribed; directions for use, and labeling instructions; refill instructions; and the date of dispensing, quantity dispensed, and identity (name, initials, or identification code) of the dispensing pharmacist for the original dispensing and each refill.

(b) Each individual pharmacist using a computerized system in the refilling of a medical or prescription order shall certify that the information entered into the computer for such a refill is correct by verifying, dating, and signing a hard-copy printout of each day's medical or prescription order refill data, or in lieu of such a printout, by signing a statement in a book or file each day attesting that the refill information entered that day has been reviewed by the pharmacist and is correct as shown. Such documentation shall be separately maintained at the pharmacy practice site for at least two (2) years from the date of the last dispensing.

(c) Any such computerized system shall have the capability of producing a hard-copy printout of any medical or prescription order refill data which the pharmacy practice site is responsible for maintaining under the laws and/or regulations of this state and/or the federal government. (This would, for example, furnish a medical or prescription order-by-medical or prescription order, refill-by-refill audit trail for any specified strength and dosage form of any prescription drug and device, by either brand or generic name or both.) Such a printout must include: the medical or prescription order serial number; patient's name (and address on controlled substance medical and prescription orders); name of prescriber; name, strength, and dosage form of the product; and the date of each refill, quantity dispensed on each refill, and the name or identification code of the dispensing pharmacist. Controlled substance data contained on such a printout must be separated, asterisked, or in some other manner visually identifiable apart from other items appearing on the printout. Any computerized system employed by a pharmacy practice site must, upon the request of an authorized representative of the board, send or provide such a printout to the pharmacy practice site within forty eight (48) hours excluding weekends (Saturdays and Sundays) and legal holidays.

(d) In the event that a pharmacy practice site which utilizes such a computerized system experiences system down-time, the pharmacy practice site must have a written or readily retrievable auxiliary policy and procedure which will be used for documentation of refills of all medical and prescription orders. This auxiliary procedure must ensure that each refill is authorized, and that all appropriate data is retained for on-line data entry as soon as the computer system is available for use again.

(e) Each pharmacy practice site and pharmacist using such a computerized system must comply with the provisions of paragraphs one (1) and two (2) of this rule. In addition, the requirements of paragraph three (3) of this rule shall apply, unless this initial dispensing data is included on the printout required by subparagraph four (4)(b) of this rule, and is identified as pertaining to the initial dispensing.

(5) A pharmacist may dispense an appropriately authorized refill of a medical or prescription order by referral to a patient profile (medication record) instead of the original medical or prescription order on file at that pharmacy practice site, subject to the following conditions:

(a) The patient profile must contain all the information contained in and required to be entered on the original medical or prescription order, including the complete refill history of that medical or prescription order. This data includes the medical or prescription order serial number; date of issuance of the medical or prescription order; name of patient; name of the prescriber; product name; strength; dosage form, and quantity prescribed; directions for use, and labeling instructions; refill instructions; and the date of dispensing, quantity dispensed, and initials of the dispensing pharmacist for the original dispensing and each refill. Dispensing data must be identified as to whether it pertains to the original dispensing or to a refill.

(Rule 1140-03-.03, continued)

(b) Controlled substance data contained on the patient profile must be asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the profile.

(c) The patient profile system must contain a complete and accurate record of the refill history of all medical and prescription orders dispensed at the pharmacy practice site. (This record will constitute compliance with the provisions of paragraph four (4) of this rule.)

(d) Each such profile must be maintained so as to be readily retrievable at the pharmacy practice site for at least two (2) years from the date of the last dispensing recorded on the profile.

(e) A pharmacist dispensing a medical or prescription order by referral to a patient profile in so doing certifies as to the accuracy and validity of the information contained on the patient profile.

(f) Each pharmacy practice site and pharmacist using such a patient profile system must comply with the provisions of paragraphs one (1) and two (2) of this rule. In addition, the requirements of paragraph three (3) of this rule shall obtain, unless the patient profile system contains a record of this initial dispensing information for all medical and prescription orders dispensed at the pharmacy practice site.

(6) No pharmacist, or pharmacy intern or pharmacy technician under the supervision of a pharmacist, shall compound or dispense any medical or prescription order except upon the following conditions:

(a) All medical and prescription orders shall be compounded and dispensed in strict conformity with any directions of the prescriber. Nothing in this rule shall prohibit a pharmacist from substituting a therapeutically equivalent prescription drug or device or related material containing the same active ingredient or ingredients, dosage form and strength;

(b) No medical or prescription order shall be refilled if it contains a statement over the signature of the prescriber that it is not to be refilled, and a medical or prescription order shall not be refilled unless so authorized by the prescriber;

(c) If any medical or prescription order contains a statement that it may be refilled a specified number of times within or during any particular period, such order shall be refilled in strict conformity with such statement; and

(d) If a prescription contains a statement that during any particular time it may be refilled at will, the order shall be refilled in strict conformity to dosage directions, with the exception that it may not be refilled after the expiration of the time specified or one (1) year from the date the order was originally issued or dispensed, whichever comes first.

(e) At a rate, based on the actual number of medical and prescription orders compounded and dispensed per hour or per day, that does not pose a danger to the public health, safety or welfare.

(7) Copies of Medical and Prescription Orders.

(a) Copies of medical and prescription orders issued directly to the patient by the pharmacy practice site where the order was originally compounded and dispensed pursuant to the receipt of the order shall bear on the face thereof, in letters red in color

(Rule 1140-03-.03, continued)

and equal in size to those describing the prescription drug or device or related material, the statement: "Copy for Information Only." Presentation of an informational written copy or label of a dispensing container shall be for information purposes only and have no legal status as a valid medical or prescription order. The recipient pharmacist of such copy or label shall contact the prescriber or transferor pharmacy practice site and obtain all information required by this rule, which is the same as obtaining an original medical or prescription order;

(b) Medical and prescription orders shall be transferred between pharmacy practice sites for the purpose of compounding and dispensing provided that the transferee, upon receiving such order directly from the transferor, records the following:

1. The name, address and original medical or prescription order serial number at the pharmacy practice site from which the order was transferred;

2. The name of the transferor; and

3. All information constituting a medical or prescription order including the following:

~~(i) Date of original dispensing;~~

(i) Date the order was originally issued and dispensed;

(ii) Original number of refills authorized on the original order;

(iii) Date of last dispensing; and

(iv) Number of valid refills remaining.

(c) The transferee informs the patient that the original medical or prescription order has been canceled at the pharmacy practice site from which it was obtained.

(d) Computerized systems must satisfy all information requirements.

~~(e) The transfer of schedule III, IV, V, controlled substances are subject to the conditions set forth in C.F.R. 1306.26.~~

(e) The transfer of schedule III, IV, V, controlled substances are subject to the conditions set forth in 21 C.F.R. 1306.25.

(8) It is permissible for any pharmacy practice site, pharmacist, or pharmacy intern or pharmacy technician under the supervision of a pharmacist, or any other place of business engaged in compounding and dispensing prescription drugs and devices and related materials for human consumption to receive from any patient or other person the return of any portion of an order that has been taken from the premises of the pharmacy practice site or other place of business, only if authorized:

(a) Pursuant to Tennessee Board of Pharmacy rule 1140-04-.10; or

(b) For the purpose of collection for disposal or destruction of any prescription drug; provided that participation in the program shall be voluntary, and such collection and destruction shall be conducted in accordance with the provisions of 21 CFR § 1317.

(Rule 1140-03-.03, continued)

~~(9) Medical and prescription orders cannot be accepted, solicited, collected or advertised at a location other than a pharmacy practice site for which a license has been issued by the board, and such pharmacy practice site shall be actively engaged in compounding and dispensing medical and prescription orders.~~

(9) Medical and prescription orders cannot be accepted, solicited, collected or advertised at any location other than a pharmacy practice site for which a license has been issued by the Board, and such pharmacy practice site shall be actively engaged in compounding and dispensing medical and prescription orders. An entity or other non-licensed site which does not dispense drugs directly to patients may accept, solicit, and collect prescriptions for the purpose of medication therapy management or other consultative services related to drug therapy and patient care.

(10) Medical and prescription orders typed or printed must be signed by the prescriber. Oral medical and prescription orders shall be initialed by the authorized individual accepting the order.

~~***Authority:*** *T.C.A. §§63-10-404(4),(11),(14),(19),(26),(29),(30), and (34), 63-10-504(b)(1), 63-10-504(j), and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Amendment filed November 16, 1992; effective January 8, 1993. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.04 FACSIMILE AND ELECTRONIC MEDICAL AND PRESCRIPTION ORDERS.

(1) Facsimile Orders

(a) The transmission of a facsimile medical or prescription order shall be to a pharmacy practice site of the patient's choice and shall occur only at the option of the patient.

(b) Medical and prescription orders may be transmitted to a pharmacy practice site by a facsimile device. Medical and prescription orders for controlled substances may be transmitted by facsimile devices in compliance with 21 C.F.R. 1306.11, 1306.21 and 1306.31.

(c) A pharmacist may dispense medical and prescription orders transmitted by facsimile devices only when transmitted by an authorized prescriber or the prescriber's designated agent.

(d) A facsimile medical or prescription order which meets the requirements of this rule shall be deemed the original medical or prescription order for purposes of filing. The facsimile medical or prescription order must either be photocopied or the original medical or prescription order should be of such quality to not fade within the legal requirements of medical or prescription order record keeping.

(e) Wholesalers, manufacturers, pharmacists and pharmacy practice sites are prohibited from supplying facsimile devices or supplies to any authorized prescriber under any conditions.

(f) An original medical or prescription order that indicates that it has been faxed to a pharmacy practice site, consistent with the provisions of this rule, may only be dispensed as an original medical or prescription order by the pharmacy practice site to

(Rule 1140-03-.04, continued)

which it was faxed, consistent with the notation on the medical or prescription order to be made in accordance with the requirements contained in this rule.

(2) Electronic Orders.

(a) Prescription or medical orders transmitted electronically shall meet the following criteria:

1. All prescription or medical orders shall be transmitted directly from an authorized prescriber or prescriber's agent to a licensed pharmacist or to an area in a licensed pharmacy of the patient's choice that is under the direct supervision of a licensed pharmacist, with no intervening person or entity having access to the order for purposes other than transmission of the order. Subject to the provisions of this rule, a prescriber or prescriber's agent may electronically transmit medical or prescription orders to a pharmacist within an institutional facility for inpatients and/or outpatients currently under treatment at that facility. Nothing in this subsection shall apply to distributors of medical gases.

2. The transmission shall include:

(i) The telephone number of the authorized prescriber to allow verbal confirmation of the validity and accuracy of the order;

(ii) The correct time and date of the transmission;

(iii) The name of the pharmacy to which the order is being transmitted; and

(iv) The prescribing practitioner's electronic signature or other secure method of validation. "Electronic Signature" is defined as the process that secures the user authentication (proof of claimed identify, such as by biometrics, fingerprints, retinal scans, hand written signature verification, etc.) at the time the signature is generated and creates the logical manifestation of a signature.

(v) If the transmission is delegated by the prescriber to an agent of the prescriber, the identity of the agent shall be included in the transmission.

~~(b) A hard copy or exact image of the transmitted order shall be maintained in the pharmacy and shall be deemed the original prescription or medical order meeting all requirements of rule 1140-03-.03 of the rules of the board.~~

(b) Electronic data related to the transmitted order shall be maintained in the pharmacy and shall be deemed the original prescription or medical order meeting all requirements of rule 1140-03-.03 of the rules of the Board.

(c) The Pharmacist receiving any transmitted order shall not knowingly participate in any system that restricts the patient's choice of pharmacy.

(d) The pharmacist may not provide financial or other remuneration to the prescriber for any prescription transmitted to the dispensing pharmacy. No person or entity, including but not limited to wholesalers, distributors, manufacturers, pharmacists, and pharmacies, shall supply electronic equipment, software, devices, or modems to any prescriber in exchange for transmitting orders.

(Rule 1140-03-.04, continued)

(e) The pharmacist shall not use the electronic transmission of orders to circumvent or violate any provision of state or federal drug laws, or the Tennessee Pharmacy Practice Act, or the regulations of the board.

(f) This rule shall not apply to medical or prescription orders electronically transmitted between pharmacies or medical or prescription orders transmitted by facsimile.

(g) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(19),(26),(29),(30), and (34), 63-10-504, 63-10-504(b)(1) and (2), and 63-10-504(j).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Amendment filed March 30, 1994; effective June 13, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002.*

1140-03-.05 AREAS OF RECEIPT AND DISPENSING.

All medical and prescription orders shall be received or accepted and compounded and dispensed from a pharmacy practice site which is in a building permanently located and non-mobile in nature. In case of emergency, the board may waive this rule upon request.

~~***Authority:*** *T.C.A. §§63-10-404(4),(11),(19),(28), and (34), and 63-10-504(b)(1) and (2)(j).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Amendment filed March 30, 1994; effective June 13, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.06 LABELING REQUIREMENTS.

~~The dispensing label for a medical or prescription order shall bear at least the following information: name and address and telephone number of pharmacy practice site; the medical or prescription order serial number, name of prescriber; name of patient; directions for use; date medical or prescription order originally dispensed, and/or refill date; "poison", "shake", "caution", or other appropriate advisory label; name of product (unless otherwise required by the prescriber); and expiration date of the product (if applicable). This rule shall not apply to medical and prescription orders dispensed by an institutional pharmacy for administration to inpatients of that institution.~~

The dispensing label for a medical or prescription order shall bear at least the following information: name and address and telephone number of pharmacy practice site; the medical or prescription order serial number, name of prescriber; name of patient; directions for use; date medical or prescription order originally dispensed, and/or refill date; "poison", "shake", "caution", or other appropriate advisory label; name of product (unless otherwise required by the prescriber); and expiration date of the product (if applicable). This rule shall not apply to medical and prescription orders dispensed by an institutional pharmacy or long-term care pharmacy for administration to inpatients of that institutional facility or long-term care facility, except when medications are dispensed to patients residing in assisted care living facilities. Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

(Rule 1140-03-.06, continued)

~~***Authority:*** *T.C.A. §§63-10-404(11),(15), and (19), and 63-10-504(b)(1) and (2)(j).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Amendment filed October 30, 1991; effective December 14, 19991. Amendment filed November 16, 1992; effective January 8, 1993. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.07 TEMPORARY ABSENCE OF PHARMACIST.

A pharmacist is permitted one (1) temporary absence for a period not exceeding one (1) hour per day. During the absence of a pharmacist from the pharmacy practice site, a sign containing the words "pharmacist not on duty" must be conspicuously displayed in the pharmacy practice site. It shall be unlawful to fail or refuse to display the required sign in a conspicuous place when a pharmacist is absent. No medical or prescription order may be compounded or dispensed during the absence of a pharmacist. Additionally, during the absence of the pharmacist the prescription department shall be closed off by physical barrier from floor to ceiling.

~~***Authority:*** *T.C.A. §§63-10-404(4),(11),(19),(26),(28), and (34), and 63-10-504(b)(1) and (2)(j).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.08 REPACKAGING.

(1) Any repackaging of prescription drugs and devices and related materials must be supervised and controlled by a pharmacist with in-process and end-process verification and documentation.

(2) Prescription drugs and devices and related materials which are repackaged by an institutional pharmacy practice site for subsequent dispensing and use within the institution shall be labeled to include:

(a) the name, strength, and quantity of prescription drug or device or related material, if larger than one (1), in the container;

(b) the manufacturer's name, and lot or control number;

(c) the expiration date of the prescription drug or device or related material being repackaged; and

(d) cautionary notations (e.g., refrigerate, shake well, not for injection), if applicable.

(3) A batch number assigned by the pharmacy practice site may be placed on the label in lieu of the manufacturer's name and lot number, provided that the pharmacy practice site maintains a readily retrievable record which identifies, by batch number, the manufacturer and lot number of the prescription drug or device or related material.

(Rule 1140-03-.08, continued)

(4) The pharmacy practice site shall have proper facilities, qualified personnel, effectual operational practices, suitable packaging material, and adequate control procedures to assure that the purity, integrity, safety, and effectiveness of the prescription drug or device or related material are not affected by such repackaging. All repackaging must be performed by a pharmacist or by a pharmacy intern or pharmacy technician under the supervision of a pharmacist.

(5) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(8),(14),(26), and (28), and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.09 LOSS OF PRESCRIPTION DRUGS, DEVICES AND RELATED MATERIALS.

The pharmacist in charge shall immediately report to the board any robbery, embezzlement, theft, burglary, or fire or disaster resulting in a loss of prescription drugs, or controlled substances or medical devices or related materials. The report shall include a list, including amounts, of such prescription drugs or controlled substances or medical devices or related materials lost or damaged.

~~***Authority:*** *T.C.A. §§63-10-404(6),(8),(14), and (27), 63-10-504 (b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.10 CONDITIONS FOR DELIVERY OR SALE.

(1) No package containing any prescription drug or device or related material damaged by fire, heat, smoke, water, or other causes shall be placed in stock, offered for sale or dispensed or otherwise sold. Any repossession proceedings must be performed with the approval of the board.

(2) Under no circumstances shall any prescription drug or device or related material damaged by fire, heat, smoke, water, or other causes be delivered or handed over to any insurance company, adjustor, salvage company, or other person unless approved by the board prior to delivery.

(3) Medications may be returned to, and received by, the pharmacy/pharmacist if received expressly for the purpose of destruction of the returned medication, provided the pharmacy is equipped for doing so with a policy for complete and timely destruction of medications and in strict accordance with 1140-03-.03(8).

(4) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(8),(11), and (14), and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204, 63-10-304, 63-10-703, and 63-10-706.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.11 OUTDATED AND DETERIORATED DRUGS.

~~The owner or pharmacist in charge of a pharmacy practice site shall immediately return or destroy all outdated, defective, or deteriorated prescription drugs and devices and related materials; except that the destruction of controlled substances listed in any schedule shall be performed by a board approved agent or vendor.~~

The owner or pharmacist in charge of a pharmacy practice site shall immediately return or destroy all outdated, defective, or deteriorated prescription drugs and devices and related materials; except that the destruction of controlled substances listed in any schedule shall be performed by a Board approved agent or vendor. Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(6), (8),(14),(27), and (28), and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Amendment filed November 25, 1985; effective February 12, 1986. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.12 STORAGE, SALE AND DELIVERY.

(1) All prescription drugs and controlled substances and devices and related materials shall be stored in an area not accessible to the public.

(2) A controlled substance which is not a prescription drug under the Federal Food, Drug, and Cosmetic Act may be dispensed by a pharmacist without a prescription to a patient provided the pharmacist complies with the provisions of 21 CFR §1306.32 and any other applicable law.

(3) Instruments and/or devices intended for the injection of any substance through the skin shall be stored in an area not accessible to the public, and shall be sold only on proof of medical need by a pharmacist or a pharmacy intern or pharmacy technician under the direct supervision of a pharmacist.

(4) All insulin preparations must be stored in an area not accessible to the public, and shall be sold only by a pharmacist or a pharmacy intern or pharmacy technician under the direct supervision of a pharmacist.

(5) Nothing in this section prohibits delivery of a prescription to a patient's home or business by an agent of the pharmacy practice site.

~~***Authority:*** *T.C.A. §§63-10-404(6),(8),(14),(26), and (28), and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.13 AUTOMATED DISPENSING DEVICES FOR AMBULATORY PHARMACY PRACTICE.

The following procedures shall be observed in the use and operation of automated dispensing devices used for storing and dispensing capsules or tablets:

(1) The lot number of each drug contained therein must be listed or posted on the device.

(2) After each lot number is used, the portion of the device where the drug was contained must be thoroughly cleaned to remove all residue before refilling.

~~(3) Lot numbers may not be mixed.~~

(43) The device may be loaded by a pharmacist; or a pharmacy intern or a pharmacy technician under the supervision of a pharmacist.

~~***Authority:*** *T.C.A. § 63-10-404(8),(14),(26),(29), and (30), and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-03-.14 PHARMACIST IN CHARGE.

(1) The board shall maintain a current record of all pharmacists who have been designated "pharmacist in charge" of a pharmacy practice site in the state of Tennessee.

~~(2) It shall be the responsibility of the person, partnership, firm, or corporation holding a pharmacy practice site license issued pursuant to T.C.A. § 63-10-506 to notify the board immediately of:~~

(2) It shall be the responsibility of the person, partnership, firm, or corporation holding a pharmacy practice site license issued pursuant to T.C.A. § 63-10-306 to notify the Board immediately of:

(a) the resignation, removal, or death of the pharmacist in charge named in the application for license (or successor pharmacist in charge); or

(b) the disability for a period exceeding thirty (30) days of the pharmacist in charge named in the application for license (or successor pharmacist in charge).

(3) The notice required by paragraph two (2) of this rule shall contain:

(a) the name and (except in the case of death or disability) signature of the outgoing pharmacist in charge;

(b) the effective date of the appointment (whether temporary or permanent) of the new pharmacist in charge;

(c) the name and signature of the new pharmacist in charge; and

(d) the name and address of the pharmacy practice site.

(4) Except in case of death or incapacity, the outgoing pharmacist in charge shall, prior to departure, conduct with the successor pharmacist in charge a joint inventory of all controlled substances. In case of failure of the outgoing pharmacist in charge to comply with this requirement, the successor pharmacist in charge shall conduct such inventory alone.

(5) In the event of death of a pharmacist in charge, the successor pharmacist in charge shall, immediately upon assuming the appointment as pharmacist in charge, conduct an inventory of all controlled substances.

(6) In the event of disability for a period exceeding thirty (30) days of a pharmacist in charge, the successor pharmacist in charge (temporary or permanent) shall conduct an inventory of all controlled substances. Should the disabled pharmacist in charge return, the disabled pharmacist in charge and successor pharmacist in charge shall immediately conduct a joint inventory of all controlled substances.

(7) A record of any inventory required by this rule shall be signed by the pharmacist(s) in charge conducting it and maintained at the pharmacy practice site with other controlled substance records for at least two (2) years. The inventory record shall indicate:

(a) the name and address of the pharmacy practice site;

(b) the name, strength, dosage form, and quantity of each controlled substance on hand;

(c) the date of inventory; and

(d) whether the inventory was taken as of the opening or close of business on that date.

(8) The pharmacist in charge shall immediately notify the board in writing in the event of termination of business by the pharmacy practice site at which the pharmacist in charge practices. Such notice shall include a complete statement concerning the disposition by the pharmacy practice site of controlled substances and all prescription drugs and devices and related materials, invoices, records, and files.

(9) In a transaction involving the purchase of a pharmacy practice site or its stock of prescription drugs and devices and related materials, both the pharmacist in charge, except in case of death or incapacity, of the pharmacy practice site selling and the pharmacist in charge of the pharmacy practice site buying the stock, or the new owner of the pharmacy practice site if no pharmacist in charge has been appointed, shall jointly inventory all controlled substances and both shall sign and date that inventory and mail a copy of that inventory to the board within thirty (30) days of the completion of the sale.

(10) The pharmacist in charge shall maintain a current registry of individuals employed at the pharmacy practice site performing the functions of a pharmacy technician.

(11) This rule does not relieve other pharmacists or persons from their responsibility to comply with state laws and regulations.

(12) No pharmacist shall be designated pharmacist in charge of more than one (1) pharmacy practice site except where the board determines that such is in the best interest of the public health.

(13) The designated pharmacist in charge at a particular pharmacy practice site shall be on duty a minimum of fifty percent (50%) of the hours that the pharmacy is in operation. Except, in any event, the pharmacist in charge shall not be required to be on duty more than an average of forty (40) hours per week.

(14) The designated pharmacist in charge shall report to the board any situation in which a medical or prescription order has caused serious personal injury or death.

(15) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(2),(25),(26),(27), and (28), and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002.*

1140-03-.15 REFERENCE BOOKS.

~~Each pharmacy practice site shall maintain an adequate reference library (printed or electronic) consistent with its scope of practice. The reference library shall include a current edition of the Tennessee Pharmacy Laws issued by the Tennessee Board of Pharmacy and may include current material regarding the technical, clinical, and professional components of the practice of pharmacy, with particular emphasis in the area in which the pharmacy specializes.~~

Each pharmacy practice site shall maintain an adequate reference library (printed or electronic) consistent with its scope of practice. The reference library shall include a current edition of the Tennessee Pharmacy Laws issued by the Tennessee Board of Pharmacy and may include current material regarding the technical, clinical, and professional components of the practice of pharmacy, with particular emphasis in the area in which the pharmacy specializes. Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

Authority: *T.C.A. §§63-10-304.* ***Administrative History:*** *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed November 24, 2008; effective February 7, 2009.*

1140-3-.16 ~~AUTOMATED DISPENSING DEVICES FOR PHARMACY PRACTICE.~~ Centralized Prescription Processing.

(1) A pharmacy may perform or outsource centralized prescription processing services to another pharmacy, provided that the following criteria are satisfied:

(a) both pharmacies shall be licensed by the State of Tennessee;

(b) both pharmacies shall share a common electronic file or both shall have the appropriate technology to allow each other access to information that is necessary to fill or refill a prescription order; and

(c) both pharmacies shall have the same owner or in the event that the pharmacies do not have the same owner, then the pharmacies shall enter a written contract stating the services that will be provided by each pharmacy as well as the responsibilities of each pharmacy in fulfilling the terms of the contract and in complying with federal and state laws and rules.

(2) The pharmacy performing or contracting for centralized prescription processing services shall maintain a policy and procedures manual stating how prescription orders will be filled or refilled through centralized prescription processing. The pharmacies shall provide the Board with a copy of the manual and appropriate documentation of the processes for the Board's

(Rule 1140-03-.16, continued)

review, upon the Board's request. The pharmacies shall ensure that the manual includes, but is not limited to the following:

(a) a description of how the pharmacies will comply with federal and state law and rules;

(b) the maintenance of records to identify the responsible pharmacist(s) in the dispensing process;

(c) the maintenance of a mechanism for tracking the prescription order during each step of the dispensing process:

1. the maintenance of a mechanism to identify all of the pharmacies involved in dispensing the prescription order on the prescription label;

2. adequate security measures to protect the confidentiality and integrity of the patient information; and

3. the maintenance of a quality assurance program for pharmacy services designed to objectively and systematically monitor and evaluate the quality of patient care, the identification of problems with patient care and the resolution of any identified problems with patient care.

(d) The pharmacies that are not physically located in the State of Tennessee shall comply with Tenn. Code Ann Title 63, Chapter 10 and the rules of the State of Tennessee Board of Pharmacy.

~~***Authority:*** *Chapter 966 of the Public Acts of 2008, §1, and T.C.A. §63-10-304.*~~

Authority: T.C.A. § 63-10-304.

Administrative History: *New rule filed November 24, 2008; effective February 7, 2009.*

1140-03-.17 – Collaborative Pharmacy Practice.

(1) Definitions—In addition to the definitions contained in Tenn. Code Ann. Title 63, Chapter 10, Part 2, the following definitions are applicable to collaborative pharmacy practice:

(a) "Active practice", for purposes of the qualifications of a pharmacist under (4)(b) of this rule, means engagement in paid, unpaid, or volunteer activity which requires a pharmacist's license under Tennessee law, for at least 2,000 hours within the 24-month period immediately preceding the date of the agreement. "Active practice" is not limited to direct patient care and includes supervisory, educational or consultative activities or responsibilities for the delivery of such services.

(b) "Agreement" means the collaborative pharmacy practice agreement.

(c) "Authorizing physician" means a medical doctor or osteopathic physician with an unencumbered Tennessee license who has a direct provider/ patient relationship with the patients served under a collaborative pharmacy practice agreement or who is the supervising physician of an advanced practice nurse or physician assistant who has such direct relationship or who, in the case of a multi-specialty practice, is the representative or chief responsible for particular specialty care within that multi-specialty practice recognized and certified by the American Board of Medical Specialties (hereinafter "ABMS") or the American Osteopathic Association Bureau of Osteopathic Specialists (hereinafter "AOABOS").

(Rule 1140-03-.16, continued)

(d) "Collaborating prescriber" means the physician, advanced practice nurse or physician assistant who is a party to a collaborative pharmacy practice agreement, who has a direct provider/ patient relationship with the patient served by the agreement and who has prepared the patient specific, drug specific, disease or condition specific plan of care based on a physical examination of the patient where required under these rules.

(e) "Hospice patient" means an individual who has been diagnosed as terminally ill, has been certified in writing by a physician to have an anticipated life expectancy of six (6) months or less and who has voluntarily requested admission to, and been accepted by, a licensed hospice as defined in T.C.A. § 68-11-201.

(f) "Institutional-based pharmacy setting" means any institutional facility or long-term care facility, as defined in 1140-01-.01, or an academic health care institution, and where the pharmacist is responsible for the care of patients within that facility, including prescriptive practices, under the terms of a collaborative agreement.

(g) "Patient Care Services" means services rendered by physicians and members of the healthcare profession under their supervision, including advanced practice nurses, physician assistants and pharmacists for the benefit of the patient and which must be within the professional training and experience of the healthcare practitioner and be covered by the collaborative pharmacy practice agreement.

(h) "Routine scope of practice and services" means any patient care service provided by the authorizing physician and their practice in compliance with the respective applicable licensing board's laws, rules, policies and procedures. In addition, the services to be provided by the pharmacist shall be services that the authorizing physician generally provides to his or her patients in the normal course of his or her clinical medical practice. The pharmacist should only provide services to the patients whom the authorizing physician or collaborating prescriber routinely treats in the course of his or her clinical medical practice.

(i) "Unencumbered", for the purpose of this rule, means an active license that is not revoked, suspended or on probation at the time and is not subject to any conditions, restrictions, or limitations imposed by the applicable licensing board, which relate directly to the delivery of health care services. A condition, restriction or limitation directly relates to the delivery of health care services when it prevents a provider from treating certain types of patients or certain types of ailments or injuries, or otherwise limits a provider from fully engaging in the practice which would otherwise be authorized pursuant to his or her license.

(2) Physicians, advanced practice nurses and physician assistants may only engage in collaborative pharmacy practice agreements with pharmacists when an appropriately executed collaborative pharmacy practice agreement has been executed and a written attestation has been filed with the licensing boards for all practitioners participating in the agreement notifying those boards of the existence of such agreement; when the patient or the patient's authorized representative has signed a general consent that the patient is to receive services from a healthcare team, including a pharmacist, with the exception of an institutional-based pharmacy setting where such additional consent is not required, and that consent is to be made part of the patient record.

(a) Any pharmacist who is a participant in a collaborative pharmacy practice agreement must be provided a copy of said agreement by the director of pharmacy, pharmacist-in-charge, or designated pharmacist in a group.

(b) The written attestation shall include the names of all signatories and practitioners participating in the collaborative pharmacy practice agreement, the date of the

(Rule 1140-03-.16, continued)

Agreement and a description of the scope of the services covered by the Agreement.

(c) In the event that an advanced practice nurse or physician assistant is a party to a collaborative pharmacy practice agreement, the physician with responsibility for supervision and control of that advanced practice nurse or physician assistant must approve and sign the Agreement.

(d) In addition, for those Agreements not involving the institutional-based pharmacy setting, the written attestation shall include a formulary of the categories of drugs and services authorized by the Agreement. The written attestation must be provided to the appropriate licensing boards of the signatories no later than thirty (30) days following the effective date of the Agreement.

(3) No physician, advanced practice nurse, physician assistant or pharmacist may engage in a collaborative pharmacy practice agreement unless each collaborating provider holds an active, unencumbered license in Tennessee and possesses at least one million dollars ($1,000,000) in professional liability insurance coverage per occurrence.

(4) In addition to the other requirements of these rules, a pharmacist must meet one of the following qualifications in order to engage in a collaborative pharmacy practice agreement:

(a) Has been awarded a doctor of pharmacy degree from a program accredited by the Accreditation Council for Pharmacy Education; or

(b) Has been awarded a bachelor of science in pharmacy and been in the continuous, active practice of pharmacy.

(5) Each collaborative pharmacy practice agreement ("Agreement") shall contain the following elements, at a minimum:

(a) Names and Titles of Collaborating Providers. The agreement must contain identification of all pharmacists and all physicians and other prescribers (collectively, "collaborating providers") who are parties to the Agreement. The Agreement shall state the procedure to be followed to indicate changes in the members of the group(s) participating in the Agreement. Unless expressly stated in the Agreement, changes to the list of collaborating providers bound by the Agreement shall not automatically void the Agreement. When the Agreement involves a group or groups of practitioners, the chief medical officer or medical director, where applicable, and the director of pharmacy or pharmacist-in-charge shall sign the Agreement, and the Agreement shall identify all collaborating providers in one or more addendums. In the case of a healthcare institution with an organized medical staff or a multi-specialty group with more than one ABMS or AOABOS recognized physician specialty, the signature of the authorizing physician representing or responsible for that specialty unit will suffice. Nevertheless, each collaborating provider must affirm understanding and acceptance of the terms of the Agreement by signing an addendum to the Agreement within thirty (30) days of the effective date of the agreement (or within thirty days of employment or association with such multi-specialty group) and all members of the medical staff or group must be provided a copy of the collaborative agreement within fifteen (15) days of execution, with a copy also made available via online access. Signatures may be handwritten, electronic, or any other method authorized by the Board of Pharmacy and the respective licensing board of the signatory.

(b) Authorized Care and Services. The Agreement must contain a provision defining the nature and scope of patient care services and activities, including screening, prevention, assessment, management, and care, authorized or restricted to be provided by the pharmacist(s) under the collaborative pharmacy practice agreement. All care and services authorized to be provided shall be within the routine scope of practice and

(Rule 1140-03-.16, continued)

services delivered by the authorizing physician and the advanced practice nurse or physician assistant, where applicable. All care and services provided, except immunizations, opioid antagonists, and preventive care, must be pursuant to a diagnosis appropriately made and documented by the physician, advanced practice nurse or physician assistant. An Agreement which grants the collaborating pharmacist prescriptive authority, including authority for initiation and discontinuance of drug therapy, must be specifically authorized in the authorized care and services portion of the Agreement and must contain a listing of the drugs or categories of drugs that may be prescribed by the collaborating pharmacist under the terms of the Agreement.

(c) Documentation and Communication. Any patient care services provided by a pharmacist or pharmacists pursuant to a collaborative pharmacy practice agreement will be documented in a patient record accessible by the pharmacist(s) and the collaborating prescriber(s) or communicated in writing to the collaborating prescriber or prescribers within three (3) business days of the service. The Agreement shall describe the methods for maintenance and access to the records by the pharmacist(s) and the prescriber(s), for documentation of services performed pursuant to the Agreement and for communication and feedback between the pharmacist(s) and the collaborating prescriber(s). All such records shall be maintained by the collaborating prescriber(s) and pharmacist(s) for a period of not less than ten (10) years from the date of the last patient contact.

(d) Override Clause. A provision must be included in the Agreement allowing the collaborating prescriber to override the actions taken by the collaborating pharmacist specific to services provided under the Agreement if he or she determines that the override is essential to the optimal health outcomes of the patient, and stating how such overrides shall be documented and communicated to the collaborating pharmacist and the patient in a timely manner, as defined in the agreement.

(e) Expiration, Modification and Termination. The effective date of the Agreement shall be stated in the Agreement. Each agreement must contain a term or expiration date, upon which the agreement will expire if not renewed; however, in any event, all Agreements must be reviewed and updated at least every two (2) years as evidenced by signatures of the parties. Every Agreement must contain a provision stating the process for modification or termination of the agreement by either party. This process shall include written notification to all affected parties when modification or termination is sought. An Agreement may be amended upon mutual approval by the collaborating prescriber, authorizing physician (where applicable) and pharmacist who have been duly authorized to execute, modify, or change the Agreement. Such amendments shall include, at a minimum, a description of the desired change and the effective date of the change. Additional prescriber(s) and additional pharmacist(s) may be added to an existing participating group through an addendum without affecting the effective date of the agreement. Any amendment executed shall not automatically void the terms and conditions of the existing Agreement unless expressly stated. Amendments to the authorized care and services not involving an institutional-based pharmacy setting which institute substantive additions or reductions to the scope of patient care services provided under the agreement including new therapeutic classes of drugs to the authorized formulary must be provided to the appropriate licensing boards no later than thirty (30) days from the effective date of the amendment.

(f) Automatic Exclusions. A provision must be included in the Agreement which identifies any terms under which a provider will be automatically excluded from participation in the Agreement, which may include but need not be limited to death, suspension, surrender, revocation, or retirement of license; loss or restriction of prescriptive authority; the suspension or revocation of a Drug Enforcement Administration registration; exclusion from any federally-funded health programs, or the formal termination of the supervising relationship between an advanced nurse practitioner or physician assistant and his or her

(Rule 1140-03-.16, continued)

supervising physician. Any Agreement involving an advanced practice nurse or physician assistant participating in a collaborative pharmacy practice agreement shall contain a procedure for immediate notification to the collaborating pharmacist(s) if that supervisory relationship is terminated for any reason.

(g) Quality Assessment. The authorizing physician(s) and pharmacist(s) shall create written measurable and objective performance goals for evaluating the quality of care provided for the patients treated pursuant to the Agreement. The Agreement must provide for such goals and data as identified by the collaborating providers, to be aggregated and reviewed by the participants to the Agreement at least quarterly. Such quarterly review shall include consideration of any changes necessary to the Agreement, authorized formulary, and patient orders, in addition to strategies regarding patient education and medication adherence, increased or improved monitoring of side effects and the need for further screening/ testing. The Agreement shall also provide at a minimum for monthly patient record review by the authorizing physician(s) of at least five per cent (5%) of the patients treated pursuant to the Agreement. The quality assessment review shall be properly documented, retained by the participating parties of the Agreement, and available for review by representatives of the various licensing boards for at least ten (10) years.

(6) The scope of a collaborative pharmacy practice agreement shall NOT include:

(a) Any patient of the collaborating prescriber for whom such collaborating prescriber has not prepared a patient specific, drug specific, disease or condition specific plan of care based on a physical examination of the patient by the collaborating prescriber, with the exception of immunizations and screening/testing which do not require such patient-specific plans, as well as the dispensing of opioid antagonists as defined in T.C.A. § 63-1-152, which require neither a physical examination nor a patient-specific plan;

(b) The prescribing of controlled substances, except by a pharmacist practicing within an institutional-based pharmacy setting or for hospice patients.

(7) A copy of the Agreement, including any addendum, modification or termination shall be accessible at each practice site and shall be made available to the applicable regulatory board for review upon request.

(8) Pharmacists engaging in the collaborative pharmacy practice must utilize an area for in-person, telephonic or other approved consultations with patients that ensures the confidentiality of the communication.

(9) Physicians, advanced practice nurses and physician assistants engaged in a collaborative pharmacy practice agreement shall:

(a) Retain professional responsibility to his/ her patients for the management of their drug therapy;

(b) Establish and maintain a physician-patient relationship with each patient subject to the collaborative pharmacy practice agreement;

(c) Be available at all times through direct telecommunication for consultation, assistance and direction, or shall make arrangements for a substitute physician to be available.

(10) Any pharmacist issuing a prescription order, as defined in T.C.A. §63-10-204, or medical order, as defined in T.C.A. § 63-10-204, pursuant to an Agreement shall issue the prescription order or medical order in accordance with the requirements set forth in Tenn. Comp. Rules and Regs.1140-03-.03 and within the terms set forth in the collaborative pharmacy practice

(Rule 1140-03-.16, continued)

agreement.

(11) All collaborative pharmacy practice agreements authorizing pharmacists to provide services and activities shall include language that ensures compliance with all applicable by-laws, policies, and procedures of that facility.

(12) For patient care services performed by a pharmacist and authorized only pursuant to a collaborative pharmacy practice agreement, the Board of Pharmacy expressly adopts the guidelines, rules, and standards of practice of the Board of Medical Examiners, Board of Osteopathic Examiners, or other Tennessee Health Related Boards, as applicable.

(13) Pharmacists engaged in the collaborative pharmacy practice are strongly encouraged to complete ten (10) hours of the biennially required thirty (30) hours of continuing education in topics related to the clinical practice of pharmacy.

(14) All signatories and other parties engaging in a collaborative pharmacy practice shall be subject to disciplinary action by their licensing boards if the licensee violates the terms of these rules or the terms of the collaborative pharmacy practice agreement. Each board with jurisdiction over any of the signatories to the agreement shall report to the other appropriate board any conduct which it believes to be in violation of any such agreement.

(15) Pharmacists who hold a current federal drug enforcement administration ("DEA") license must complete a minimum of two (2) hours biennially of continuing education related to controlled substance prescribing, which must include instruction in the Department's treatment guidelines on opioids and chronic pain and may include such other topics as medicine addiction, risk management tools, and other topics as approved by the Board of Pharmacy. Such continuing education hours shall be counted toward the pharmacist's mandatory continuing education requirement.

Authority: T.C.A. §§ 63-10-217, 63-10-304, and 63-10-306.

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-4
INSTITUTIONAL AND ALTERNATE OR ALTERNATIVE INFUSION PHARMACY PRACTICE SITES

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1140-4-.01 APPLICABILITY.

A pharmacy providing products and services to any institutional facility, and alternate or alternative infusion pharmacy practice site, shall be subject to all rules of the board dependent upon services provided.

~~***Authority:*** *T.C.A. §§63-10-404(2) and (28) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983.*

1140-4-.02 PERSONNEL.

~~(1) Pharmacist in charge. The practice of pharmacy and the performance of pharmacists and supportive pharmacy personnel associated with any institutional facility shall be under the direction, supervision and responsibility of the pharmacist in charge. The pharmacist in charge shall also be responsible for the dispensing, distribution, compounding, storage and the procurement of prescription and nonprescription drugs used throughout the institutional facility. Policies and procedures defining the scope of pharmacy practice, and the responsibilities of the pharmacists and supportive personnel, and the safe use and management of drugs, devices and related materials shall be established by the pharmacist in charge. The pharmacist in charge or designee shall participate in the institution's drug policy committees which serve to ensure rational drug use, patient care evaluation processes relating to drug utilization and effectiveness, drug delivery device selection and evaluation systems, and educational activities for the safe and appropriate use of drugs which will assess the quality of services and products provided and document actions taken. Policies and procedures as indicated in this chapter shall be written and shall be made available to the board.~~

(1) Pharmacist in charge. The practice of pharmacy and the performance of supportive pharmacy personnel associated with any institutional facility shall be under the direction, supervision and responsibility of the pharmacist in charge. The pharmacist in charge shall also be responsible for the dispensing, distribution, compounding, storage and the procurement of prescription and nonprescription drugs used throughout the institutional

facility. Policies and procedures defining the scope of pharmacy practice, collaborative working relationships, the responsibilities of the pharmacists and supportive personnel, and the safe use and management of drugs, devices and related materials shall be established by the pharmacist in charge. The pharmacist in charge or designee shall participate in the institution's drug policy committees which serve to ensure rational drug use, patient care evaluation processes relating to drug utilization and effectiveness, drug delivery device selection and evaluation systems, and educational activities for the safe and appropriate use of drugs which will assess the quality of services and products provided and document actions taken. Policies and procedures as indicated in this chapter shall be written and shall be made available to the Board.

(2) Pharmacists. The pharmacist in charge shall be supported by a sufficient number of pharmacists to provide appropriate practice of pharmacy for the patients served by the institutional facility. Employment of pharmacists by the institutional facility shall be determined by the pharmacist in charge.

(3) Institutional consultant pharmacist. An institutional facility may utilize a consultant pharmacist who may or may not be independent of the pharmacy practice site, who shall provide patient care service which includes, but is not limited to:

(a) development, interpretation, and communication of drug, device and related materials orders and health information;

(b) providing consultation on matters pertaining to efficient drug distribution systems, proper drug selection, rational and safe drug use, and drug therapy assessment;

(c) evaluation of a patient's drug therapy to maximize outcome(s), including effective communication with prescribing practitioners and other healthcare professionals;

(d) effective counseling of a patient or a patient's attorney for healthcare or other caregiver;

(e) service on committees or governing bodies; and

(f) providing in service educational programs for members of the healthcare team.

(4) Supportive personnel. The pharmacist in charge shall be assisted by a sufficient number of pharmacy technicians, as defined in 1140-2-.02 pharmacy interns, and other supportive personnel as may be required to operate the pharmacy competently, safely, and adequately to meet the needs of the patients served by the institution.

(5) Supervision. All of the activities associated with the practice of pharmacy and the operations of the pharmacy at a specific institutional pharmacy practice site shall be supervised by a sufficient number of pharmacists to ensure that all functions and activities are performed competently, safely and without risk of harm to patients.

~~***Authority:*** *T.C.A. §§63-10-404(4), (8), (11), (14), (21), (26), (27), (28), and (30) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983.*

(Rule 1140-4-.02, continued)

1140-4-.03 PHYSICAL REQUIREMENTS.

(1) Area. An institutional or alternative infusion pharmacy practice site shall have sufficient floor space allocated to it to ensure that medical and prescription orders are prepared and dispensed in sanitary, well lighted, and enclosed spaces. The institutional pharmacy shall also have sufficient counter space or other suitable work module to ensure that medical and prescription orders are prepared and dispensed in an orderly manner.

(2) Equipment and Materials. The pharmacy practice site shall have sufficient equipment and physical facilities for the practice of pharmacy. This shall include but not be limited to:

(a) hot and cold running water;

(b) refrigerated storage space;

(c) frozen storage space as appropriate; and

(d) adequate information systems.

(3) Storage. All prescription drugs and devices and related materials shall be stored in designated areas within the pharmacy practice site which are sufficient to ensure proper sanitation, temperature, light, ventilation, moisture control, segregation, and security.

(4) Alcohol and Flammables. Alcohol and flammables shall be stored in an area that shall, at a minimum, meet basic local building code requirements for the storage of volatiles, and such other laws, ordinances, or regulations that may apply.

(5) Security. A pharmacy practice site shall be capable of being locked to prevent access by unauthorized personnel. A pharmacist must be accessible within the institutional facility where an institutional pharmacy practice site is located; and when no pharmacist is present at the institution, the pharmacy practice site must be kept closed and securely locked except as provided in 1140-4-.14.

(6) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(8), (14), and (28) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 7, 1983.*

1140-4-.04 PRESCRIPTION ORDERS.

~~A pharmacist shall review all prescription orders before the drug is first dispensed. In the event that medications available in the institutional facility are ordered and administered before the pharmacist's review, the order shall be reviewed by a pharmacist in a timely manner. The pharmacist shall have access to the patient's medical record. The original order must be maintained in a readily retrievable manner according to the pharmacy practice site policy for at least two (2) years from the date of its issuance.~~

(Rule 1140-4-.03, continued)

(1) A pharmacist shall review all prescription orders before the drug is first dispensed. In the event that medications available in the institutional facility are ordered and administered before the pharmacist's review, the order shall be reviewed by a pharmacist in a timely manner. The pharmacist shall have access to the patient's medical record. The original order must be maintained in a readily retrievable manner according to the pharmacy practice site policy for at least two (2) years from the date of its issuance.

(2) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(1), (11), (14), (26), and (28) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-4-.05 DISTRIBUTION AND CONTROL OF DRUGS.

The pharmacist in charge or designee, in conjunction with appropriate committees of the facility, shall be responsible for approving policies for the distribution and control of drugs within the facility. The process shall be established to provide for the safe and efficient distribution of drugs and for the provision of pharmaceutical care, and shall include but not be limited to:

(1) A drug dispensed from the pharmacy for subsequent administration to a patient shall be appropriately identified with the name and location of the patient and the name and strength of the drug.

(2) The pharmacist in charge is responsible for the development and maintenance of an audit trail on drugs dispensed.

(3) The prescription order shall be recorded on a patient medication profile that will be maintained during the patient's treatment. This profile shall include the date of the prescription order, the name and dosage form of the drug and the dose and administration frequency.

(4) The facility distribution system may be based on a combination of processes that will ensure compliance with federal and state guidelines such as emergency kits/crash carts, floorstock systems, automated dispensing devices, medication carts, and/or after-hours procedures for pharmacy site access.

(5) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(11), (14), and (27) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Amendment to rule filed November 16, 1992; effective January 8, 1993. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

(Rule 1140-4-.06, continued)

1140-4-.06 MEDICATION CARTS.

~~Drugs distributed from the pharmacy to other areas of the institutional facility may be stored in medicine cabinets or drug carts which shall be kept secured unless in use by the nursing staff or other authorized personnel. Access to the medication cart shall be defined by facility policies. It is recommended that drugs be dispensed in unit dose packaging and medications for each patient shall be distributed and stored in separate trays, drawers, compartments, or containers assigned to that resident and bearing the resident's name and location.~~

(1) Drugs distributed from the pharmacy to other areas of the institutional facility may be stored in medicine cabinets or drug carts which shall be kept secured unless in use by the nursing staff or other authorized personnel. Access to the medication cart shall be defined by facility policies. It is recommended that drugs be dispensed in unit dose packaging and medications for each patient shall be distributed and stored in separate trays, drawers, compartments, or containers assigned to that resident and bearing the resident's name and location.

(2) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(11), (14), and (28) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-4-.07 FLOORSTOCK DRUGS.

~~The pharmacist in charge or designee, in conjunction with appropriate committees, shall be responsible for approving policies and procedures for floorstock at the institutional facility. The policies shall include specific drugs, quantities, prescription order review, storage requirements, and replenishment of drugs, devices, or related materials which are supplied to the institutional facility as floorstock.~~

(1) The pharmacist in charge or designee, in conjunction with appropriate committees, shall be responsible for approving policies and procedures for floorstock at the institutional facility. The policies shall include specific drugs, quantities, prescription order review, storage requirements, and replenishment of drugs, devices, or related materials which are supplied to the institutional facility as floorstock.

(2) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~**Authority:** T.C.A. §§63-10-404(8), (14), and (27) and 63-10-504(b)(1) and (2).~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.

1140-4-.08 CONTROLLED DRUGS.

(1) Controlled substances (and those drugs deemed by the pharmacist in charge to have a potential for abuse) which are issued as floorstock shall be accounted for by providing documentation of:

(a) the drug name, strength, and dosage form;

(b) the date and time of administration;

(c) the quantity/dose administered;

(d) identification of the patient;

(e) identification of the prescriber; and

(f) identification of the authorized personnel administering the controlled substance.

(2) A record of the destruction of controlled substances previously dispensed to or for patients shall be maintained so as to be readily retrievable for at least two (2) years, and such records shall include:

(a) the identification of patient;

(b) drug name, strength, dosage form, and quantity;

(c) the date and method of destruction; and

(d) the identification of authorized personnel witnessing the destruction and its record.

(3) Schedule II controlled substances which are kept within a pharmacy practice site shall be stored in a secured, substantially constructed cabinet, safe, or other structure which provides a double locked secured system.

(4) Nothing in this rule shall be interpreted to authorize the destruction of controlled substance floorstock or pharmacy stock. Such drugs shall upon request, be destroyed or returned to the pharmacy for destruction by a board approved agent or vendor.

(5) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§53-11-302, 63-10-404(11), (14), (27), and (28) and 63-10-504(b)(1) and (2)(j).*~~

Authority: T.C.A. §§ 53-11-302, 63-10-204, and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-4-.09 EMERGENCY AND HOME CARE KITS.

Drugs and devices and related materials may be provided by emergency kits as defined by policies and procedures provided that such kits meet the following requirements:

(1) Emergency Kits.

(Rule 1140-4-.09, continued)

(a) Drugs and devices and related materials may be provided by emergency kits as defined by policies and procedures, provided that such kits meet the following requirements:

1. Emergency kit drugs are those drugs which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk of harm to patients. Drugs in this kit are to be used only for emergency orders.

2. The policies and procedures to implement the requirements of this subsection and to approve the contents of the emergency kit will be determined by a committee composed of representatives of the medical and nursing staff and the pharmacist in charge or his/her designee.

3. The emergency kit shall be provided sealed or electronically secured by authorized personnel in accordance with established policies. The expiration date of the kit shall be clearly marked on the exterior of the kit to represent the earliest expiration date of any drug, device, or related materials contained in the kits.

4. Emergency kits shall be stored in a secured area at the institutional facility or patient care site to prevent unauthorized access. To ensure a proper environment for preservation of the drugs contained therein, appropriate policies and procedures shall be written to include storage at the site of patient care.

5. Only authorized individuals may obtain drugs, devices or related materials from the emergency kit in accordance with established policies and state and federal laws and regulations.

6. A list of the emergency kit contents shall be readily accessible and it shall include the drugs, devices, and related materials contained therein and include the name (trade and/or generic), strength, and quantity of the products contained therein.

7. A mechanism must be in place to ensure that the emergency kits are not in use after the expiration date.

8. Drugs contained within the emergency kit shall be properly labeled according to the United States Food and Drug Administration (FDA) labeling requirements for the drug or device and with additional information that may be required by the staff to prevent misunderstanding or risk of harm to the patients.

9. Removal of any drug, device, or related material from the emergency kit shall be pursuant to a valid medical or prescription order and must be documented by established policy which may include patients identification, name of the drug, strength, amount, date, time, and identification of the authorized individual removing the drug.

10. When an emergency kit is opened for any reason, the pharmacy practice site shall be notified, and the kit shall be restocked and resealed within a reasonable time so as to prevent risk of harm to patients.

(2) Home Care Kits.

(Rule 1140-4-.09, continued)

(a) A home care kit is a kit containing certain drugs, as determined by the board, to be kept in the home of the patient for use by a healthcare professional engaged in home healthcare of a patient as necessary to meet the therapeutic needs of patients and which are not available from any other source in sufficient time to prevent risk of harm to patients.

1. A home care kit may contain:

(i) Sodium Chloride for Injection 0.9% Bacteriostatic

(ii) Sterile Water for injection Bacteriostatic or Preservative Free

(iii) Epinephrine injection 1mg/ml

(iv) Diphenhydramine

(v) Heparin Flush <or = 100units/ml

(vi) Naloxone

(vii) Sodium Chloride for Irrigation

(viii) Sterile Water for Irrigation

(ix) Dextrose 50%

(x) Urokinase 5000units

(xi) Any other legend drug as approved by the board.

(b) Drugs contained in home care kits are to be used for emergencies only. Maintenance of a central venous catheter is considered an emergency if confirmed with the patient's physician or his/her designee.

(c) Policies and procedures for the dispensing, use, storage at the patient care site, security and expiration date review, and reconciliation of drug contents shall be determined as in section (1)(a)2 of this rule. Additional policies or protocols for treating anaphylactic reaction, maintaining patency of intravenous or central venous catheters, or flushing of intravenous devices shall be established, in the same manner.

(d) Removal of any drug from the Home Care Kit shall be pursuant to a valid medical or prescription order and/or protocol and must be documented in the patient's medical record.

(e) When a home care kit is opened for any reason, the pharmacy practice site shall be notified and the kit shall be restocked and resealed within a reasonable time so as to prevent risk of harm to patients.

(3) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~**Authority:** T.C.A. §§63-10-504 and 63-10-504(b)(1) and (2).~~

Authority: T.C.A. § 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002.*

1140-4-.10 UNUSED DRUGS, DEVICES, AND RELATED MATERIALS.

~~Discontinued, outdated, defective, or deteriorated drugs, devices, or related materials and containers with worn, illegible, or missing labels shall be returned to the pharmacy practice site for proper disposition. All such drugs, devices or related materials returned to the pharmacy practice site must be destroyed unless in unit dose packaging, unopened commercially prepackaged containers and in the professional judgment of the pharmacist in charge or designee, the medications or related materials meet all federal and state board standards for product integrity.~~

(1) Discontinued, outdated, defective, or deteriorated drugs, devices, or related materials and containers with worn, illegible, or missing labels shall be returned to the pharmacy practice site for proper disposition. All such drugs, devices or related materials returned to the pharmacy practice site must be destroyed unless in unit dose packaging, unopened commercially prepackaged containers and in the professional judgment of the pharmacist in charge or designee, the medications or related materials meet all federal and state board standards for product integrity.

(2) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(8), (14), (16), (28) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983; effective March 9, 1983. Repeal and rule filed May 11, 1998; effective July 25, 1998.*

1140-4-.11 TAKE-HOME AND LEAVE OF ABSENCE DRUGS, DEVICES, AND RELATED MATERIALS.

(1) All prescription drugs prescribed for and dispensed to patients who are on leave of absence from the institutional facility must be dispensed in accordance with the institution's policies and procedures.

(2) All prescription drugs prescribed for and dispensed to patients who are being discharged from the institutional facility must be dispensed with labeling in accordance with 1140-3-.06.

(3) The pharmacist in charge in coordination with the medical and nursing staff committees of the facility shall establish policies and procedures to assure that this process meets state and federal guidelines appropriate for the facility.

(4) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(11), (14), (16), and (27) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-4-.12 DRUGS BROUGHT INTO THE FACILITY.

(1) The pharmacist in charge shall establish policies to control any drugs brought into the institutional facility.

(2) Administration of these drugs shall be pursuant to a medical or prescription order.

(3) Drugs brought into the facility shall not be administered until properly identified.

(4) Drugs which are not to be administered shall be packaged, sealed, and returned to an adult member of the patient's family for removal from the institutional facility or the drugs shall be securely stored and returned to the patient at discharge per facility policy.

(5) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(14), (19), (27), and (34) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Amendment filed December 17, 1984; effective March 16, 1985. Amendment filed August 30, 1991; effective November 27, 1991.*

1140-4-.13 RECALLS.

The recall procedure shall be readily activated to ensure that all prescription drugs and devices and related materials included on the recall are returned to the pharmacy practice site for proper disposition. The pharmacist in charge shall develop and implement policies and procedures for recalls.

~~***Authority:*** *T.C.A. §§63-10-404(8), (14), (27), and (28) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Amendment field August 30, 1991; effective November 27, 1991. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-4-.14 ABSENCE OF PHARMACIST.

(1) Institutional pharmacy practice site.

(a) General. During such times as an institutional pharmacy practice site is closed, facility policy as approved by the pharmacist in charge shall provide a process for authorized personnel to obtain drugs necessary for the provision of patient care. This function may also be accomplished as outlined in the After Hours Drug Provision of this section. A pharmacist must be "on call" twenty four (24) hours per day, seven (7) days per week.

(b) After Hours Drug Provision. When an institutional pharmacy practice site is closed, access to prescription drugs shall be by locked cabinet(s), automated dispensing machines or other enclosure(s) constructed and located outside of the pharmacy practice site, to which only personnel authorized by the pharmacist in charge may obtain access. Access should be sufficiently secured to deny entry to unauthorized persons by force or otherwise. Those practice sites utilizing automated dispensing devices for after hours drug provision shall meet the requirements of rule 1140-4-.15.

(Rule 1140-4-.14, continued)

The pharmacist in charge shall develop an inventory listing of those drugs to be included in such after hours storage, and shall ensure that:

1. such prescription drugs are available therein, properly labeled;

2. such prescription drugs are prepackaged in amounts not to exceed a seventy-two (72) hour medication period; unless available in a commercially prepared package dictating multiple dose therapy (e.g., ophthalmic products, topical products, otic products);

3. all prescription drugs therein are inventoried at least once a month;

4. a record shall be made at the after hours storage location including the following elements:

   (i) the date and time of removal of a drug;

   (ii) the patient's name and location;

   (iii) the name, strength, dosage form, and quantity of the prescription drug; and

   (iv) the identification of the authorized personnel removing the drug.

5. the prescription order shall be verified by a pharmacist or designee in a timely manner.

6. the above record shall be used by authorized pharmacy personnel to replenish the after hours storage location, and this record shall be kept at the institutional pharmacy practice site so as to be readily retrievable for at least two (2) years;

7. policies and procedures shall be established to implement the requirements of this section.

(c) Access to the Pharmacy Practice Site within an Institutional Facility. Whenever any prescription drug is not available from floor supplies, emergency kits, or other approved distribution system for the facility, and such prescription drug or device or related material is required to treat the immediate needs of a patient whose health would otherwise be jeopardized, such prescription drug, device or related material may be obtained from the pharmacy practice site in accordance with the requirements of this paragraph. Only authorized personnel, accompanied by a security guard or other authorized employee of the institution may have access to the pharmacy practice site and may remove the required drug, device or related material. Such person(s) shall be designated through policies of the facility and shall receive appropriate education and training in the proper methods of access and removal of prescription drugs, records and procedures required prior to such person(s) being permitted to obtain access to the pharmacy practice site. Such education and training shall be conducted by the pharmacist in charge or designee, who shall require, at a minimum, the following records and procedures;

1. Removal of any prescription drug, device or related material from the pharmacy practice site by an authorized person(s) must be recorded in a suitable form at the pharmacy practice site showing:

   (i) the date and time of removal of the drug;

(Rule 1140-4-.14, continued)

(ii) patient identification and location;

(iii) the name, strength, dosage form, and quantity of the drug, device or related material removed; and

(iv) the signatures of the authorized personnel and the accompanying witness;

~~2. The above record shall be maintained at least two (2) years at the pharmacy practice site in a separate file or log book;~~

2. The above record shall be maintained at least two (2) years at the pharmacy practice site electronically, or in a separate file or log book;

3. The medication or prescription order shall be verified by a pharmacist or authorized personnel; and

4. The quantity of drug removed shall not exceed the amount needed plus one (1) dose until the pharmacy practice site reopens; unless available in a commercially prepared package dictating multiple dose therapy (e.g., ophthalmic products, topical products, otic products).

(2) Alternate or Alternative Infusion pharmacy practice site.

(a) During such times as an alternate or alternative infusion pharmacy practice site is closed, policies and procedures shall be established by the pharmacist in charge for the provision of prescription drugs, devices and related materials to patients on a twenty four (24) hours per day seven (7) days per week basis.

(b) A pharmacist must be "on call" during all absences.

~~***Authority:*** *T.C.A. §§63-10-404(11), (14), (15), (19), (26), (27), (28), and (34) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

~~**1140-4-.15 AUTOMATED DISPENSING DEVICES IN INSTITUTIONAL PRACTICE SITES**~~

1140-04-.15 Automated Dispensing Systems.

No prescription drug or device or related material shall be distributed or issued by the use of any automated dispensing device unless the device and the method of operation have been found by the board to ensure the purity, potency, and integrity of the prescription drug or device or related material, and to protect the prescription drug or device or related material from diversion.

(1) A pharmacist shall be designated to be accountable for this automated dispensing system.

(a) Individuals authorized by the facility policies and the pharmacist in charge will stock this device under the supervision of a pharmacist, if a pharmacist is not stocking the device.

(Rule 1140-4-.15, continued)

(b) The pharmacist will work collaboratively with healthcare professionals to ensure that appropriate controls and monitors are utilized to provide information that drugs dispensed were for the correct patient and that pilferage is identified and resolved.

(2) All persons authorized to have access to these automated devices shall have documentation that they have successfully completed a training program that teaches them to perform the functions they perform with the automated device.

(3) Automated dispensing systems shall be used only for the furnishing of drugs and devices and related materials or other products related to the care of patients of that institution or facility; and

(4) At the time of removal of any drug or device or related material from the device, it shall automatically make a record, to be retained by the pharmacy for a minimum of two (2) years, indicating:

(a) the date and time of removal of the drug or device or related material;

(b) the name, strength, dosage form, and quantity of drugs or devices or related material removed;

(c) the identification of the patient for whom the drug or device or related material was ordered; and

(d) the identification of the person authorized to remove the drug or device or related material from the device.

(5) The pharmacist in charge or designee is responsible for determining how access codes or other methods of access to automated devices are assigned.

(6) The facility shall have policies and procedures approved by the pharmacist in charge in coordination with members of the nursing and medical staff for the points outlined in this section for automated dispensing devices.

(7) The facility may provide off-campus automated dispensing systems for care provided by the institution when the following conditions are met:

(a) Each pharmacy holding an active license with the Tennessee Board of Pharmacy and using automated dispensing systems shall register each automated dispensing system with the Tennessee Board of Pharmacy. Each pharmacy shall maintain a list of the physical locations of all automated dispensing machines in its systems, whether such systems are located in the same facility as the licensed pharmacy, or not, and shall be responsible to pay a registration fee, as defined in 1140-01-.10 (for each automated dispensing system, which the licensed pharmacy is responsible for and which is located in an institutional facility.)

(b) The pharmacist in charge of the institutional pharmacy practice site shall be designated to be accountable for this automated dispensing system.

1. The filling/stocking of all medications in the automated dispensing system shall be completed by a pharmacist or pharmacy technician under the direct supervision of a pharmacist, except as provided below:

(Rule 1140-4-.15, continued)

(i) If the automated dispensing system uses removable cartridges or containers to hold drugs, the prepackaging of the cartridges or containers shall occur at the provider pharmacy unless provided by an FDA approved repackager.

(ii) The prepackaged cartridges, unit dose packages or containers may be sent to the off-campus site to be loaded into the machine by personnel designated by the pharmacist-in-charge provided:

(I) a pharmacist verifies the cartridge or container has been properly filled and labeled;

(II) the individual cartridges, unit dose packages or containers are transported to the off-campus site in a secure, tamper-evident container;

(III) the automated dispensing system uses bar-coding, microchip, or other technologies to ensure that the containers are accurately loaded in the automated dispensing system;

(IV) all drugs to be stocked in the automated dispensing system shall be delivered to the off-campus site by the institutional pharmacy.

2. A record of medications filled/stocked into an automated dispensing system shall be maintained and shall include identification of the persons filling/stocking and checking for accuracy.

3. All containers of medications stored in the automated dispensing system shall be packaged and labeled in accordance with federal and state laws and regulations.

4. All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

5. The automated dispensing system shall provide a mechanism for securing and accounting for medications removed from and subsequently returned to the automated dispensing system, all in accordance with existing state and federal law.

6. The automated dispensing system shall provide a mechanism for securing and accounting for wasted medications or discarded medications in accordance with existing state and federal law.

(c) Nothing in this section shall be interpreted to authorize the stocking of controlled substances in automated dispensing systems, except when done in a manner consistent with federal controlled substance rules and regulations.

(d) The registration fee for each automated dispensing system shall be determined by the Tennessee Board of Pharmacy and listed in 1140-01-.10. The Board shall maintain a list of registered automated dispensing systems, including physical address and number of devices located at each physical address. Registrations for automated dispensing systems must be renewed every two (2) years.

~~**Authority:** T.C.A. §§63-10-404(8), (11), (14), (26), and (27) and 63-10-504(b)(1) and (2).~~

(Rule 1140-4-.15, continued)

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-4-.16 EMERGENCY ROOMS.

~~If prescription drugs, devices and related materials in an emergency room are to be dispensed (other than by pharmacy staff) rather than administered, the drugs, devices or related materials must be dispensed by the physician or an emergency room nurse or certified physician assistant at the direction of a physician. If the physician in an emergency room does not personally dispense, then prescription drugs, devices and related materials for outpatient use must be packaged in containers from the pharmacy practice site in amounts not to exceed a twelve (12) hour period or with products commercially prepared for multiple dose therapy (e.g., ophthalmic products, topical products, otic drops) in the smallest available package. These prescription drugs, devices or related materials shall be dispensed only after a medical or prescription order has been issued and recorded in the emergency room and shall be labeled with appropriate labeling.~~

(1) If prescription drugs, devices and related materials in an emergency room are to be dispensed (other than by pharmacy staff) rather than administered, the drugs, devices or related materials must be dispensed by the physician or an emergency room nurse or certified physician assistant at the direction of a physician. If the physician in an emergency room does not personally dispense, then prescription drugs, devices and related materials for outpatient use must be packaged in containers from the pharmacy practice site in amounts not to exceed a twelve (12) hour period or with products commercially prepared for multiple dose therapy (e.g., ophthalmic products, topical products, otic drops) in the smallest available package. These prescription drugs, devices or related materials shall be dispensed only after a medical or prescription order has been issued and recorded in the emergency room and shall be labeled with appropriate labeling.

(2) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~**Authority:** T.C.A. §§63-10-404(1), (8), (11), (15), (19), (28), and (34) and 63-10-504(b)(1) and (2).~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.

1140-4-.17 INVESTIGATIONAL DRUGS.

~~The pharmacist in charge in coordination with the institutional facility, medical and nursing staff and, if appropriate, the pharmaceutical manufacturer, shall develop policies and procedures for the approval, management, distribution and control of investigational drug studies. The process shall ensure that such studies contain safeguards for the patient, for the institution and for the scientific integrity of the study. Each patient or the patient's legal guardian must freely consent, in writing, to treatment with the drugs, unless otherwise not required by federal law. The pharmacist is responsible to the institution and to the principal investigator for seeing that procedures for the control of investigational drugs are developed and implemented when needed.~~

(Rule 1140-4-.17, continued)

(1) The pharmacist in charge in coordination with the institutional facility, medical and nursing staff and, if appropriate, the pharmaceutical manufacturer, shall develop policies and procedures for the approval, management, distribution and control of investigational drug studies. The process shall ensure that such studies contain safeguards for the patient, for the institution and for the scientific integrity of the study. Each patient or the patient's legal guardian must freely consent, in writing, to treatment with the drugs, unless otherwise not required by federal law. The pharmacist is responsible to the institution and to the principal investigator for seeing that procedures for the control of investigational drugs are developed and implemented when needed.

(2) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(14) and (26) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-4-.18 MONTHLY INSPECTIONS.

The pharmacist in charge shall be responsible (personally or by qualified designee) for documented monthly inspections of all drugs, devices and related materials kept at nursing stations, surgery, delivery rooms, emergency rooms, clinics, and any other area of the facility. Records of such inspections shall be dated, signed and maintained so as to be readily retrievable at the pharmacy practice site for at least two (2) years. These inspections must assure the following:

(1) test reagents, germicides, and disinfectants are stored separately from drugs, devices and related materials;

(2) external drugs, devices and related materials are stored separately from internal drugs, devices and related materials;

(3) thermolabile drugs are stored at the proper temperature;

(4) drugs, devices and related materials requiring special storage conditions to ensure their stability are properly stored;

(5) there are no outdated or deteriorated drugs, devices or related materials;

(6) all drugs, devices and related materials are properly labeled;

(7) emergency drugs, devices and related materials are stored in accordance with rule 1140-4-.10;

(8) medicine cabinets, carts and storage areas are accessible to authorized personnel only;

(9) dispensing of controlled substances is properly and adequately documented;

(10) telephone numbers of regional poison control centers and other emergency assistance organizations are posted;

(11) metric-apothecaries' weight and measure conversion tables and charts are available; and

(Rule 1140-4-.17, continued)

(12) adequate pharmaceutical references for the drugs administered in that location are available.

(13) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§63-10-404(8) (14), and (28) and 63-10-504(b)(1) and (2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed February 7, 1983; effective March 9, 1983. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-05
CONTINUING EDUCATION

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1140-05-.01 REQUIREMENTS FOR PHARMACIST LICENSE RENEWAL.

(1) Every person licensed as a pharmacist shall complete at least thirty (30) hours of continuing pharmaceutical education during each two (2) year license cycle. The required thirty (30) hours shall consist of at least fifteen (15) hours obtained through live contract programs. In order to fulfill the fifteen (15) live contact hour requirement, a pharmacist shall obtain the hours from a program designated as "live" by the ACPE-approved provider, from a program that is approved by the Board prior to the expiration of the pharmacist's license or from an out-of-state program that is approved by the board of pharmacy in the state where the program was presented.

(2) Notwithstanding paragraph one (1) of this rule, no pharmacist shall be required to complete any continuing pharmaceutical education during a two (2) year license cycle if that pharmacist presents proof that during all or part of the license cycle the pharmacist was enrolled in a recognized academic program pursuing a pharmacy degree, a doctor of medicine degree, a doctor of osteopathic medicine degree, a doctor of dental surgery degree, or an advanced or graduate degree in a health-related science; or participating in a pharmacy residency or fellowship program; or engaged in a course of study leading to certification as a nurse practitioner or a physician assistant.

(3) The board may waive the requirements of this rule upon a showing of emergency, illness, or other good cause.

~~***Authority:*** *T.C.A. §§63-10-204, 63-10-304, 63-10-306, 63-10-404(5) and (26), 63-10-504(b)(1) and 63-10-506(g).*~~

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Administrative History: *Original rule filed December 5, 1984; effective January 4, 1985. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed November 24, 2008; effective February 7, 2009.*

1140-05-.02 REPORTING SYSTEM.

(1) Each pharmacist shall submit to the board with the license renewal form, and on a form provided by the Tennessee Board of Pharmacy, a sworn statement indicating that the pharmacist has completed the required number of continuing pharmaceutical education hours.

(2) The board shall not renew the license of any pharmacist until the applicant has submitted the required sworn statement indicating that the pharmacist has completed the required number of continuing pharmaceutical education contact hours during the previous license cycle.

(Rule 1140-05-.02, continued

(3) The licensee shall produce proof of the completion of the required number of continuing pharmaceutical education hours upon the request of the board or its designee.

(4) Falsification of the continuing pharmaceutical education sworn statement may result in the probation, suspension or revocation of the pharmacist's license and/or the imposition of a civil penalty not to exceed one thousand dollars ($1,000.00) with the imposition of a requirement for additional continuing education if appropriate.

(5) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§56-1-308, 63-10-504(b)(1), and 63-10-506.*~~

Authority: T.C.A. §§ 63-10-304 and 63-10-306.

Administrative History: *Original rule filed December 5, 1984; effective January 4, 1985. Amendment filed November 17, 1994; effective March 30, 1995. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed August 19, 2002; effective November 2, 2002.*

1140-05-.03 RECOGNITION OF PROGRAMS.

The board will recognize any continuing pharmaceutical education hours obtained from an ACPE-approved provider.

~~***Authority:*** *T.C.A. §§63-10-404(5) and 63-10-504(b)(1).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed December 5, 1984; effective January 4, 1985. Amendment filed November 17, 1994; effective March 30, 1995. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-05-.04 FALSIFICATION OF RECORDS.

~~Any pharmacist who alters, forges, or falsifies, or causes to be altered, forged, or falsified any information, documents, or records required to be kept or submitted by this Chapter shall be subject to disciplinary action by the board under *T.C.A. § 63-10-505(6).*~~

Any pharmacist who alters, forges, or falsifies, or causes to be altered, forged, or falsified any information, documents, or records required to be kept or submitted by this Chapter shall be subject to disciplinary action by the Board under *T.C.A. § 63-10-305(6).*

~~***Authority:*** *T.C.A. §§63-10-404(2) and (26) and 63-10-504(b)(1).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed December 5, 1984; effective January 4, 1985. Amendment filed November 17, 1994; effective March 30, 1995. Repeal and new rule filed May 11, 1998, effective July 25, 1998.*

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-06
NUCLEAR PHARMACY PRACTICE SITES

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1140-06-.01 APPLICABILITY.

The provisions of this Chapter are in addition to, and not in substitution for, other applicable laws and rules administered by the board, the State Board of Radiological Health.

~~***Authority:*** *T.C.A. § 63-10-504(b)(1).*~~

Authority: T.C.A. § 63-10-304.

Administrative History: *Original chapter filed January 26, 1987; effective April 29, 1987. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-06-.02 GENERAL REQUIREMENTS.

(1) A nuclear pharmacy practice site shall contain adequate space, commensurate with the scope of services required and provided. The board may, upon request, exempt a nuclear pharmacy practice site handling radioactive drugs exclusively from the minimum space requirements for pharmacy practice sites.

(2) The compounding and dispensing area for radioactive drugs shall be separate from the compounding and dispensing area for non-radioactive drugs, and shall be secured from unauthorized personnel.

(3) All pharmacy practice sites handling radiopharmaceuticals shall provide adequate radioactive storage and product decay area, preferably separate from and exclusive of the hot laboratory and the compounding, dispensing, quality assurance, and office areas.

(4) A nuclear pharmacy practice site shall only dispense radiopharmaceuticals which comply with acceptable professional standards of radiopharmaceutical quality assurance.

(5) A pharmacist may transfer to authorized persons radioactive materials not intended for drug use, in accordance with *T.C.A. 68-202-206.* A nuclear pharmacy practice site may also furnish radiopharmaceuticals for office use to authorized practitioners for individual patient use.

(6) In addition to any labeling requirements of the board for non-radioactive drugs, the immediate outer container of a radioactive drug to be dispensed shall also be labeled with:

(a) the standard radiation symbol;
(b) the words "Caution - Radioactive Material";
(c) the radionuclide;
(d) the chemical form;
(e) the amount of radioactive material contained, in millicuries or microcuries;
(f) if a liquid, the volume;

(Rule 1140-06-.02, continued)

(g) the calibration time for the amount of radioactivity contained;
(h) the expiration time; and
(i) the name, address, and telephone number of the nuclear pharmacy practice site.

(7) The immediate container shall be labeled with:

(a) the standard radiation symbol;
(b) the words "Caution - Radioactive Material";
(c) the name of the drug; and
(d) the medical or prescription order number.

(8) The amount of radioactivity shall be determined by radiometric methods for each product immediately prior to dispensing.

(9) A nuclear pharmacy practice site shall conduct and keep proper records of appropriate internal test assessments on all radiopharmaceuticals, with interpretation of the resulting data to determine suitability for use in humans.

(10) A nuclear pharmacy practice site shall conduct authentication of product history by identifying and keeping proper records of the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.

~~***Authority**: T.C.A. § 63-10-404(4),(11),(16),(28), § 63-10-504(b)(1), § 63-10-504(b)(1),(2), § 63-10-504(j).*~~

Authority: T.C.A. § 63-10-204 and 63-10-304.

Administrative History: *Original chapter filed January 26, 1987; effective April 29, 1987. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-06-.03 LIBRARY.

Each nuclear pharmacy practice site shall maintain an adequate reference library (printed or electronic) consistent with its scope of practice. The reference library shall include a current edition of the Tennessee Pharmacy Laws issued by the Tennessee Board of Pharmacy and may include current material regarding the technical, clinical, and professional components of the practice of pharmacy, with particular emphasis in the area in which the pharmacy specializes.

Authority**: T.C.A. § 63-10-304.* ***Administrative History: *Original chapter filed January 26, 1987; effective April 29, 1987. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Amendment filed November 24, 2008; effective February 7, 2009.*

1140-06-.04 EQUIPMENT.

Each nuclear pharmacy practice site shall contain at least the following equipment:

(1) Vertical laminar flow hood;
(2) Dose calibrator;
(3) Refrigerator;
(4) Room monitor;
(5) Portable survey meter;
(6) Single or multiple channel scintillation counter;
(7) Microscope;
(8) Radio chemical exhaust hood and filter system, only if required for licensing by the State Board of Radiological Health.
(9) Such other equipment as may be required by the State Board of Radiological Health.

(Rule 1140-06-.02, continued)
~~***Authority***: T.C.A. § 63-10-504(b)(1),(2).~~

Authority: T.C.A. § 63-10-304.

Administrative History: *Original chapter filed January 26, 1987; effective April 29, 1987. Repeal and new rule filed May 11, 1998; effective July 25, 1998*

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-07
STERILE PRODUCT PREPARATION IN PHARMACY PRACTICE

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1140-07-.01 APPLICABILITY.

The provisions of this Chapter shall apply to all pharmacy practice sites and pharmacists, pharmacy interns, pharmacy technicians and supportive personnel involved in the compounding and dispensing of sterile products.

~~***Authority:*** *T.C.A. § 63-10-404(4),(11),(26),(28),(29),(30), § 63-10-504(b)(1),(2).*~~

Authority: T.C.A. §§ 63-10-204, 63-10-304 and 63-10-216.

Administrative History: *Original chapter filed October 1, 1987; effective November 15, 1987. Amendment filed March 30, 1994; effective June 13, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

1140-07-.02 STANDARDS.

(1) All sterile products shall be prepared in compliance with applicable USP standards for pharmaceutical compounding.

(2) The Board of Pharmacy, upon a showing of good cause and in the best interest of the public health, safety and welfare, may waive the requirements of any applicable portion of USP standards.

(a) All waiver requests submitted pursuant to this part shall be submitted in writing.

(b) The Board of Pharmacy may authorize the Executive Director to exercise some, or all, of its waiver authority under this part.

(3) Noncompliance by a licensee with applicable standards and guidelines, or any other violation of the provisions of this rule shall be considered unprofessional conduct within the meaning of T.C.A. 63-10-305 and a violation of a duly promulgated rule of the Board of Pharmacy.

(4) Any licensed pharmacy which compounds sterile products, except hospital pharmacies compounding for inpatients of a hospital, shall submit to the Board of Pharmacy, on a quarterly basis, a report listing the quantity of high risk or batch sterile products, as defined by USP standards, compounded and dispensed during the previous quarterly period and any other information as required by USP standards.

(a) Quarterly reports submitted pursuant to this paragraph shall be submitted by the 15th day of the month following the end of each calendar quarter.

(Rule 1140-07-.02, continued)

(b) In any calendar year where any one of the above dates fall on a weekend or official state holiday, all quarterly reports due on that date shall be submitted on the following business day.

(c) The format for reports submitted pursuant to this paragraph shall be determined by the Board of Pharmacy through policy and made available to the public on the Board of Pharmacy's website.

(5) Any licensed pharmacy which compounds and dispenses sterile products shall provide at a minimum upon request of the Board of Pharmacy the following information for any sterile drug product compounded, dispensed, traded, sold, or otherwise distributed:

(a) name, strength, and dosage form;

(b) quantity compounded, dispensed, traded, sold, or otherwise distributed during the preceding quarterly period;

(c) all components and an accurate statement of the weight or measure of each component;

(d) the beyond-use date;

(e) storage requirements;

(f) labels and labeling with appropriate beyond-use date and instructions for storage and use.

(6) Any licensed pharmacy which compounds and dispenses sterile products must ensure that the following information is on file at the practice site and readily accessible for sterile products:

(a) documentation of the name and strength of all drug products compounded over the past two (2) years;

(b) the sources and lot numbers of the components used in those drug products;

(c) the total number of dosage units compounded over the past two (2) years;

(d) the name of the person who prepared the drug product;

(e) the name of the pharmacist who approved the drug product;

(f) the name of the practitioner or the name of the patient or healthcare entity who received the compounded drug product;

(g) the results of any sampling, testing or other quantitative evaluation conducted for the purposes of quality control for any sterile compounded products, as defined by chapter 1140-01, compounded over the past two (2) years.

(7) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

Authority: *T.C.A. §§ 63-10-204, 63-10-216, 63-10-301, 63-10-304 and 63-10-306.* ***Administrative History:*** *Original rule filed July 11, 2014; effective October 9, 2014.*

(Rule 1140-07-.02, continued)

1140-07-.03 PERSONNEL.

(1) The pharmacist in charge or pharmacist designee shall be responsible for, at a minimum, the following:

(a) Procurement, storage, compounding, labeling, repackaging, dispensing, and distribution of all prescription drugs and devices and related materials necessary in compounding and dispensing sterile products;

(b) Establishment of policies and procedures for the compounding and dispensing of sterile products;

(c) Documentation of competency in aseptic techniques of all pharmacists, pharmacy interns and pharmacy technicians. The aseptic technique of each person compounding and dispensing sterile products shall be observed and evaluated as satisfactory during orientation and training and at least on an annual basis or whenever unacceptable techniques are observed or detected;

(d) Establishment of a quality assurance program;

(e) Reviewing and updating annually all policies and procedures; and

(f) Provision of sterile products on a twenty four (24) hour a day basis.

(2) All pharmacists, pharmacy interns and pharmacy technicians as defined in 1140-2-.02 responsible for compounding or dispensing sterile products shall:

(a) Obtain practical and/or academic training in the compounding and dispensing of sterile products;

(b) Complete annual continuing education related to sterile product compounding and dispensing and utilization; and

(c) Maintain, in the pharmacy practice site, documentation of completion of the required training and continuing education.

(d) Use proper aseptic technique in all sterile product compounding as defined by the pharmacy practice site's policies and procedures.

(3) A pharmacist shall be available to respond to patients' and other health care practitioners' information needs on a twenty four (24) hour a day basis.

(4) The pharmacist in charge shall be assisted by such additional pharmacists, pharmacy interns, pharmacy technicians as defined by 1140-2-.02 and supportive personnel necessary to operate the pharmacy practice site competently and safely and to provide services in a timely and appropriate manner.

(5) All pharmacists, pharmacy interns and pharmacy technicians must be qualified through an appropriate combination of specific training and experience to operate or manipulate any item of equipment, apparatus, or device to which such pharmacists, interns and technicians will be assigned to use to compound and dispense sterile products.

(6) A written record of initial and subsequent training and competency evaluations shall be maintained in the pharmacy practice site and contain the following information:

(a) Name of the person receiving the training or evaluation;

(Rule 1140-07-.03, continued)

(b) Date(s) of the training or evaluation;

(c) General description of the topics covered; and

(d) Signature of the person receiving the training or evaluation and the pharmacist in charge or pharmacist designee of the pharmacist in charge.

(7) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. § 63-10-404(4), (5), (8), (11), (14), (16), (26), (27),(29),and (30), and §63-10-504(b)(1),(2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original chapter filed October 1, 1987; effective November 15, 1987. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Rule was previously numbered 1140-07-.02, but was renumbered to 1140-07-.03 with the addition of a new 1140-07-.02. Rule filed July 11, 2014; effective October 9, 2014.*

1140-07-.04 PHYSICAL REQUIREMENTS.

(1) Any facility that compounds sterile products shall comply with applicable USP standards.

(2) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

Authority: *T.C.A. § 63-10-204, 63-10-216, 63-10-301, 63-10-304 and 63-10-306.* ***Administrative History:*** *Original chapter filed October 1, 1987; effective November 15, 1987. Amendment filed March 30, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Rule was previously numbered 1140-07-.03, but was renumbered to 1140-07-.04 with the addition of a new 1140-07-.02. Rule filed July 11, 2014; effective October 9, 2014.*

1140-07-.05 POLICY AND PROCEDURE MANUAL.

(1) A policy and procedure manual related to sterile product compounding shall be available for inspection at the pharmacy practice site. The manual shall include policies and procedures for sterile compounding pursuant to USP standards, and shall, at a minimum, include:

(a) security;

(b) equipment;

(c) sanitation;

(d) reference materials;

(e) prescription drug and device and related material storage;

(f) prescription drug and device and related material compounding and dispensing;

(g) prescription drug and device and related material labeling and relabeling;

(Rule 1140-07-.05, continued)

(h) prescription drug and device and related material destruction and returns;

(i) dispensing of sterile products;

(j) record keeping;

(k) quality assurance;

(l) quality control;

(m) duties for pharmacist(s), pharmacy intern(s), pharmacy technician(s) and supportive personnel;

(n) public safety relative to harmful sterile products, including the active notification of patients if they may be affected by a product found to have a defect or an out-of-specification result including any recall policy and procedures;

(o) attire;

(p) pharmacist, pharmacy intern, and pharmacy technician training.

(q) compliance with all applicable USP standards; and

(r) response to adverse events, outbreaks, and other public health threats associated with products compounded, dispensed, manufactured, propagated, distributed, or otherwise processed at the facility, including procedures for the rapid compilation and dissemination of records to appropriate authorities.

(2) Any licensed facility which engages in sterile compounding shall conduct an annual review of its policy and procedure manual, and shall update its policy and procedure manual as necessary.

(3) Failure by any licensee or registrant to comply with its policy and procedure manual, or any part of this rule shall be considered a violation of a duly promulgated rule of the Board of Pharmacy and may be considered dishonorable, immoral, unethical or unprofessional conduct within the meaning of T.C.A. § 63-10-305(6).

~~***Authority**: T.C.A.§ 63-10-204, 63-10-216, 63-10-301, 63-10-304, 63-10-306, 63-10-404 (4), (8), (14), (26), (29). And (30), and 63-10-504(b)(1),(2).*~~

Authority: T.C.A. §§ 63-10-204, 63-10-216, 63-10-301, 63-10-304, and 63-10-306.

Administrative History: *Original rule filed October 1, 1987; effective November 15, 1987. Amendment filed November 16, 1992; effective January 8, 1993. Amendment filed March 30, 1994; effective June 13, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendments filed July 11, 2014; effective October 9, 2014. Rule was previously numbered 1140-07-.04, but was renumbered to 1140-07-.05 with the addition of a new 1140-07-.02. Rule filed July 11, 2014; effective October 9, 2014.*

1140-07-.06 LABELING.

(1) At the time of dispensing of the sterile product, the dispensing container must bear a label which contains the following information:

(Rule 1140-07-.06, continued)

(a) patient's name (if for outpatient use) or healthcare entity name;

(b) prescriber (s) name (if for outpatient use);

(c) pharmacy practice site name, address, and phone number (if for outpatient use);

(d) identification of the pharmacist who compounded the sterile product;

(e) when applicable, identification of the pharmacy intern or pharmacy technician who assisted in the compounding of the sterile product;

(f) name and amount of drug added;

(g) expiration date and, when applicable, expiration time, Beyond Use Dating (BUD);

(h) date of compounding;

(i) appropriate auxiliary label(s); and

(j) directions for use (if for outpatient), if applicable.

(2) Original medical or prescription orders for sterile products shall comply with applicable state and federal laws and regulations.

~~***Authority**: T.C.A. § 63-10-404 (11), (14), (19), (26), (28), (29), (30), (32), and (34), 63-10-204, 63-10-216, 63-10-301, 63-10-304, 63-10-306, and 63-10-504(b(1),(2).*~~

Authority: T.C.A. §§ 63-10-204, 63-10-216, 63-10-301, 63-10-304, and 63-10-306.

Administrative History: *Original chapter filed October 1, 1987; effective November 15, 1987. Amendment filed March 30, 1994; effective June 13, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Rule was previously numbered 1140-07-.05, but was renumbered to 1140-07-.06 with the addition of a new 1140-07-.02. Rule filed July 11, 2014; effective October 9, 2014.*

1140-07-.07 HAZARDOUS PRODUCTS.

(1) Physical Requirements.

(a) If the pharmacy practice site is engaged in the compounding of hazardous sterile products, a suitable facility to prepare such products and minimize the risk associated with such products shall be provided.

(b) Such pharmacy practice site shall be designed and equipped for storage and have a procedure for disposal of materials containing hazardous residues in accordance with state and federal laws.

(1) A dedicated Class II, Type A contained vertical flow biohazard cabinet is the minimally acceptable compounding site for the routine compounding of hazardous sterile products.

(2) Hazardous sterile products shall be segregated within the pharmacy practice site and storage areas so identified.

(Rule 1140-07-.07, continued)

(2) Dispensing.

(a) Prepared doses of hazardous sterile products for patients shall be placed in an appropriate outer wrap to minimize the risk exposure in case of accidental rupture of the primary container.

(b) Reasonable effort shall be made to assure that all hazardous sterile product primary containers and waste are removed from the site of use and disposed of as hazardous waste in accordance with applicable state and federal laws.

(3) Training.

(a) As part of the training for all pharmacists, pharmacy interns and pharmacy technicians involved in compounding of hazardous sterile products, an annual certification must be made by each pharmacist, pharmacy intern and pharmacy technician and the pharmacist in charge that each has read and understands the latest editions of:

1. Work Practice Guidelines for Personnel Dealing with Cytotoxic (Antineoplastic) Drugs (Occupational); and

2. The American Society of Health-System Pharmacists (ASHP) technical assistance bulletin on handling cytotoxic and hazardous substances.

(4) Hazardous sterile products dispensed shall bear a distinctive warning label with an appropriate caution statement thereon.

(5) Gloving and gowning shall be required in the compounding of hazardous sterile products. Gloves should be rinsed frequently with a sanitizing agent (e.g., seventy percent (70%) isopropyl alcohol) and shall be changed when the integrity of the gloves is compromised.

(6) In the compounding of hazardous sterile products, a protective disposable gown made of lint-free low permeability fabric with a closed front, long sleeves and elastic or knit closed cuffs with cuffs tucked under the gloves shall be worn. Gowns and gloves used in the compounding of hazardous sterile products shall not be worn outside the sterile product compounding area.

~~***Authority:*** *T.C.A. § 63-10-404(4),(11),(26),(27),(28),(29),(30), § 63-10-504(b)(1),(2).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original chapter filed October 1, 1987; effective November 15, 1987. Amendment filed March 30, 1994; effective June 13, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Rule was previously numbered 1140-07-.06, but was renumbered to 1140-07-.07 with the addition of a new 1140-07-.02. Rule filed July 11, 2014; effective October 9, 2014.*

1140-07-.08 ATTIRE.

(1) All pharmacists, pharmacy interns and pharmacy technicians shall wear applicable outer garments and shall use applicable respiratory precautions as set out in USP 797.

Authority: *T.C.A. §§ 63-10-204, 63-10-216, 63-10-301, 63-10-304 and 63-10-306.* ***Administrative History:*** *Original chapter filed October 1, 1987; effective November 15, 1987. Amendment filed March 30, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed*

(Rule 1140-07-.09, continued)
January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Rule was previously numbered 1140-07-.07, but was renumbered to 1140-07-.08 with the addition of a new 1140-07-.02. Rule filed July 11, 2014; effective October 9, 2014.

1140-07-.09 QUALITY ASSURANCE.

(1) There shall be a documented, ongoing quality assurance program that monitors process validation; pharmacist(s), pharmacy intern(s), and pharmacy technician(s) performance; equipment; and environment.

(2) The program shall be designed to assure that the pharmacy practice site is capable of consistently compounding quality sterile products.

(3) All quality assurance programs shall follow applicable USP standards.

(4) As part of its quality assurance program, any licensed facility which engages in sterile compounding shall perform a gap analysis pursuant to guidelines adopted by the Board of Pharmacy. Any exceptions or serious deficiencies noted in this analysis shall be reported to the Board of Pharmacy.

(5) Failure by any licensee or registrant to comply with its quality assurance program shall be considered a violation of a duly promulgated rule of the Board of Pharmacy and may be considered dishonorable, immoral, unethical or unprofessional conduct within the meaning of T.C.A. § 63-10-305(6).

~~***Authority:*** *T.C.A. § 63-10-204, 63-10-216, 63-10-301, 63-10-304, 63-10-306, 63-10-404 (26), (28), (29),and (30), and 63-10-504(b)(1),(2).*~~

Authority: T.C.A. §§ 63-10-204, 63-10-216, 63-10-301, 63-10-304, and 63-10-306.

Administrative History: *Original chapter filed March 30, 1994; effective June 13, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Rule was previously numbered 1140-07-.08, but was renumbered to 1140-07-.09 with the addition of a new 1140-07-.02. Rule filed July 11, 2014; effective October 9, 2014.*

1140-07-.10 RESERVED.

~~***Authority:*** *T.C.A. §§ 63-10-204, 63-10-216, 63-10-301, 63-10-304, 63-10-306, 63-10-404(26),(28),(29),(30), § 63-10-504(b)(1),(2).*~~

Authority: T.C.A. § 63-10-304.

Administrative History: *Original chapter filed March 30, 1994; effective June 13, 1994. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rule filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to reserved status. Rule was previously numbered 1140-07-.09, but was renumbered to 1140-07-.10 with the addition of a new 1140-07-.02. Rule filed July 11, 2014; effective October 9, 2014.*

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-08
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1140-08-.01 Civil Penalties

1140-08-.01 CIVIL PENALTIES.

~~(1) The board may, in a lawful proceeding respecting licensing (as defined in the Uniform Administrative Procedures Act), in addition to or in lieu of any other lawful disciplinary action, assess civil penalties for violations of statutes, rules or orders enforceable by the board in accordance with the following schedule:~~

~~Violation~~	~~Penalty~~
~~T.C.A., Section 63-10-505(1)~~	~~$0 - $1000~~
~~T.C.A., Section 63-10-505(2)~~	~~$0 - $1000~~
~~T.C.A., Section 63-10-505(3)~~	~~$0 - $1000~~
~~T.C.A., Section 63-10-505(4)~~	~~$0 - $1000~~
~~T.C.A., Section 63-10-505(5)~~	~~$0 - $1000~~
~~T.C.A., Section 63-10-505(6)~~	~~$0 - $1000~~
~~T.C.A., Section 63-10-505(7)~~	~~$0 - $1000~~
~~T.C.A., Section 63-10-505(8)~~	~~$0 - $1000~~

~~In determining the amount of any civil penalty to be assessed pursuant to this rule the board may consider such factors as the following:~~

~~(a) Willfulness of the violation.~~
~~(b) Repetitions of the violation.~~
~~(c) Magnitude of the risk of harm caused by the violation.~~

(1) The Board may, in a lawful proceeding respecting licensing (as defined in the Uniform Administrative Procedures Act), in addition to or in lieu of any other lawful disciplinary action, assess civil penalties for violations of statutes, rules or orders enforceable by the Board in accordance with the following schedule:

Violation	Penalty
T.C.A. Section 63-10-305(1)	$0 - $1000
T.C.A. Section 63-10-305(2)	$0 - $1000
T.C.A. Section 63-10-305(3)	$0 - $1000
T.C.A. Section 63-10-305(4)	$0 - $1000
T.C.A. Section 63-10-305(5)	$0 - $1000
T.C.A. Section 63-10-305(6)	$0 - $1000
T.C.A. Section 63-10-305(7)	$0 - $1000
T.C.A. Section 63-10-305(8)	$0 - $1000

In determining the amount of any civil penalty to be assessed pursuant to this rule the board may consider such factors as the following:

(a) Willfulness of the violation.

(b) Repetitions of the violation.

(c) Magnitude of the risk of harm caused by the violation.

(2) Each violation of any statute, rule or order enforceable by the board shall constitute a separate and distinct offense and render the person committing the offense subject to a separate fine for each violation.

(3) Each day any person, partnership, firm, or corporation or agency causes or permits a pharmacy practice site to be conducted in violation of any statutes, rules or orders enforceable by the board constitutes a separate and distinct offense and renders such person, partnership, firm, or corporation or agency subject to a separate fine for each day.

~~***Authority**: T.C.A. §63-10-504(b)(1), and §63-10-505.*~~

Authority: T.C.A. §§ 63-10-304 and 63-10-305.

Administrative History: *Original rule filed November 15, 1989; effective December 30, 1989. Repeal and new rule filed May 11, 1998; effective July 25, 1998.*

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-09
MANUFACTURERS, OUTSOURCING FACILITIES, OXYGEN SUPPLIERS AND WHOLESALERS/DISTRIBUTORS

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1140-09-.01 MANUFACTURER, OUTSOURCING FACILITY, OXYGEN SUPPLIER AND WHOLESALER/DISTRIBUTOR LICENSING.

(1) Every manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor, before engaging in the manufacture, sale or distribution of prescription drugs and prescription devices in this state, must be licensed by the Board in accordance with this chapter.

(2) An applicant with physical facilities in this state must obtain and display prominently a separate license for each principal place of business where the applicant manufactures or distributes prescription drugs and prescription devices.

(3) The requirement of a license shall not apply to the following types of distributions:

(a) Intracompany sales;

(b) The purchase or other acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a prescription drug for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(c) The sale, purchase or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;

(d) The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control; for purposes of this subparagraph, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization whether by ownership of stock, voting rights, by contract or otherwise;

(e) The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons; for purpose of this subparagraph, "emergency medical reasons" includes transfers of prescription drugs by a retail pharmacy practice site to alleviate a temporary shortage;

(f) The sale, purchase, or trade of a prescription drug, an offer to sell, purchase or trade a prescription drug, or the dispensing of a prescription drug pursuant to a medical or prescription order;

(g) The distribution of prescription drug samples by manufacturers' representatives; or

(Rule 1140-09-.01, continued)

(h) The sale, purchase, or trade of blood and blood components intended for transfusion.

(i) The sale, purchase, or trade of a prescription drug, or an offer to sell, purchase or trade of a prescription drug by a pharmacy practice site to another pharmacy practice site or to authorized prescribing practitioners, except that the total gross dollar volume of such transfers shall not exceed five percent (5%) of the total medical and prescription orders sales revenue of either the transferor or transferee pharmacy during any twelve (12) consecutive month period.

(4) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority**: T.C.A. §§ 63-10-204, 63-10-304, 63-10-305, 63-10-306, 63-10-404(2), (8), (14), (18), (37), 63-10-504(b)(1), and 63-10-506(f).*~~

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Administrative History: *Original rule filed January 7, 1992; effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014; effective through July 30, 2014. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendment filed July 11, 2014; effective October 9, 2014. Amendments filed March 24, 2015; effective June 22, 2015.*

1140-09-.02 MINIMUM INFORMATION REQUIRED.

(1) The board shall require the following minimum information from each manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor applying for a license or any renewal of such license:

(a) The name, full business address, and telephone number of the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor;

(b) All trade or business names used by the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor;

(c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor for storage, handling, and distribution;

(d) The type of ownership or operation (i.e., partnership, corporation, or sole proprietorship); and

(e) The name(s) of the owner and/or operator of the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor, including:

1. If a person, the name of the person;

2. If a partnership, the name of each partner, and the name of the partnership;

3. If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation;

4. If a sole proprietorship, the full name of the sole proprietor and the name of the business entity;

(Rule 1140-09-.02, continued)

5. DEA registration number if applicable; and

6. The results of a criminal background check for the owner or manager of the facility seeking licensure, submitted directly to the Board of Pharmacy by the vendor identified in the Board of Pharmacy's licensure application materials.

(2) Applicants seeking to register as manufacturers or outsourcing facilities shall provide the following materials to the Board of Pharmacy:

(a) Proof of registration with the Food and Drug Administration as a manufacturer or outsourcing facility and the most current inspection by that agency, or correspondence or other written proof from the Food and Drug Administration which states that registration with that agency is unnecessary;

(b) The name and contact information of the owner, the owner's agent, or another such individual employed at or contracted by the applicant that can be reached at any time by the Board of Pharmacy, the Department of Health or any agents thereof in the event of a potential or actual public health threat related to the sterility or potency of any drug or biologic product manufactured, wholesaled or distributed by the applicant.

(3) Applicants seeking to obtain a sterile compounding modifier registration shall provide the following materials to the Board of Pharmacy:

(a) Upon request by the Board of Pharmacy or the executive director, a list of sterile products currently being manufactured, wholesaled and distributed;

(b) The name and contact information for any laboratory, corporation, or other organization that may perform sterility and potency testing, or similar procedures for the purposes of quality assurance on any drug or biologic product produced by the applicant;

(4) Changes in any information in paragraphs (1), (2), or (3) of this rule shall be submitted in writing to the Board of Pharmacy immediately.

(5) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§ 63-10-204, 63-10-304, 63-10-305, and 63-10-306.*~~

Authority: T.C.A. §§ 63-10-204, 63-10-304, and 63-10-306.

Administrative History: *Original rule filed January 7, 1992; effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendments filed July 11, 2014; effective October 9, 2014. Repeal and new rule filed March 24, 2015; effective June 22, 2015.*

1140-09-.03 MINIMUM QUALIFICATIONS.

(1) The board shall consider, at a minimum, the following factors in reviewing an application for a license as a manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor:

(a) Any convictions of the applicant under any federal, state, or local laws relating to drug samples or distribution of controlled substances;

(Rule 1140-09-.03, continued)

(b) Any felony convictions of the applicant under federal, state, or local laws;

(c) The applicant's past experience in the manufacturing or distribution of prescription drugs and prescription devices, including controlled substances;

(d) The furnishing by the applicant of false or fraudulent material in any application made in connection with manufacturing or distribution;

(e) Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs, including controlled substances, prescription drugs and prescription devices;

(f) Compliance with licensing requirements under previously granted licenses, if any;

(g) Compliance with requirements to maintain and/or make available to the board or to federal, state, or local law enforcement officials those records required federal, state or local laws; and

(h) Any other factors or qualifications the board considers relevant to and consistent with the public health and safety.

(2) The board shall have the right to deny a license to an applicant if it determines that the granting of such a license would not be in the public interest.

(3) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§ 63-10-404, 63-10-404 (2), (6), (8), (14), (18), (37), 63-10-304, 63-10-305, 63-10-306, 63-10-504, and 63-10-504(b)(1).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed January 7, 1992 effective February 21, 1992. Repeal and new rule filed May 11, 1999, effective July 25, 1998. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendment filed July 11, 2014; effective October 9, 2014. Amendment filed March 24, 2015; effective June 22, 2015.*

1140-09-.04 PERSONNEL.

The board shall require that personnel employed by a manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor have appropriate education and/or experience to assume positions of responsibility for compliance with board requirements.

~~***Authority:*** *T.C.A. §§ 63-10-204, 63-10-304, 63-10-305, and 63-10-306.*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed January 7, 1992 effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendment filed July 11, 2014; effective October 9, 2014. Repeal and new rule filed March 24, 2015; effective June 22, 2015.*

1140-09-.05 MINIMUM REQUIREMENTS FOR GENERAL OPERATION.

(Rule 1140-09-.05, continued)
The following shall be the minimum requirements for the storage and handling of prescription drugs and prescription devices and for the establishment and maintenance of prescription drug and prescription device distribution records by manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors:

(1) Facilities. All facilities at which prescription drugs and prescription devices are stored, warehoused, handled, held, offered, marketed, or displayed shall:

(a) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations;

(b) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;

(c) Have a quarantine area for storage of prescription drugs and prescription devices that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed, secondary containers that have been opened;

(d) Be maintained in a clean and orderly condition, and

(e) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(2) Security.

(a) All facilities shall be secure from unauthorized entry.

1. Access from outside the premises shall be kept to a minimum and be well-controlled.

2. The outside perimeter of the premises shall be well-lighted.

3. Entry into areas where prescription drugs and prescription devices are held shall be limited to authorized personnel.

(b) All facilities shall be equipped with an alarm system to detect entry after hours.

(c) All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(3) Storage. All prescription drugs and prescription devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs and devices, or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF).

(a) If no storage requirements are established for a prescription drug or prescription device it may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that identity, strength, quality, and purity are not adversely affected.

(b) Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment, devices, and/or logs shall be utilized to document proper storage of prescription drugs and prescription devices.

(c) The record keeping requirements in paragraph (6) of this section shall be followed for all prescription drugs and prescription devices.

(Rule 1140-09-.05, continued)

(4) Examination of materials.

(a) Upon receipt, each outside shipping container shall be visually examined for identity and to prevent the acceptance of contaminated prescription drugs that are otherwise unfit for distribution. This examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents.

(b) Each outgoing shipment shall be carefully inspected for identity of the prescription drug products and to ensure that there is no delivery of prescription drugs that have been damaged in storage or held under improper conditions.

(c) The record keeping requirements in paragraph (6) of this section shall be followed for all incoming and outgoing prescription drugs.

(5) Returned, damaged, and outdated prescription drugs and prescription devices.

(a) Prescription drugs and prescription devices that are outside, damaged, deteriorated, misbranded, or adulterated shall be quarantined and physically separated from other prescription drugs and prescription devices until destroyed or returned.

(b) Any prescription drugs and prescription devices whose immediate or sealed outer or sealed secondary containers have been opened or used shall be quarantined and physically separated from other prescription drugs and prescription devices until either destroyed or returned.

(c) If the conditions under which a prescription drug or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, then the prescription drug or prescription device shall be destroyed, or returned, unless examination, testing, or other investigation proves that the prescription drug or prescription device meets appropriate standards of safety, identity, strength, quality and purity. In determining whether the conditions under which a prescription drug or prescription device has been returned cast doubt on safety, identity, strength, quality, or purity, the manufacturer, outsourcing facility , oxygen supplier or wholesaler/distributor shall consider, among other things, the conditions under which the prescription drug or prescription device has been held, stored or shipped before or during return and the condition of the prescription drug or device or related material and its container, carton, or labeling, as a result of storage or shipping.

(d) The record keeping requirements in paragraph (6) of this section shall be followed for all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs and prescription devices.

(6) Record keeping.

(a) Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and prescription devices. These records shall include the following information:

1. The source of the prescription drugs and prescription devices including the name and principal address of the seller or transferor, and the address of the location from which the prescription drugs and prescription devices were shipped;

2. The identity and quantity of the prescription drugs and prescription devices received and distributed or disposed of; and

(Rule 1140-09-.05, continued)

3. The dates of receipt and distribution or other disposition of the prescription drugs and prescription devices.

(b) Inventories and records shall be made available for inspection and photocopying by authorized federal, state, or local law enforcement agency officials for a period of two (2) years following disposition of the prescription drugs and prescription devices.

(c) Records described in this paragraph that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of a federal, state, or local law enforcement agency.

(7) Written policies and procedures. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, and distribution of prescription drugs and prescription devices; including policies and procedures for identifying, recording, and reporting losses or thefts, and for correcting all errors and inaccuracies in inventories. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall include in written policies and procedures the following:

(a) A procedure whereby the older approved stock of a prescription drug or prescription device is distributed first. The procedure may permit deviation from this requirement, if such deviation is temporary and appropriate.

(b) A procedure to be followed for handling recalls and withdrawals of prescription drugs and prescription devices. Such procedures shall be adequate to respond to recalls and withdrawals due to:

1. Any action initiated at the request of the United States Food and Drug Administration or other federal, state, or local law enforcement or other government agency, including the board;

2. Any voluntary action by the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor to remove defective or potentially defective prescription drugs and prescription devices from the market; or

3. Any action undertaken to promote public health and safety by replacing of an existing product with an improved product or new package design.

(c) A procedure to ensure that manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors prepare for, protect against, and respond to any crisis that affects security or operation of any facility in the event of strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.

(d) A procedure to ensure that any outdated prescription drugs and prescription devices shall be segregated from other prescription drugs and prescription devices and either returned to the manufacturer, outsourcing facility, oxygen supplier or wholesaler/distributor or destroyed. This procedure shall provide for written documentation of the disposition of outdated prescription drugs and prescription devices. This documentation shall be maintained for two (2) years after disposition of the outdated prescription drugs and prescription devices.

(8) Responsible persons. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall establish and maintain lists of officers, directors, managers, and

(Rule 1140-09-.05, continued)

other persons in charge of distribution, storage, and handling, including a description of such persons' duties and a summary of such persons' qualifications.

(9) Compliance with federal, state, and local law. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall operate in compliance with applicable federal, state, and local laws and regulations.

(a) Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall permit the board and authorized federal, state, and local law enforcement officials to enter and inspect premises and delivery vehicles, and to audit records and written operating procedures, at reasonable times and in a reasonable manner, to the extent authorized by law.

(b) Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors that handle controlled substances shall register with the board and with the United States Drug Enforcement Administration (DEA) and shall comply with applicable state, local and DEA regulations.

(10) Salvaging and reprocessing. Manufacturers, outsourcing facilities, oxygen suppliers and wholesalers/distributors shall be subject to the provisions of any applicable federal, state, and local laws or regulations that relate to salvaging or reprocessing of prescription drugs and prescription devices

(11) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

~~***Authority:*** *T.C.A. §§ 63-10-204, 63-10-304, 63-10-305, 63-10-305, and 63-10-306, 63-10-404 (8), (18), (33), (37), and 63-10-504(b)(1).*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

Administrative History: *Original rule filed January 7, 1992 effective February 21, 1992. Repeal and new rule filed May 11, 1998; effective July 25, 1998. Emergency rules filed January 31, 2014 expired effective July 31, 2014. The rules reverted to their previous status. Amendment filed July 11, 2014; effective October 9, 2014. Amendments filed March 24, 2015; effective June 22, 2015.*

1140-09-.06 MINIMUM REQUIREMENTS FOR STERILE PRODUCT OPERATION.

(1) Any manufacturer, outsourcing facility or wholesaler/distributor licensed pursuant to this chapter that also holds an active sterile compounding registration from the Board of Pharmacy and that holds a license or registration from the Federal Food and Drug Administration, shall comply with all applicable federal laws, regulations, and guidelines including, but not limited to:

(a) FDA Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs 21 CFR § 210;

(b) FDA Current Good Manufacturing Practice for Finished Pharmaceuticals 21 CFR § 211;

(c) DEA regulations relating to controlled substances 21 CFR §§ 1300-99.

(2) Any manufacturer, outsourcing facility or wholesaler/distributor licensed pursuant to this chapter who also holds an active sterile compounding registration from the Board of Pharmacy and who

(Rule 1140-09-.05, continued)

does not hold a license or registration from the federal Food and Drug Administration shall comply with all applicable USP standards.

(3) Any manufacturer, outsourcing facility or wholesaler/distributor licensed pursuant to this chapter who also holds an active sterile compounding registration from the Board of Pharmacy shall comply with all other applicable Board of Pharmacy rules and all other applicable laws of this State.

(4) The Board of Pharmacy may waive any applicable USP standards upon a showing by the applicant that good cause exists and that a waiver would better promote public health, safety, and welfare.

~~***Authority:*** *T.C.A. §§ §§ 63-10-204, 63-10-216, 63-10-304, 63-10-305, and 63-10-306.*~~

Authority: T.C.A. §§ 63-10-204 and 63-10-304.

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RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-10
RULES OF PROCEDURE FOR HEARING CONTESTED CASES

For Rules of Procedure for Hearing Contested Cases see Rules of the Secretary of State.

~~***Authority:*** *T.C.A. §63-10-504(b) (1), §4-5-301.*~~

Authority: T.C.A. §§ 4-5-301 and 63-10-304. ***Administrative History:***

RULES
OF
THE TENNESSEE BOARD OF PHARMACY

CHAPTER 1140-11
CONTROLLED SUBSTANCE MONITORING DATABASE

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1140-11-.01 Definitions.

(1) The following definitions shall be applicable to this chapter:

(a) "ARCOS" (the "Automation of Reports and Consolidated Orders System") is an automated, comprehensive drug reporting system, created pursuant to 21 U.S.C. § 827 and administered by the United States Drug Enforcement Administration, which monitors the flow of controlled substances from the point of manufacture, through commercial distribution channels, to the point of distribution or sale at the dispensing or retail level.

(b)~~(a)~~ "Board" means the Board of Pharmacy created by T.C.A., Title 63, Chapter 10, part 3;

(c)~~(b)~~ "Client" means the owner or custodian of any animal under the care of a licensed veterinarian.

(d)~~(c)~~ "Commissioner" means the Commissioner of Health;

(e)~~(d)~~ "Committee" means the Controlled Substance Database Committee created by T.C.A., Title 53, Chapter 10, part 3;

(f)~~(e)~~ "Controlled substance(s)" means a drug, substance, or immediate precursor in Schedules I through VI as defined or listed in the Tennessee Drug Control Act, compiled in T.C.A., Title 39, Chapter 17, part 4;

(g)~~(f)~~ "Controlled substance dispensed identifier" means the National Drug Code Number of the controlled substance;

(h)~~(g)~~ "Database" means the controlled substance database created by T.C.A., Title 53, Chapter 10, part 3;

(i)~~(h)~~ "Department" means the Department of Health;

(j)(i) "Dispense" means to physically deliver a controlled substance covered by this chapter to any person, institution or entity with the intent that it be consumed away from the premises in which it is dispensed. It does not include the act of writing a prescription by a practitioner to be filled at a pharmacy. For purposes of this part, physical delivery includes mailing controlled substances into this state;

(k)~~(i)~~ "Dispenser" means any health care practitioner who is licensed and has current authority to dispense controlled substances;

(Rule 1140-11-.01, continued)

(l)~~(k)~~ "Dispenser identifier" means the Drug Enforcement Administration Registration Number of the dispenser as defined in T.C.A. § 53-10-302(8);

(m)~~(l)~~ "Hardship" means a situation where a dispenser does not have an automated recordkeeping system capable of producing an electronic report of the required data in the format established by the American Society for Automation in Pharmacy Telecommunications Format for Controlled Substances. "Hardship" may also include other situations as determined by the Committee in its sole discretion;

(n)~~(m)~~ "Healthcare practitioner" means:

1. a physician, dentist, optometrist, veterinarian, or other person licensed, registered, or otherwise permitted to prescribe, distribute, dispense or administer a controlled substance in the course of professional practice; or

2. a pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, or administer a controlled substance in the course of professional practice;

(o)~~(n)~~ "Healthcare practitioner extender" means any registered or licensed healthcare professional, and up to two (2) unlicensed persons designated by the prescriber or dispenser, who act as agents of the prescriber or dispenser. The prescriber or dispenser shall be responsible for all actions taken by the agents, pursuant to this part;

(p)~~(o)~~ "Law enforcement personnel" means agents of the Tennessee Bureau of Investigation, agents of a judicial district drug task force, federal law enforcement officers commissioned by a federal government entity, certified law enforcement officers certified pursuant to T.C.A. § 38-8-107, and certified law enforcement officers in other states;

(q)~~(p)~~ "Patient" means a person or an animal who is receiving medical treatment from a prescriber;

(r)~~(q)~~ "Patient identifier" means the patient's full name; address including zip code; date of birth; and social security number or an alternative identification number as defined by this rule;

(s)~~(r)~~ "Person" means any individual, partnership, association, corporation and the state of Tennessee, its departments, agencies and employees, and the political subdivisions of Tennessee and their departments, agencies and employees;

(t)~~(s)~~ "Prescriber" means an individual licensed as a medical doctor, podiatrist, dentist, optometrist, veterinarian, osteopathic physician, a physician assistant who has authority to issue prescriptions for controlled substances, or an advanced practice nurse with a certificate of fitness to prescribe;

(u)~~(t)~~ "Prescriber identifier" means the Drug Enforcement Administration Registration Number of the prescriber as defined by this rule.

~~***Authority:*** *T.C.A. §§ 53-10-302 and 53-10-303(f).*~~

Authority: T.C.A. §§ 53-10-302 and 53-10-303.

Administrative History: *Original rule filed December 22, 2005; effective March 7, 2006. Emergency rule filed January 4, 2013; effective through July 3, 2013. Repeal and new rule filed April 2, 2013; effective July 1, 2013.*

1140-11-.02 ACCESS TO DATABASE.

(Rule 1140-11-.02, continued)

(1) All prescribers with DEA numbers who prescribe controlled substances, and all dispensers in practice who provide direct care to patients in Tennessee for more than fifteen (15) calendar days per year, shall be registered in the database. New licensees shall have up to thirty (30) calendar days after notification of licensure to register in the database. Licensed veterinarians who never prescribe a controlled substance in an amount intended to treat a non-human patient for more than forty-eight (48) hours shall not be required to register in the database.

(2) Information sent to, contained in, and reported from the database in any format shall be made available only as provided for in T.C.A. § 53-10-306 and to the following persons in accordance with this chapter:

(a) A prescriber conducting medication history reviews who is actively involved in the care of a patient or a bona fide prospective patient; a prescriber or supervising physician of the prescriber conducting a review of all medications dispensed by prescription attributed to that prescriber; or a prescriber having authority to prescribe or dispense controlled substances, to the extent the information relates specifically to a current or bona fide prospective patient of the prescriber, to whom the prescriber has prescribed or dispensed, is prescribing or dispensing, or considering prescribing or dispensing any controlled substance. Each authorized individual under this paragraph shall have a separate identifiable authentication for access;

(b) A dispenser or pharmacist not authorized to dispense controlled substances conducting drug utilization or medication history reviews who is actively involved in the care of a patient; or a dispenser having authority to dispense controlled substances to the extent the information relates specifically to a current or bona fide prospective patient to whom that dispenser has dispensed, is dispensing, or considering dispensing any controlled substance. Each authorized individual under this paragraph shall have a separate identifiable authentication for access;

(c) A county medical examiner appointed pursuant to T.C.A. § 38-7-104 when acting in an official capacity as established in T.C.A. § 38-7-109;

(d) Personnel of the following entities actively engaged in analysis of controlled substances prescription information as part of their assigned duties and responsibilities directly related to TennCare:

1. The Office of the Inspector General;

2. The Medicaid Fraud Control Unit; and

3. The Bureau of TennCare's Chief Medical Officer, Associate Chief Medical Directors, Director of Quality Oversight, and Associate Director of Pharmacy.

(e) A quality improvement committee, as defined in T.C.A. § 68-11-272, of a hospital licensed under T.C.A. title 68 or title 33, as part of the committee's confidential and privileged activities under T.C.A. § 68-11-272(b)(4) with respect to the evaluation, supervision or discipline of a healthcare provider employed by the hospital or any of its affiliates or subsidiaries, who is known or suspected by the hospital's administrator to be prescribing controlled substances for the prescriber's personal use;

(f) A healthcare practitioner extender, who is acting under the direction and supervision of a prescriber or dispenser, and only to the extent the information relates specifically to a current or bona fide prospective patient to whom the prescriber or dispenser has prescribed or dispensed, or considering prescribing or dispensing any controlled substance. Each

(Rule 1140-11-.02, continued)

authorized individual under this paragraph shall have a separate identifiable authentication for access, and the prescriber or dispenser shall cancel the healthcare practitioner extender's access to the database upon the end of the agency relationship;

(g) A manager of any investigation or prosecution unit of a health related board, committee or other governing body that licenses practitioners, who has access to the database with the committee's permission pursuant to T.C.A. § 53-10-308. Such manager may release the database information to the state of Tennessee health related boards, health related committees, the department, and representatives of health-related professional recovery programs;

(h) The following personnel of the Department of Mental Health and Substance Abuse Services, who are actively engaged in analysis of controlled substance prescription information, as part of their assigned duties and responsibilities. These personnel shall have access to prescription information for specific patients. Additionally, aggregate controlled substances prescribing information may be provided to these personnel and may be shared with other personnel of the Department of Mental Health and Substances Abuse Services as needed to fulfill the assigned duties and responsibilities:

1. The Chief Pharmacist;

2. The State Opioid Treatment Authority (SOTA) or SOTA designees; and

3. The Medical Director; or

(i) A person who has the patient's written permission to have access to the patient's records in the database.

(3) Law enforcement personnel engaged in an official investigation and enforcement of state or federal laws involving controlled substances or violations of T.C.A., Title 53, Chapter 10, part 3 may access information contained in the database pursuant to this chapter.

(4) Law enforcement agencies and personnel seeking or receiving information from the database pursuant to this section shall comply with the following requirements:

(a) Any law enforcement agency or judicial district drug task force that requires one (1) or more of its officers or agents to have the authorization to request information from the database shall first pre-approve each such officer. Pre-approval shall be by the applicant's supervisor, who shall be either the chief of police, county sheriff, or the judicial district drug task force district attorney general in the judicial district in which the agency or task force has jurisdiction. By December 1 of each year, each district attorney general shall send to the board of pharmacy a list of applicants authorized to request information from the database from that general's judicial district for the next calendar year.

(b) If the Tennessee Bureau of Investigation (TBI) requires one (1) or more of its agents to have the authorization to request information from the database, each such agent shall first be pre-approved by the agent's immediate supervisor and division head. Approved applicants shall be sent to the board of pharmacy by the TBI director. By December 1 of each year, the TBI director shall send to the board of pharmacy a list of applicants authorized to request information from the database from the bureau for the next calendar year.

(c) An application submitted by law enforcement personnel shall include at least the following:

1. Applicant's name; title; agency; agency address; agency contact number; agency supervisor; and badge number, identification number or commission number, and the business email address of each applicant officer or agent, the appropriate

(Rule 1140-11-.02, continued)

district attorney general and, if a TBI agent, the TBI director and their email addresses; and

2. Signatures of the applicant, the applicant's approving supervisor and the district attorney general of the judicial district in which the applicant has jurisdiction or the approving TBI division head and the TBI director.

(d) When requesting information from the database, law enforcement personnel must provide a case number corresponding with an official investigation involving controlled substances.

(e) Law enforcement personnel, including judicial district drug task force agents and TBI agents, who are authorized to request information from the database, shall resubmit their identifying application information that was submitted pursuant to subparagraph (4)(c) to the appropriate district attorney general or to the TBI director, by November 20 of each year. Such resubmitted applications shall be sent by the appropriate district attorney general or the TBI director to the board of pharmacy by December 1 each year. If during the calendar year, a name is added to the list, removed from the list, or information about a person on the list changes, the appropriate district attorney general or TBI director shall immediately notify the board of pharmacy of any changes to the list submitted or in the information submitted for each officer or agent on the list application.

(5) Information obtained from the database may be shared with other law enforcement personnel or prosecutorial officials, only upon the direction of the officer or agent who originally requested the information, and may only be shared with law enforcement personnel from other law enforcement agencies who are directly participating in an official joint investigation.

(6) Any information obtained from the database that is sent to a law enforcement official or judicial district drug task force agent shall also be sent to the district attorney general of the judicial district in which such officer or agent has jurisdiction. Likewise, any database information sent to a TBI agent shall also be sent to the TBI director.

(7) Information obtained from the database by law enforcement personnel shall be retained by the law enforcement personnel's respective department or agency. The information obtained from the database shall not be made a public record, notwithstanding the use of the information in court for prosecution purposes. Information obtained from the database shall be maintained as evidence in accordance with each law enforcement agency's respective procedures relating to the maintenance of evidence.

(8) If a law enforcement officer, judicial district drug task force agent, or TBI agent has probable cause to believe, based upon information received from a database request, that a prescriber or pharmacist may be acting or may have acted in violation of the law, the officer or agent shall consult with the board of pharmacy inspector's office if a pharmacist is believed to have acted or is acting unlawfully or to the health related boards' investigations unit if a prescriber is believed to have acted or is acting unlawfully.

(9) At least every six (6) months, the board of pharmacy shall send a list to each district attorney general containing all requests made for database information during the previous six (6) months. The list shall include the name of the requesting officer or agent, the officer or agent's agency, the date of the request, and the nature of the request, including the case number, for each officer or agent making a request in such district attorney's judicial district. Likewise, a list shall be sent to the TBI director for all TBI agents making requests during the previous six (6) months.

(a) Each district attorney general and the TBI director shall use the list to verify database requests made during the preceding six (6) month period, and conduct an audit in accordance with T.C.A. § 53-10-306(j)(2). Verification of all database requests on the list received by each district attorney general and the TBI director must be sent back to the board of

(Rule 1140-11-.02, continued)

pharmacy within sixty (60) days of receipt. Where database information requests do not correspond to an investigation in the applicable jurisdiction or if the information requested was not relevant or pertinent to such an investigation, the district attorney general or TBI director shall so note on the verified list and shall investigate and make a report to the board of pharmacy within sixty (60) days.

(b) The results of the audit shall be discoverable by a prescriber, dispenser, or healthcare practitioner extender charged with violating any state or federal law involving controlled substances or under a notice of charges proffered by an appropriate licensing board for a violation of any law involving controlled substances, but only the results pertaining to that prescriber, dispenser, or healthcare practitioner extender are discoverable. If, however, there is an active criminal investigation involving a prescriber, dispenser, or healthcare practitioner extender, or the prescriber, dispenser, or healthcare practitioner extender is under investigation by any investigations or prosecution unit of the appropriate licensing board, the results of the audit shall not be discoverable by the prescriber, dispenser, or healthcare practitioner extender during either such period.

Authority: *T.C.A. §§ 53-10-303(f), 53-10-304(b), 53-10-305(e), 53-10-306, and 53-10-308.* ***Administrative History:*** *Original rule filed December 22, 2005; effective March 7, 2006. Emergency rule filed January 4, 2013; effective through July 3, 2013. Repeal and new rule filed April 2, 2013; effective July 1, 2013.*

1140-11-.03 Fees

(1) A fee of twenty-two dollars and fifty cents ($22.50) shall be paid to the Board for each request from law enforcement processed by Committee staff, unless an alternative arrangement has been agreed to.

(2) A fee of twenty-two dollars and fifty cents ($22.50) shall be paid to the Board for each request from any judge of a participating drug court pursuant to T.C.A. § 53-10-306 processed by Committee staff, unless an alternative arrangement has been agreed to.

Authority: T.C.A. §§ 53-10-303 and 53-10-306.

1140-11-.04~~.03~~ ALTERNATIVE IDENTIFICATION OF PATIENTS.

(1) If a patient does not have a social security number or refuses to provide his or her social security number to be used as a patient identifier, then the board shall use the patient's driver's license number or telephone number as the patient identifier in the database.

(2) If a patient does not have a social security number, a driver's license number or a telephone number, then the board shall use the number "000-00-0000" as the patient identifier in the database.

(3) If a patient or a patient's agent refuses to provide his or her social security number, driver's license number or telephone number to his or her prescriber or dispenser, then the board shall use the number "999-99-9999" as the patient identifier in the database.

(4) If a patient's social security number is not available, then the board shall use the social security number, driver's license number or telephone number of the person obtaining the controlled substance on behalf of the patient as the patient identifier in the database or the numbers "000-00-0000" (does not have the data) or "999-99-9999" (refusal to provide data), as applicable.

(5) If a patient is a child who does not have a social security number, then the board shall use the parent's or guardian's social security number, driver's license number, telephone number, or number

(Rule 1140-11-.04, continued)

"000-00-0000" (does not have data) or number "999-99-9999" (refusal to provide data) as the patient identifier in the database.

(6) If a patient is an animal, then the board shall use the owner's social security, driver's license number, telephone number, or number "000-00-0000" (does not have data) or number "999-99-9999" (refusal to provide data) as the patient identifier in the database.

Authority: *T.C.A. §§ 53-10-303(f) and 53-10-305.* ***Administrative History:*** *Original rule filed December 22, 2005; effective March 7, 2006.*

1140-11-.05~~.04~~ SUBMISSION OF INFORMATION.

(1) Each dispenser or dispenser's agent shall, regarding each controlled substance dispensed, submit to the database all of the following information:

(a) Prescriber identifier;

(b) Dispensing date of controlled substance;

(c) Patient identifier and/or client identifier;

(d) Controlled substance dispensed identifier;

(e) Quantity of controlled substance dispensed;

(f) Strength of controlled substance dispensed;

(g) Estimated number of days' supply;

(h) Dispenser identifier;

(i) Date the prescription was issued by the prescriber;

(j) Whether the prescription was new or a refill; and

(k) Source of payment.

~~(2) The information in the database, as required by paragraph one (1) above, shall be submitted at least once every seven (7) days for all controlled substances dispensed during the preceding seven (7) day period.~~

(2) Prior to January 1, 2016, the information in the database, as required by paragraph one (1) above, shall be submitted at least once every seven (7) days for all controlled substances dispensed during the preceding seven (7) day period. Information submitted after January 1, 2016, with the exception of information reported by veterinarians, shall be submitted for each business day but no later than the close of business on the following day.

(3) The data required by this rule shall be submitted to the database by any dispenser, or dispenser's agent, who dispenses a controlled substance contained in Schedules II, III, and IV, and Schedule V controlled substances identified by the Committee as demonstrating a potential for abuse.

(4) The reporting requirement shall not apply for the following:

(a) A drug administered directly to a patient;

(b) Any drug sample dispensed;

(Rule 1140-11-.04, continued)

(c) Any drug dispensed by a licensed veterinarian; provided, that the quantity dispensed is limited to an amount adequate to treat the non-human patient for a maximum of forty-eight (48) hours;

(d) Any facility that is registered by the United States drug enforcement administration as a narcotic treatment program and is subject to the recordkeeping provisions of 21 CFR 1304.24; or

(e) Any drug dispensed by a licensed healthcare facility; provided, that the quantity dispensed is limited to an amount that is adequate to treat the patient for a maximum of forty-eight (48) hours.

(5) The dispenser, or dispenser's agent, shall submit the data that is required by T.C.A. § 53-10-305 in one of the following forms:

(a) An electronic device compatible with the Committee's receiving device or the receiving device of the Committee's agent; or

(b) Other electronic or data format approved by the Committee.

(6) The dispenser, excluding a veterinarian, shall transmit the data that is required, pursuant to T.C.A. § 53-10-305, in the 2009 version of the Telecommunications Format for Controlled Substances established by the American Society for Automation in Pharmacy (ASAP).

(7) If the dispenser does not have an automated recordkeeping system capable of producing an electronic report of the required data in the format established by the ASAP, or for whom electronic reporting would cause an undue hardship as determined by the Committee, then that dispenser may request a waiver from the electronic reporting requirement from the Committee. The waiver may be valid for two (2) years from ratification by the Committee.

(8) If the Committee grants the dispenser a waiver from the electronic reporting requirement, then the dispenser shall comply with an alternative method of reporting the data as determined by the Committee, such as submitting the required data in writing on a form approved by the Committee.

Authority: *T.C.A. §§ 53-10-303(f), 53-10-304 and 53-10-305.* ***Administrative History:*** *Original rule filed December 22, 2005; effective March 7, 2006. Emergency rule filed January 4, 2013; effective through July 3, 2013. Repeal and new rule filed April 2, 2013; effective July 1, 2013.*

1140-11-.06~~.05~~ Practice Sites – Electronic Access.

(1) Each person or entity operating a practice site where a controlled substance is prescribed or dispensed to a human patient shall provide for electronic access to the database at all times when a prescriber or dispenser provides healthcare services to a human patient potentially receiving a controlled substance.

(2) This rule shall not apply to dispensers who are not required to report, pursuant to T.C.A. § 53-10-304(d) or § 53-10-305(g).

(3) A violation of paragraph one (1) above is punishable by a civil penalty not to exceed one hundred dollars ($100) per day assessed against the person or entity operating the practice site; provided, however, that the penalty shall only be imposed when there is a continued pattern or practice of not providing electronic access to the database

(Rule 1140-11-.04, continued)

Authority: *T.C.A. §§ 53-10-303(f) and 53-10-310.* ***Administrative History:*** *Emergency rule filed January 4, 2013; effective through July 3, 2013. Repeal and new rule filed April 2, 2013; effective July 1, 2013.*

1140-11-.07 ~~.06~~ Prescriber and Dispenser Responsibilities (Effective April 1, 2013).

(1) All prescribers or their designated healthcare practitioner's extenders, unless otherwise exempted by T.C.A. Title 53, Chapter 10, part 3, shall check the database prior to prescribing one of the controlled substances identified below in paragraph (3) to a human patient at the beginning of a new episode of treatment and shall check the database for the human patient at least annually when that prescribed controlled substance remains part of treatment.

(2) Before dispensing, a dispenser shall have the professional responsibility to check the database or have a healthcare practitioner extender check the database, if the dispenser is aware or reasonably certain, that a person is attempting to obtain a Schedule II-V controlled substance, identified by the Committee as demonstrating a potential for abuse for fraudulent, illegal, or medically inappropriate purposes, in violation of T.C.A. § 53-11-402.

(3) The controlled substances which trigger a check of the database pursuant to paragraph (1) above include, but are not limited to, all opioids and benzodiazepines.

(4) Prescribers are not required to check the database before prescribing or dispensing one of the controlled substances identified in paragraph (3) above or added to that list by the Committee if one (1) or more of the following conditions is met:

(a) The controlled substance is prescribed or dispensed for a patient who is currently receiving hospice care;

(b) The Committee has determined that prescribers in a particular medical specialty shall not be required to check the database as a result of the low potential for abuse by patients receiving treatment in that medical specialty;

(c) The controlled substance is prescribed or dispensed to a patient as a non-refillable prescription as part of treatment for a surgical procedure that occurred in a licensed healthcare facility;

(d) The quantity of the controlled substance which is prescribed or dispensed does not exceed an amount which is adequate for a single, seven-day treatment period and does not allow a refill.

Authority: *T.C.A. §§ 53-10-303(f) and 53-10-310.* ***Administrative History:*** *Emergency rule filed January 4, 2013; effective through July 3, 2013. Repeal and new rule filed April 2, 2013; effective July 1, 2013.*

1140-11-.08 Minimum Reporting Requirements for Wholesalers and Manufacturers.

(1) Wholesalers and manufacturers, as defined in T.C.A. § 63-10-204, shall submit a report of all wholesales and distributions of controlled substances at least once every month and no later than 45 days after the earliest transaction being reported.

(a) Any report submitted pursuant to this rule shall be in the ARCOS format, as specified in the most current version of the "Instructions for Reporting Wholesale Transactions" document, which will be made freely available on the Board of Pharmacy's website or the Controlled Substance Monitoring Database's website.

(b) Any report submitted pursuant to this rule shall be sent to the database or email address specified in the "Instructions for Reporting Wholesale Transactions" document.

(Rule 1140-11-.04, continued)

(c) Any entity exempt from reporting to the Drug Enforcement Administration pursuant to 21 C.F.R. § 1304.33 shall not be required to submit reports of wholesales and distributions of controlled substances pursuant to this rule.

Authority: T.C.A. § 53-10-312.

Rules
of the
Tennessee Board of Pharmacy

Chapter 1140-13
Pharmacy Practice In Federally Qualified Health Centers
Telepharmacy

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1140-13-.01 PURPOSE.

The rules in this chapter implement a pilot program for the dispensing of prescription medications from federally qualified health centers through the use of telepharmacy pursuant to T.C.A. § 63-10-601, et seq.

Authority: *Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-602. [effective July 1, 2008].* ***Administrative History:*** *Public necessity rule filed November 25, 2008; effective through May 9, 2009. New rule filed February 24, 2009; effective May 10, 2009.*

1140-13-.02 DEFINITIONS.

In addition to the definitions contained in T.C.A. § 63-10-601, the following definitions are applicable to this chapter:

(1) "Board" means the Tennessee Board of Pharmacy;

(2) "Central pharmacy" means the central pharmacy practice site licensed by the Tennessee Board of Pharmacy located within a federally qualified health center that is connected through computer link, videolink, and audiolink to one (1) or more satellite clinics;

(3) "Dispense" shall have the same meaning as set forth in Tenn. Code Ann. § 63-10-204(12);

(4) "Issue" means the delivery of drugs from the pharmacy technician employed by the federally qualified health center participating in this program to the patient or patient's agent;

(5) "Person" means any individual, partnership, association, corporation, or entity;

(6) "Pharmacist" shall have the same meaning as set forth in Tenn. Code Ann. § 63-10-204(30) and who is an employee of a federally qualified health center participating in this program;

(7) "Pharmacist-in-charge" shall have the same meaning as set forth in Tenn. Code Ann. §63-10-204(31) and who is an employee of a federally qualified health center participating in this program;

(8) "Pharmacy practice site" shall have the same meaning as set forth in Tenn. Comp. R. & Regs. Rule 1140-01-.01(23);

(9) "Pharmacy technician" means an individual registered by the Board as a pharmacy technician who is an employee of a federally qualified health center participating in this program and is being supervised by a pharmacist at the central pharmacy;

(Rule 1140-13-.02, continued)

(10) "Program" means the pilot program established in T.C.A. §63-10-601 for the dispensing of medications (with the exception of controlled substances schedules I, II, III, and IV) from federally qualified health centers through the use of telepharmacy;

(11) "Satellite clinic" means a clinic location located within federally qualified health center where any prescription dispensed at the central pharmacy shall be issued to the patient or patient's agent through telepharmacy;

(12) "Telepharmacy" means the method of providing pharmaceutical services through a remote site connection between a central pharmacy and a satellite clinic.

Authority: *Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-602. [effective July 1, 2008].* ***Administrative History:*** *Public necessity rule filed November 25, 2008; effective through May 9, 2009. New rule 1140 filed February 24, 2009; effective May 10, 2009.*

1140-13-.03 LICENSING AND RENEWAL.

(1) Licensing.

(a) Beginning July 1, 2008, the central pharmacy that desires to participate in this pilot program shall obtain a pharmacy license for the central pharmacy to be issued by the Board by submitting an application to the Board, along with the required license fee, and shall comply with the pharmacy practice site licensure requirements established in Tenn. Comp. R. & Regs. Rule 1140-01-.08(1) and Rule 1140-01-.12.

(b) As a condition for licensure, the central pharmacy participating in this program shall meet all of the standards established in Tenn. Comp. R. & Regs. Rule 1140-01-.12(1), (2), and (3) and shall also meet the following minimal operating requirements:

1. shall be connected to the satellite clinic through computer link, videolink, and audiolink;

2. shall have a computer system that is connected to the satellite clinic's computer system that shares common electronic files;

3. shall have its own computer(s) that is/are not accessed by others employed by the federally qualified health center, scanner(s), printer(s), and fax machine(s); and

4. shall have a licensed pharmacist at the central pharmacy location.

(2) The central pharmacy license shall expire two (2) years from the date of issuance. All licenses shall be renewed on or before the last day of the two (2)- year license cycle.

(3) The central pharmacy may renew its license within six (6) months after the license expiration date with payment of the renewal fee and late renewal penalty fee. After the six (6) month grace period, the licensee may reapply for licensure.

(4) Upon request, the Board may waive selected portions of these requirements so long as any waiver granted is consistent with the Board's authority under Tenn. Code Ann. Title 63, Chapters 1 and 10, and Tenn. Code Ann. Title 4, Chapter 5.

Authority: *Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-602. [effective July 1, 2008].* ***Administrative History:*** *Public necessity rule filed November 25, 2008; effective through May 9, 2009. New rule filed February 24, 2009; effective May 10, 2009.*

1140-13-.04 FEES.

(1) Initial license fee.....$168.00

(2) Renewal fee.....$168.00

(3) Regulatory fee.....$ 10.00

(4) The late renewal penalty fee is ten dollars ($10.00) per month for each month or fraction of a month that renewal is late.

Authority: *Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-602. [effective July 1, 2008].* ***Administrative History:*** *Public necessity rule filed November 25, 2008; effective through May 9, 2009. New rule filed February 24, 2009; effective May 10, 2009.*

1140-13-.05 CIVIL PENALTIES.

(1) With respect to any licensed central pharmacy, the Board may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or Board's order pertaining to drugs or the practice of pharmacy, including, but not limited to telepharmacy, in accordance with the following schedule:

Violation	Penalty
T.C.A. §63-10-305	$0- $1,000
T.C.A. §63-10-601	$0- $1,000
Rule 1140-02-.01	$0- $1,000
Rule 1140-02-.02	$0- $1,000
Rule 1140-13-.06	$0- $1,000
Rule 1140-13-.07	$0- $1,000
Rule 1140-13-.08	$0- $1,000

(2) Each day of continued violation may constitute a separate violation.

(3) In determining the amount of any penalty to be assessed pursuant to this rule, the board may consider such factors as the following:

(a) Whether the amount imposed will be a substantial economic deterrent to the violator;

(b) The circumstances leading to the violation;

(c) The severity of the violation and the risk of harm to the public;

(d) The economic benefits gained by the violator as a result of noncompliance;

(e) The interest of the public; and

(f) The willfulness of the violation.

Authority: *Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-602. [effective July 1, 2008].* ***Administrative History:*** *Public necessity rule filed November 25, 2008; effective through May 9, 2009. New rule filed February 24, 2009; effective May 10, 2009.*

1140-13-.06 PHARMACIST RESPONSIBILITIES.

(1) Pharmacy Operations and Security.

(a) The pharmacist-in-charge shall ensure that the central pharmacy's connection with the satellite clinic through computer, videolink, and audiolink is operational at all times that the satellite clinic is open.

(b) In the event that the computer, videolink, or audiolink connection is not operational, the pharmacist-in-charge shall ensure that the satellite clinic shall cease to operate relative to the issuance of prescriptions supplied by the central pharmacy until the links are reconnected. Whenever an interruption of data, video, or audiolink occurs between the central pharmacy and the satellite clinic, no prescription shall be dispensed, and a sign shall be posted noting the closure with an estimated time until a resumption of services can be expected.

(c) The pharmacist-in-charge shall ensure that prescriptions for controlled substances schedules I, II, III, or IV are not issued from the satellite clinic.

(d) The pharmacist-in-charge shall ensure that only the pharmacists and pharmacy technicians employed by the federally qualified health center and working in the satellite clinic shall have keys to the satellite clinic.

(e) The pharmacist-in-charge shall ensure that the security at the central pharmacy shall be performed in accordance with Tenn. Comp. R. & Regs. Rule 1140-01-.12.

(f) The pharmacist-in-charge shall ensure the security of the storage of drugs at the central pharmacy and the satellite clinic.

(g) The pharmacist-in-charge shall ensure that the prescriptions filled at the central pharmacy and stored in the satellite clinic to be issued to patients and caregivers by means of telepharmacy shall be segregated in a secure area in the pharmacy room from other medications stored in the pharmacy room that have not been filled and will not be issued through the telepharmacy program.

(h) The pharmacist-in-charge shall ensure that pharmacy technicians working at the central pharmacy are supervised by a pharmacist in accordance with Rule 1140-02-.02(8).

(i) The pharmacist-in-charge shall ensure that pharmacy technicians working at the satellite clinic shall be supervised by a pharmacist without a pharmacist being physically present.

(j) The pharmacist-in-charge may request a waiver of Tenn. Comp. R. & Regs. Rule 1140-03-.14(12) upon a showing of good cause.

(2) Verification.

(a) The pharmacist shall perform all in-process and end-process verification of the pharmacy technician's activities, including, but not limited to: checking the contents of the prescription bottle; checking the bottle label; checking the prescription; performing a

(Rule 1140-13-.06, continued)

drug utilization review in accordance with Tenn. Comp. R. & Regs. Rule 1140-03-.01(3); and performing patient counseling.

(3) Patient Counseling.

(a) If a pharmacist is not physically present at the satellite clinic and the patient or patient's agent is being issued a new prescription, then the pharmacist shall counsel the patient or patient's caregiver by means of telepharmacy before the prescription is issued.

(b) If a pharmacist is not physically present at the satellite clinic and the patient or patient's agent is being issued a refilled prescription, then the pharmacy technician shall offer counseling to the patient or patient's caregiver by means of telepharmacy before the prescription is issued.

(c) Pharmacists shall counsel patients in accordance with Board of Pharmacy rules whether the medication is issued from the central pharmacy or the satellite clinic.

(4) Supervision.

(a) The pharmacist-in-charge shall ensure that each individual operating as a pharmacy technician while employed by a federally qualified health center at a central pharmacy or satellite clinic is properly registered with the Board at all times.

(b) The pharmacist-in-charge or a designee of the pharmacist-in-charge shall complete an in-person inspection twice a month of the satellite clinics to ensure compliance with all applicable laws and rules relative to drugs and the practice of pharmacy outlined in the central pharmacy's policies and procedures.

(c) The pharmacists working at the federally qualified health center are not required to be physically present to verify the accuracy of all pharmacy technician functions performed at the satellite clinic while participating in this program; verification may be conducted by means of the computer link, videolink, and audiolink.

(5) Policies and Procedures.

(a) The pharmacist-in-charge shall ensure that the central pharmacy and satellite clinic have policies and procedures including, but not limited to the following:

1. when and how a pharmacy technician should contact a pharmacist to perform the issuing process;

2. how the pharmacy technician is to use the computer, videolink, and audiolink technology to communicate with the pharmacist;

3. delivery of the filled prescriptions to the satellite clinic to be issued to the patient or the patient's caregiver;

4. recordkeeping process to track the prescriptions dispensed from the central pharmacy and issued from the satellite clinic;

5. recordkeeping process to track the filled prescriptions received by the satellite clinic from the central pharmacy;

6. how to securely transport the filled prescriptions from the central pharmacy to the satellite clinic;

(Rule 1140-13-.06, continued)

7. how to order prescriptions and refills for the central pharmacy;

8. how to ensure that patient counseling is performed in accordance with this chapter;

9. when and how unissued medications will be disposed of or sent back to the central pharmacy.

Authority: *Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-602. [effective July 1, 2008].* ***Administrative History:*** *Public necessity rule filed November 25, 2008; effective through May 9, 2009. New rule 1140 filed February 24, 2009; effective May 10, 2009.*

1140-13-.07 PHARMACY TECHNICIAN RESPONSIBILITIES.

(1) The pharmacy technician shall ensure that the central pharmacy's connection with the satellite clinic through computer, videolink, and audiolink is operational at all times that the satellite clinic is open.

(2) In the event that the computer, videolink, and audiolink connection is not operational, the pharmacist-in-charge shall ensure that the satellite clinic shall cease to operate relative to the issuance of medications supplied by the central pharmacy until the links are reconnected. Whenever an interruption of data, video, or audio link occurs between the central pharmacy and the satellite clinic, no prescription shall be issued, and a sign shall be posted noting the closure of the clinic with an estimated time that a resumption of services can be expected.

(3) While working at a satellite clinic, the pharmacy technician shall notify the pharmacist at the central pharmacy prior to any medication being issued in order to ensure that patient counseling is performed or offered.

(4) The pharmacy technician shall only issue prescriptions dispensed by the central pharmacy.

Authority: *Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-602. [effective July 1, 2008].* ***Administrative History:*** *Public necessity rule filed November 25, 2008; effective through May 9, 2009. New rule filed February 24, 2009; effective May 10, 2009.*

1140-13-.08 RECORDKEEPING AND INSPECTIONS.

(1) The pharmacist-in-charge, pharmacists, and pharmacy technicians employed by the federally qualified health center working at a central pharmacy or satellite clinic shall ensure that a record is maintained at each central pharmacy and satellite clinic containing the prescriptions dispensed or issued from each location, including but not limited to the date dispensed/issued; date dispensed from the central pharmacy; date received by the satellite clinic; the drug name; quantity, dosage; strength; and patient name.

(2) All records of prescriptions dispensed from the central pharmacy and issued from the satellite clinic shall be retained for at least two (2) years from the date dispensed.

(3) Board of Pharmacy investigators shall be able to inspect the central pharmacies and the satellite clinics to ensure compliance with the applicable laws and rules related to drugs and the practice of pharmacy.

Authority: *Chapter 1028 of the Public Acts of 2008, § 2 and T.C.A. §§ 63-10-601 through 63-10-602. [effective July 1, 2008] and T.C.A. §63-10-307.* ***Administrative History:*** *Public necessity rule filed*

November 25, 2008; effective through May 9, 2009. New rule filed February 24, 2009; effective May 10, 2009.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Debra Wilson, D.Ph	X				
Jason Kizer, D.Ph	X				
Nina Smothers, D.Ph.	X				
Joyce McDaniel	X				
Will Bunch, D.Ph.	X				
Kevin K. Eidson, Pharm. D.	X				
R. Michael Dickenson, D.Ph.	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board of Pharmacy (board/commission/ other authority) on 12/18/2015 (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: *10/27/15 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *12/18/15 (mm/dd/yy)*

Date: 10/18/16

Signature:

Name of Officer: Stefan Cange

Title of Officer: Assistant General Counsel
Department of Health

LOYCE JEFFERY PAYNE
STATE OF TENNESSEE
NOTARY PUBLIC
MARSHALL COUNTY

Subscribed and sworn to before me on: 10/20/16

Notary Public Signature:

My commission expires on: 6/29/20

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

Herbert H. Slatery III
Attorney General and Reporter

11/18/2016
Date

Department of State Use Only

Filed with the Department of State on: 11/22/16

Effective on: 2/20/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Mental Health and Substance Abuse Services
DIVISION:	Office of Licensure
SUBJECT:	Minimum Program Requirements for all Services and Facilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, §§ 4-3-1601, 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-405, 33-2-407, 33-2-408, 33-2-409, 33-2-412, 33-2-417, etc. (Tennessee statutes creating TDMHSAS and granting TDMHSAS and its commissioner certain authority, including the authority to promulgate rules and regulations regarding licensure and compliance, etc.). Public Chapter 153 of 2015 - Tennessee legislation amending TCA § 33-2-404 by creating subsection (b) and allowing for licensure rules to be amended and brought in compliance with federal rule changes. 79 FR 2947 (January 16, 2014) - federal law codification of the HCBS Settin s Rule.
EFFECTIVE DATES:	February 28, 2017 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	Legislation passed during the 2015 legislative session of the 109 General Assembly and enacted as Public Chapter 153 of 2015 (S8112/HB101), in part, revised T.C.A. § 33-2-404 to give TDMHSAS "the authority to amend its rules for licensure as needed to be consistent with the federal home-based and community-based settings final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014), including the authority to differentiate licensure requirements for any entity contracted to provide Medicaid-reimbursed home-and community-based services in order to allow the facility or entity to comply with federal rule and continue to receive Medicaid reimbursement for home- and community-based services."

This statutory change necessitated changes to Tennessee Administrative Rule Chapter 0940-05-06, Minimum Program Requirements for All Services and Facilities. With the changes set out in this Rulemaking Hearing Rule (see 0940-05-06-.09), 0940-05-06 complies with both Public Chapter 153 of 2015 and 79 FR 2947 (January 16, 2014) by addressing the rights and obligations that must be in place for individuals receiving home- and community-based services that are reimbursed by Medicaid.

Additionally, these new rules provide protection to clients of all services and facilities licensed by TDMHSAS by requiring licensed providers to establish a policy that states that licensed providers will not allow persons placed on the Tennessee Department of Health's Abuse Registry or the Tennessee Sex Offender Registry to volunteer for a service or facility licensed by TDMHSAS (see 0940-05-06-.02(1)).

Furthermore, various portions of the new rules address financial stewardship of a client's money and how that money is used to provide services (0940-05-06-.03(1); 0940-05-06-.03(2); 0940-05-06-.03(3); 0940-05-06-.03(4); 0940-05-06-.03(5); 0940-05-06-.03(6)). Additional changes were made to address housekeeping matters and to ensure compliance with current best practices.

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.

TDMHSAS Responses to Comments about
Rules Chapter 0940-05-06 Minimum Program Requirements for All Services and Facilities
Facilities made prior to, during, or after the
Rulemaking Hearing Held on May 19, 2016

PAUL FUCHCAR, EXECUTIVE DIRECTOR, CADAS

0940-05-06-.02 (1)(d)(3) Policies and Procedures for All Services and Facilities.
"The total cost of services to the client"

Levels of treatment are billed at different rates and clients can be moved to less intensive levels of care during a treatment episode. Further, treatment centers use individualized treatment stays so there isn't a set charge for a treatment episode. Because of this, facilities would be unable to ascertain the total costs until after the client has been discharged. Are we missing the intent of this rule?

TDMHSAS Response: If an agency charges a client for services, the intent of 0940-05-06(1)(d)(3) is to ensure that a service recipient can acquire an itemized list of services provided and the dollar amount charged for those services.

0940-05-06-.06(2)(e) Client Rights in All Services and Facilities
"(2) The following rights must be afforded to all clients by all licensed facilities unless modified in accordance with rules 0940-05-06-.07 or 0940-05-06-.08:
(e) Clients shall be permitted to retain and use personal clothing and possessions including books, pictures, games, toys, radios, arts and crafts materials, religious articles, toiletries, jewelry and letters."

We realize that the rules state that "The rights of all clients in a facility may only be modified or limited when it is demonstrated and documented that a legitimate program purpose cannot reasonably be achieved without such modification or limitation." However, clients in substance abuse treatment often use electronics such as radios to distract from processing and participating in treatment. Also, arts and crafts would include knitting needles and glass objects could cause injury. Further, toiletries would include aerosol deodorant which can be used as inhalants; mouthwash, cologne and other toiletries may contact alcohol and that would be inappropriate in a substance abuse setting. Could we modify this slightly to say: Clients shall be permitted to retain and use personal clothing and appropriate possessions including books, pictures, games, toys, radios, arts and crafts materials, religious articles, toiletries, jewelry and letters;

TDMHSAS Response: TDMHSAS concurs with this comment and has made this change to 0940-05-06-.06(2)(e).

FRAN CLIPPARD, CENTER FOR LIVING & LEARNING RESIDENTIAL TREATMENT FACILTY

We have been licensed by the department for over 30 years. We haven't ever received Medicaid funding but could you explain to us how that process, as a licensed facility we could start the process of becoming reimbursed by Medicaid? Or is that something we should address in this meeting?

TDMHSAS Response: The subject of this comment (how to receive Medicaid funding) is outside the scope of this rulemaking activity (to comply with federal home and community-based services rules; 79 FR 2947 & Public Chapter 153 (2015)). If licensees have questions regarding how to receive Medicaid funding, TDMHSAS recommends that the licensee contact the Medicaid authority in Tennessee.

RONDY SMITH, REST STOP MINISTRIES

We are new to this process in the early licensure stages of a supportive living facility. I just want to make sure I have clarification. I think I understand that basically the major impact here is from .09 on and that's for

people receiving pay, payors. Like we, we have no fees actually. We're not going to be impacted by that. Up until that point, I don't believe I received anything that really pointed out what the changes were simply technical, minimal impact. Could we have those pointed out to us?

TDMHSAS Response: Alex King, TDMHSAS director of licensure, provided an oral summary of the changes to 0940-05-06 at the rulemaking hearing held on May 19th, 2016 and a written summary of the changes to 0940-05-06 has been provided in this document (please see subsection A of the section entitled "Additional Information Required by Joint Government Operations Committee"). Additionally, a redline version of 0940-05-06, which shows the changes made to 0940-05-06, has been provided with this rule filing.

HEATHER TAYLOR, REGIONAL INTERVENTION PROGRAM (RIP)

If a rule or portion of a rule does not apply to our facility/service, do we need to have a policy that states that -- or how this rule does not apply? For example, if we do not accept fees/exchange any money for services, do we need a policy that states we do not accept fees/exchange any money for services provided?

TDMHSAS Response: A licensee or potential licensee can request a waiver of a rule that the licensee feels they should not be subject to but would otherwise apply to them. TDMHSAS has the authority to approve or deny a waiver request. If a waiver request is approved, the licensee or potential licensee would not be subject to the waived rule.

WILLIAM BEAIRD, THE GOOD SHEPHERD RESIDENTIAL HOME

The lady that just came up, there was some information she wanted about a situation that's taking place with her being she is a director. Is it not applicable that new information would filter out to the entire group about whatever situation we might be in? What I'm saying is, today I'm not a director but next week I might be. Could it not be some information that would come from you to her that would be helpful to everybody in here?

TDMHSAS Response: Please see the above response to HEATHER TAYLOR, REGIONAL INTERVENTION PROGRAM (RIP). The response to Ms. Taylor's comment applies to all licensees and potential licensees and addresses Mr. Beaird's comment.

Regulatory Flexibility Addendum

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

The agency shall consider, but not be limited to, each of the following methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety, and well-being:

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

The proposed rules align with Tennessee and federal law and do not conflict with other federal, state, or local governmental rules. Legislation passed during the 2015 legislative session of the 109th General Assembly and enacted as Public Chapter 153 of 2015 (SB112/HB101), in part, revised T.C.A. § 33-2-404 to give TDMHSAS "the authority to amend its rules for licensure as needed to be consistent with the federal home-based and community-based settings final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014), including the authority to differentiate licensure requirements for any entity contracted to provide Medicaid-reimbursed home- and community-based services in order to allow the facility or entity to comply with federal rule and continue to receive Medicaid reimbursement for home- and community-based services." This statutory change necessitated changes to Tennessee Administrative Rule Chapter 0940-05-06, Minimum Program Requirements for All Services and Facilities. With the changes set out in this Rulemaking Hearing Rule (see 0940-05-06-.09), 0940-05-06 compiles with both Public Chapter 153 of 2015 and 79 FR 2947 (January 16, 2014) by addressing the rights and obligations that must be in place for individuals receiving home- and community-based services that are reimbursed by Medicaid.

(2) Clarity, conciseness, and lack of ambiguity in the rule.

The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and reporting requirements for small businesses.

The proposed rules do not establish flexible compliance or reporting requirements because the main goal of TDMHSAS's licensure function is to safeguard the health, safety and well-being of all individuals served by a TDMHSAS licensed provider. However, these proposed rules were written in a way so as not to be overly burdensome to licensed providers.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses.

The proposed rules do not establish friendly schedules or deadlines for compliance and reporting requirements for small businesses because the main goal of TDMHSAS's licensure function is to safeguard the health, safety and well-being of all individuals served by a TDMHSAS licensed provider. However, these proposed rules were written in a way so as to acknowledge the everyday business obligations of all licensed providers and provide for a common sense approach to compliance and reporting.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

The proposed rules are written to be clear, simple, and easy to read by all TDMHSAS licensed providers, including small businesses.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

The proposed rules restate standards established by 79 FR 2974 (January 16, 2014) for home- and community-based services (see 0940-05-06-.09). Other changes made in the proposed rules are designed to address best practices and to safeguard the health, safety and well-being of all individuals served by a TDMHSAS licensed provider.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

The proposed rules do not unnecessarily create any entry barriers or other effects that stifle entrepreneurial activity or curb innovation.

Economic Impact Statement

(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.

These rules apply to all TDMHSAS licensed agencies in Tennessee. A little under one-half of the licensed providers in Tennessee, approximately 445 providers, qualify as small businesses (fewer than 50 employees).

(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.

The proposed rules impose no new reporting requirements or costs on any TDMHSAS licensed providers. The proposed rules do require a TDMHSAS licensed provider to develop policies and procedures so as to ensure that employees and volunteers comply with procedures for detection, prevention, and reporting of communicable diseases to the Tennessee Department of Health

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

The proposed rules will have a minimal impact on small businesses and consumers.

(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.

The minimal regulations, as outlined in these proposed rules, are mandated by federal and state law changes. These rules are being amended to align with those federal and state law changes and are the least intrusive and least costly means of achieving that purpose and objective.

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

Federal: The provisions of the proposed rules dealing with federal home- and community based setting rules align with the provisions of 79 FR 2947 (January 16, 2014).

State: The proposed rules are similar to how other state counterparts license facilities that provide mental health and substance abuse services.

(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.

Exemption of small businesses from the proposed rules would result in different standards of care for persons who seek mental health and/or substance abuse services in Tennessee. By requiring all TDMHSAS licensed providers to function under the same standards, the State ensures that some of its most vulnerable citizens are receiving effective, efficient, and standardized care.

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)

These rules do not have a projected 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;

Legislation passed during the 2015 legislative session of the 109th General Assembly and enacted as Public Chapter 153 of 2015 (SB112/HB101), in part, revised T.C.A. § 33-2-404 to give TDMHSAS "the authority to amend its rules for licensure as needed to be consistent with the federal home-based and community-based settings final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014), including the authority to differentiate licensure requirements for any entity contracted to provide Medicaid-reimbursed home- and community-based services in order to allow the facility or entity to comply with federal rule and continue to receive Medicaid reimbursement for home- and community-based services." This statutory change necessitated changes to Tennessee Administrative Rule Chapter 0940-05-06, Minimum Program Requirements for All Services and Facilities. With the changes set out in this Rulemaking Hearing Rule (see 0940-05-06-.09), 0940-05-06 compiles with both Public Chapter 153 of 2015 and 79 FR 2947 (January 16, 2014) by addressing the rights and obligations that must be in place for individuals receiving home- and community-based services that are reimbursed by Medicaid. Additionally, these new rules provide protection to clients of all services and facilities licensed by TDMHSAS by requiring licensed providers to establish a policy that states that licensed providers will not allow persons placed on the Tennessee Department of Health's Abuse Registry or the Tennessee Sex Offender Registry to volunteer for a service or facility licensed by TDMHSAS (see 0940-05-06-.02(l)). Furthermore, various portions of the new rules address financial stewardship of a client's money and how that money is used to provide services (0940-05-06-.03(1); 0940-05-06-.03(2); 0940-05-06-.03(3); 0940-05-06-.03(4); 0940-05-06-.03(5); 0940-05-06-.03(6)). Additional changes were made to address housekeeping matters and to ensure compliance with current best practices.

(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;

TCA §§ 4-3-1601, 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-403, 33-2-404, 33-2-405, 33-2-407, 33-2-408, 33-2-409, 33-2-412, 33-2-417, etc. (Tennessee statutes creating TDMHSAS and granting TDMHSAS and its commissioner certain authority, including the authority to promulgate rules and regulations regarding licensure and compliance, etc.).

Public Chapter 153 of 2015 – Tennessee legislation amending TCA § 33-2-404 by creating subsection (b) and allowing for licensure rules to be amended and brought in compliance with federal rule changes.

79 FR 2947 (January 16, 2014) - federal law codification of the HCBS Settings 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;

As of August 2016, TDMHSAS licenses 1,479 sites across Tennessee. This includes personal support services agencies, mental health facilities, and alcohol and drug facilities across the state.

Provisions specifically addressing HCBS rights and obligations will only affect those TDMHSAS licensed providers who accept Medicaid-reimbursed home and community-based services.

Housekeeping items affect all TDMHSAS licensed providers.

TDMHSAS is not aware of any stakeholders in direct opposition or support of this rule amendment proposal.

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

TDMHSAS has no knowledge of any opinions of the attorney general and reporter or any judicial ruling that directly relates to this particular rule proposal.

(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;

TDMHSAS estimates this rule will have no impact on state and local revenues and/or expenditures.

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

Kurt Hippel, TDMHSAS, Director of the Office of Legislation and Rules

Alex R. King, TDMHSAS, Director of the Office of Licensure

Cynthia Tyler, TDMHSAS, Assistant Commissioner of the Division of Administrative and Regulatory Services

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

Kurt Hippel, TDMHSAS, Director of the Office of Legislation and Rules

Alex R. King, TDMHSAS, Director of the Office of Licensure

Cynthia Tyler, TDMHSAS, Assistant Commissioner of the Division of Administrative and Regulatory Services

(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

Kurt Hippel, TDMHSAS, Director of the Office of Legislation and Rules
500 Deaderick Street, 5th Floor, Andrew Jackson Building
Nashville, TN 37243
615-532-9439
Kurt.Hippel@tn.gov

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500 Deaderick Street, 6th Floor, Andrew Jackson Building
Nashville, TN 37243
615-532-6586
Cynthia.Tyler@tn.gov

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

None.

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Email: publications.information@tn.gov

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Sequence Number: 11-16-16
Rule ID(s): 6380
File Date: 11/30/16
Effective Date: 2/28/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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

Agency/Board/Commission:	Tennessee Department of Mental Health and Substance Abuse Services
Division:	Office of Licensure
Contact Person:	Kurt Hippel, Director, Office of Legislation and Rules
Address:	Andrew Jackson Building, 5th Floor 500 Deaderick Street Nashville, TN
Zip:	37243
Phone:	615-532-6520
Email:	Kurt.Hippel@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0940-05-06	Minimum Program Requirements for All Services and Facilities
Rule Number	**Rule Title**
0940-05-06-.01	Governance Requirements for All Services and Facilities
0940-05-06-.02	Policies and Procedures for All Services and Facilities
0940-05-06-.03	Financial Management for All Services and Facilities
0940-05-06-.04	Personnel Requirements for All Services and Facilities
0940-05-06-.05	Individual Client Record Requirements for All Services and Facilities
0940-05-06-.06	Client Rights in All Services and Facilities
0940-05-06-.07	Modification or Limitation of All Clients' Rights
0940-05-06-.08	Modification or Limitation of an Individual Client's Rights
0940-05-06-.09	Services or Facilities Providing Home and Community Based Services
0940-05-06-.10	Reserved

(Place substance of rules and other info here. Please be sure to include a detailed explanation of the changes being made to the listed rule(s). Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Chapter 0940-05-06
Minimum Program Requirements for All Facilities

Chapter 0940-05-06 Minimum Program Requirements for All Facilities is being repealed and rewritten including its table of contents.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

Chapter 0940-05-06
Minimum Program Requirements for All Services and Facilities

New Rule

New Table of Contents

0940-05-06-.01 Governance Requirements for All Services and Facilities
0940-05-06-.02 Policies and Procedures for All Services and Facilities
0940-05-06-.03 Financial Management for All Services and Facilities
0940-05-06-.04 Personnel Requirements for All Services and Facilities
0940-05-06-.05 Individual Client Record Requirements for All Services and Facilities
0940-05-06-.06 Client Rights in All Services and Facilities
0940-05-06-.07 Modification or Limitation of All Clients' Rights
0940-05-06-.08 Modification or Limitation of an Individual Client's Rights
0940-05-06-.09 Services or Facilities Providing Home and Community Based Services
0940-05-06-.10 Reserved

0940-05-06-.01 Governance Requirements for All Services and Facilities.

(1) The governing body must ensure that the facility complies with all applicable federal, state, and local laws, ordinances, rules, and regulations.

(2) The governing body must ensure that the facility is administered and operated in accordance with written policies and procedures.

(3) The governing body must exercise general direction over the facility and establish policies governing the operation of the facility and the welfare of the individuals served.

(4) The governing body must designate an individual responsible for the operation of the facility.

(5) The governing body must ensure that the licensed facility serves only persons whose placement will not cause the facility to violate its licensed status and capacity based on the facility's distinct licensure category, the facility's life safety occupancy classification, and the required staffing ratios, if any.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-304, 33-2-405 and 33-2-407. ~~T.C.A. § 33-2-504~~

0940-05-06-.02 Policies and Procedures for All Services and Facilities.

(1) The governing body must ensure that a written policies and procedures manual is maintained. The manual must include the following elements:

(a) A description of each facility service provided by the licensee. The description must include the hours of operation and admission and discharge criteria and rules for service

DRAFT

recipients, if any;

(b) An organizational chart or a statement which clearly shows or describes the lines of authority between the governing body, the chief executive officer, and the staff;

(c) ~~A policy~~ Policies and procedures which ensure that someone is delegated the authority to act in the absence of the individual responsible for the operation of the facility;

(d) A schedule of fees currently charged to the client, if any, for all services provided by the licensee, including a refund policy. The schedule shall include:

1. The fee or fees for each service, including any additional charges for services not covered by the basic service fee;

2. The process by which licensee will apply any governmental or other funds or donations to the fee or fees for services. This may include, but not be limited to, use of a client's food stamps as payment for his or her meals; use of federal, state or other funds or donations to finance all or part of the client's cost for services; or payments made to the agency for a client's participation in an employment or rehabilitation program to finance the cost of services provided; and,

3. The total cost of services to the client;

(e) A statement of client rights and the grievance procedures to be followed when a suspected violation of client rights has been reported. This statement shall, at a minimum, include those client rights found in Rule 0940-05-06-.06 and, if applicable, 0940-05-06-.09;

(f) ~~A policy~~ Policies and procedures which ensure the confidentiality of client information and which include the following provisions:

1. The facility staff must comply with applicable confidentiality laws and regulations (e.g. T.C.A. ~~§33-3-104(10)~~ § 33-3-103; federal alcohol and drug regulations found at 42 C.F.R. Part 2);

2. The client must not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's facility services;

3. The client must not be required to perform in public gatherings; and,

4. Identifiable photographs of the client must not be used without the written and signed consent of the client or the client's guardian;

(g) A medication administration policy and control procedures for facilities involved in the administration of medication to clients or facilities that supervise the self-administration of medication by the client;

(h) The plans and procedures to be followed in the event of fire evacuation and natural disaster emergencies;

(i) The plans and procedures to be followed in the event of an emergency involving client care which will provide for emergency transportation of clients, emergency medical care, and staff coverage in such events;

(j) A policy which prohibits clients, except those who may be certified by the Department as peer or family support specialists and who are working at a facility in that capacity, from having any of the following responsibilities:

1. Responsibility for the care of other clients;

PRELIM

2. Responsibility for the supervision of other clients unless on-duty/on-site staff are present; and,

3. Responsibilities requiring access to confidential information;

(k) ~~A policy~~ Policies and procedures to be followed in the reporting and investigation of suspected or alleged abuse ~~or neglect of clients~~, neglect, or other critical incidents, whether perpetrated by or on the client by staff, other clients or outside parties. The procedures must include provisions for corrective action, if any, to be taken as a result of such reporting and investigation. These procedures shall also include provisions for reporting incidents or allegations to the department and, when necessary other appropriate state agencies and local law enforcement;

(l) ~~A policy~~ Policies and procedures which ensure that volunteers, if used by the facility, are in a supportive capacity and are under the supervision of appropriate designated staff members. A record should be maintained on each volunteer which shall include the volunteer's status on the Tennessee Sexual Offender Registry (Sex Offender Registry). A volunteer included on either the Abuse Registry or the Sex Offender registry shall not work in an agency providing services to vulnerable adults or children. It is recommended that the volunteer's record also include a criminal background check and references.

(m) ~~A policy~~ Policies and procedures which govern the use of client behavior-management techniques, if used by the facility;

(n) A policy regarding the use of human subjects in research, if the facility is involved or planning to be involved in such research, which includes procedures for the following:

1. Identification of subjects, projects and staff;

2. Provisions to protect the personal and civil rights of the subjects;

3. Obtaining the consent of the subject involved;

4. Assurance that all research projects are conducted under the direction and supervision of professional staff qualified by education and experience to conduct research;

5. Emergency guidelines for problems that may develop during research activities; and,

6. Appointment of a facility representative to act as a coordinator of the research activities;

(o) Policies and procedures for ensuring that employees and volunteers comply with procedures for detection, prevention and reporting of infectious and communicable diseases to the Tennessee Department of Health;

(p) Policies and procedures ensuring that employees and volunteers practice infection control procedures and standard precautions to protect the service recipient from infectious diseases;

(q) Policies and procedures regarding coordination of care with the client's other health, mental health, social, educational and residential service providers;

(r) Policies and procedures describing the process by which the licensee will comply with Rule 0940-05-06-.03 Financial Management of All Services and Facilities, including process by which the client or client's representative may register a complaint with the licensee to address the licensee's holding and disbursement of client's funds or property;

REVISED

(s) Policies and procedures that address inappropriate relationships of a business, social, professional, romantic and sexual nature between the client and the licensee, its staff and/or volunteers; and,

(t) Policies and procedures that address sanctions against an employee for violations of the licensee's policies and procedures and a process by which a complaint or grievance may be registered with the licensee.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-302, 33-2-304, 33-2-404, 33-2-405 and 33-2-407. ~~T.C.A. § 33-2-504~~

0940-05-06-.03 Financial Management of All Services and Facilities.

(1) The licensee holding or receiving funds or property for the service recipient as trustee or representative payee will adhere to all laws, state and federal, that govern his fiduciary position and relation to the client. A licensee may not retaliate against an employee, volunteer or other individual who reports a violation of the licensee's fiduciary obligation to the client.

(2) The licensee ~~must~~ shall prohibit staff, volunteers and proprietors from soliciting or borrowing money or property from clients.

(3) The licensee ~~must~~ shall ensure that all money received, held and/or disbursed ~~in the client's~~ on behalf of the client is for the strict, personal benefit of the client.

(4) The licensee ~~must~~ shall not mix ~~its~~ funds with those of the client. The licensee shall maintain a separate account in a federally insured financial institution for the deposit and/or disbursement of client funds.

(5) The licensee ~~must~~ shall not take funds or property of the client for the ~~facility's own~~ licensee's personal or organizational use or gain.

~~(6) The licensee must provide an annual reporting to the client or the client's parent or guardian of the client's funds being held and disbursed by the facility.~~

(6) The licensee shall maintain a written account of all monies received or disbursed on behalf of the client. No less than annually the licensee shall provide the client or the client's legal representative a report of all funds held and disbursed on behalf of the client.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-302, 33-2-304, 33-2-404, 33-2-405 and 33-2-407. ~~T.C.A. § 33-2-504~~

0940-05-06-.04 Personnel Requirements for All Services and Facilities.

(1) A job description must be maintained which includes the employment requirements and the job responsibilities for each facility staff position.

(2) A personnel record must be maintained which verifies that each employee meets ~~the~~ their respective employment requirements for the staff position held. Included in the employee's personnel records shall be evidence of a criminal background check as specified in T.C.A. § 33-2-1202; the employee's status on the Tennessee Elderly and Vulnerable Abuse Registry maintained by the Department of Health; and the employee's status on the Tennessee Sexual Offender Registry; the employee's date of birth; social security number; and records of any disciplinary action.

(3) Annual training and development activities ~~which are appropriate in assisting~~ that assist the staff in meeting the needs of the clients ~~being served must be provided for each staff member. The provision of such activities must be evidenced by documentation in the facility records.~~ All direct care staff shall receive training in fire evacuation procedures. The agency shall document all training and development activities in which an employee participated in the employee's

personnel records.

(4) Training and development activities which are appropriate in assisting volunteers (if used by the facility) in implementing their assigned duties must be provided for each volunteer. The provision of such activities must be evidenced by documentation in the facility's records.

(5) Direct-services staff members must be competent persons aged eighteen (18) years of age or older.

(6) An employee's professional license or certification, including, but not limited to, certification as a peer or family support specialist, as required by the job description or State law.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407. ~~T.C.A. § 33-2-504~~

0940-05-06-.05 Individual Client Record Requirements for All Services and Facilities.

The governing body must ensure that an individual ~~client~~ record is maintained, in electronic or hard copy format, for each client being served and which minimally includes the following information:

(1) The name and social security number of the client;

(2) The address of the client or, for residential treatment programs, a permanent or previous address;

(3) The telephone number of the client;

(4) The sex of the client;

(5) The date of the client's birth;

(6) The date of the client's admission to the facility;

(7) The source of the client's referral to the facility;

(8) If applicable, legal documents affirming that the client has a court-appointed legal representative and the name, address and telephone number of the legal representative;

(9) The name, address, and telephone number of a family representative and/or an emergency contact person;

(10) If the facility charges fees for its services, a ~~written~~ fee schedule, as described in Rule 0940-05-06-.02(1)(d), shall be dated, completed and signed by the client (or the client's legal representative) prior to provision of any services other than emergency services. The licensee should complete a new fee schedule when there is a change in the amount of fees, the services provided, or additional charges for which the client is responsible are incurred; ~~This agreement must include at least the following information:~~

~~1. The fee or fees to be paid by the client;~~

~~2. The services covered by such fees, and~~

~~3. Any additional charges for services not covered by the basic service fee;~~

(11) When appropriate, informed, signed and dated consent and authorization forms for the release or ~~obtainment~~ obtaining of information ~~about~~ from the client. These forms shall be in compliance with state and federal confidentiality laws and include at least the following information:

(a) Name and title of the person or organization to or from who disclosure is to be made;

(b) The signature of the client or the client's legal representative;

(c) The purpose of the disclosure;

DRAFT

(d) The extent and nature of information to be disclosed;

(e) A statement that the content is subject to revocation at any time except to the extent that action has already been taken in reliance thereon and a specified date, event or condition upon which the consent will expire without express revocation; and,

(f) The date on which the consent is signed;

(12) Documentation that the client or someone legally acting on behalf of the client has been informed of the client's rights and responsibilities and of the facility's general rules affecting the client; and,

(13) A written account of all monies received or disbursed on behalf of the client and a copy of the annual report on the use and disbursement of client funds as required by 0940-05-06-.03(6).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-304, 33-2-404, 33-2-405 and 33-2-407. ~~T.C.A. § 33-2-504~~

0940-05-06-.06 Client Rights in All Services and Facilities.

(1) The following rights ~~must~~ shall be afforded to all clients by all licensees and are not subject to modification:

(a) Clients have the right to be fully informed before or upon admission about their rights and responsibilities and about any limitation on these rights imposed by rules of the facility. The facility must ensure that the client is given ~~oral and/or written rights~~ information about his or her rights that shall include at least the following:

1. A statement of the specific rights guaranteed the client by these rules and applicable state and federal laws;

2. A description of the facility's complaint and grievance procedures;

3. A listing of all available advocacy services;

4. A copy of all general facility rules and regulations for clients; and,

5. The information must be presented in a manner or format that promotes understanding by clients of their rights and an opportunity must be given to clients to ask questions about the information. If a client who is unable to understand this information at the time of admission later becomes able to do so, the information must be presented to the client at that time. If a client is likely to continue indefinitely to be unable to understand this information, the facility must promptly attempt to provide the required information to a parent, guardian, or other appropriate person or agency responsible for protecting the rights of the client;

(b) Clients have the right to voice grievances to staff of the facility, to the licensee, and to outside representatives of their choice with freedom from restraint, interference, coercion, discrimination or reprisal;

(c) Clients have the right to be treated with consideration, respect and full recognition of their dignity and individuality;

(d) Clients have the right to be protected by the licensee from neglect; from physical, verbal and emotional abuse (including corporal punishment); and from all forms of misappropriation and/or exploitation;

(e) Clients have the right to be assisted by the facility in the exercise of their civil rights;

(f) Clients have the right to be free of any requirement by the facility that they perform

PROPOSED

services which are ordinarily performed by facility staff;

(g) If residential services are provided, clients must be allowed to send personal mail unopened and to receive mail and packages which may be opened in the presence of staff when there is reason to believe that the contents thereof may be harmful to the client or others;

(h) Clients have the right to privacy while receiving services;

(i) Clients have the right to have their personal information kept confidential in accordance with state and federal confidentiality laws;

(j) Clients have the right to ask the facility to correct information in their records. If the facility refuses, the client may include a written statement in the records of the reasons they disagree;

(k) Clients have the right to be informed about their care in a language they understand; and,

(l) Clients have the right to vote, make contracts, buy or sell real estate or personal property, or sign documents, unless the law or a court removes these rights.

(2) The following rights must be afforded to all clients by all licensed facilities unless modified in accordance with rules 0940-05-06-.07 or 0940-05-06-.08:

(a) Clients have the right to participate in the development of the client's individual program or treatment plans and to receive sufficient information about proposed and alternative interventions and program goals to enable them to participate effectively;

(b) Clients have the right to participate fully, or to refuse to participate, in community activities including cultural, educational, religious, community services, vocational and recreational activities;

(c) If residential services are provided, clients must be allowed to have free use of common areas in the facility with due regard for privacy, personal possessions, and the rights of others;

(d) ~~If residential services are provided,~~ Clients have the right to be accorded privacy and freedom for the use of bathrooms ~~at all hours~~ when needed;

(e) Clients shall be permitted to retain and use personal clothing and appropriate possessions including books, pictures, games, toys, radios, arts and crafts materials, religious articles, toiletries, jewelry and letters;

(f) If residential services are provided and if married clients reside in the facility, privacy for visits by spouses must be ensured, and if both spouses are clients residing in the facility, they must be permitted to share a room;

(g) If residential services are provided, clients have the right to associate and communicate privately with persons of their choice including receiving visitors at reasonable hours; and,

(h) If residential services are provided, persons supported have the right to be given privacy and freedom in the use of their bedroom/sleeping area.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405, 33-2-407, and 33-3-113. ~~T.C.A. § 33-2-504~~

0940-05-06-.07 Modification or Limitation of All ~~Rights of~~ Clients' Rights ~~by Facility Rules, Policies, or Procedures~~.

(1) The rights of all clients ~~of~~ in a facility may only be modified or limited under the following

conditions:

(a) It is demonstrated and documented that a legitimate program purpose cannot reasonably be achieved without such modification or limitation;

(b) No modification or limitation may be made solely for the convenience of facility staff or be more stringent than is necessary to achieve the demonstrated purpose;

(c) Clients or representatives of clients, as appropriate, must be fully informed of proposed facility rules, policies or procedures modifying or limiting client rights, and of the reasons therefore and must be given an opportunity to object; to propose alternatives; and to consult with family, friends and/or advocacy agencies prior to their implementation;

(d) Facility rules, policies or procedures which modify or limit client rights must be in writing and posted in a conspicuous place. If the clients receive services in their homes, they and/or their legally-appointed representative shall be provided with a written copy of the proposed rules, policies or procedures; and,

(e) The facility is not a Medicaid-reimbursed home and community based service (HCBS) provider required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407. ~~T.C.A. § 33-2-504~~

0940-05-06-.08 Modification or Limitation of an Individual Client's Rights.

(1) The rights of an individual client in a facility may only be modified or limited under the following conditions:

(a) It is demonstrated and documented that such modification or limitation is necessary because of the individual client's physical or mental condition or inappropriate behavior;

(b) To achieve a legitimate goal in the client's individual program plan;

(c) No modification or limitation may be made solely for the convenience of staff or be more stringent than is necessary;

(d) The client ~~or a representative of the client~~ and/or the client's legally-appointed representative, as appropriate, must be fully informed of the proposed limitation or modification and must be given an opportunity to object, to propose alternatives, and to consult with family, friends, and/or advocacy agencies prior to implementation of the modifications or limitations;

(e) Any modifications or limitations and the reasons therefore must be documented in the client's record; and,

(f) The facility is not a Medicaid-reimbursed home and community based service (HCBS) provider required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407. ~~T.C.A. § 33-2-504~~

0940-05-06-.09 ~~Reserved~~ Services or Facilities Providing Home and Community Based Services.

A facility contracted to provide Medicaid-reimbursed home- and community-based services (HCBS) is required to comply with the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

PROPOSED

(1) Medicaid-reimbursed individuals receiving HCBS services shall be afforded the rights referenced in 42 C.F.R. §441.301(c)(4) of the HCBS Settings Rule.

(2) The clients of an agency contracted to provide Medicaid-reimbursed HCBS residential services have the right to associate and communicate privately with persons of their choice including receiving visitors at any time.

(3) The rights of persons supported in a facility receiving HCBS services may only be modified or limited as provided in the federal home-based and community-based setting final rule, published in the Federal Register at 79 FR 2947 (January 16, 2014).

(a) Any modifications or limitations must be documented in the client's record or service plan and must:

1. Identify a specific and individualized assessed need;

2. Document the positive interventions and supports used prior to any modifications to the person-centered service plan;

3. Document less intrusive methods of meeting the need that have been tried but did not work;

4. Include a clear description of the condition that is directly proportionate to the specific assessed need;

5. Include regular collection and review of data to measure the ongoing effectiveness of the modification;

6. Include established time limits for periodic reviews to determine if the modification is still necessary or can be terminated;

7. Include the informed consent of the client or legal representative; and,

8. Include an assurance that interventions and supports will cause no harm to the client.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

0940-05-06-.10 Reserved.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-305, 33-1-309, 33-2-301, 33-2-302, 33-2-404, 33-2-405 and 33-2-407.

PROPOSED

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health and Substance Abuse Services (board/commission/ other authority) on 10/6/16 (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: 03/23/16

Rulemaking Hearing(s) Conducted on: (add more dates). 05/19/16

Date: 10/6/16

Signature:

Name of Officer: E. Douglas Varney

Title of Officer: Commissioner

SUE B. HUNT
STATE OF TENNESSEE NOTARY PUBLIC
COUNTY OF DAVIDSON

Subscribed and sworn to before me on: October 6, 2014

Notary Public Signature: Sue B. Hunt

My commission expires on: May 8, 2017

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

Herbert H. Slatery III
Attorney General and Reporter

11/15/2016
Date

Department of State Use Only

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PUBLICATIONS

Filed with the Department of State on: 11/30/16

Effective on: 2/28/17

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health Services and Development Agency
DIVISION:	
SUBJECT:	Fee Increase; Certificate of Need Program; Rules of Procedure for Hearing Contested Cases
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 68-11-1601 et seq., 68-11-1605, 68-11-1609, and 68-11-1610
EFFECTIVE DATES:	February 13, 2017 through June 30, 2017
FISCAL IMPACT:	Chapter 1043 of the Public Acts of 2016 "Act" eliminates approximately half of the agency's revenue, while requiring the agency to adjust fees to become self-sufficient. This requires the agency to look at budget cuts and adjust fees to cover the rest of its $1.2 million budget. The agency's fiscal note detailed the revenue foregone by the Act, and noted that the only way to make the bill revenue-neutral would be significant fee increases.
STAFF RULE ABSTRACT:	This rulemaking hearing rule raises the filing fee for a certificate of need application from two dollars and twenty-five cents ($2.25) per one thousand dollars ($1,000) of the estimated capital expenditure involved to five dollars and seventy-five cents ($5.75) per one thousand dollars ($1,000) of the estimated capital expenditure involved; the minimum filing fee from three thousand dollars ($3,000) to fifteen thousand dollars ($15,000); and the maximum filing fee from forty-five thousand dollars ($45,000) to ninety-five thousand dollars ($95,000). The rule also clarifies that the agency may recoup certain costs in contested cases that are voluntarily dismissed; Tennessee Code Annotated, Section 68-11-1610, provides "All costs of the contested case proceeding, including the administrative law judge's costs and deposition costs, such as expert witness fees, shall be assessed against the losing party in the contested case. If there is more than one losing party, the costs shall be divided equally among the losing parties. No costs shall be assessed against the agency."

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

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. These rules do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.
2. These rules have clarity, conciseness, and lack of ambiguity.
3. These rules do not establish flexible compliance and reporting requirements for small businesses.
4. These rules do not establish friendly schedules or deadlines for compliance and reporting requirements for small businesses.
5. These rules do not consolidate or simplify compliance or reporting requirements for small businesses.
6. These rules do not establish performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and
7. These rules do not create unnecessary entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs. The examination filing fees in these rules were adopted by the Health Services and Development Agency members after running different scenarios to determine the minimum fees necessary to provide for the cost of administering the implementation and enforcement of this state's certificate of need laws while being fiscally self-sufficient, as is required by Chapter 1043 of the Public Acts of 2016.

STATEMENT OF ECONOMIC IMPACT ON SMALL BUSINESSES

1. Most certificate of need applicants are either hospitals, surgery centers, outpatient diagnostic centers, nursing homes, mental health hospitals, intellectual disability institutional habilitation facilities; home care organizations, or physicians' practices. Most applicants are not small businesses. Since there is much money to be made from many services requiring a certificate of need, which applicants should be considered small businesses is a grey area (e.g., certain physicians' practices, certain home health agencies). The smallest physicians' practices and the smallest home care organization applicants would feel the effect of increased fees the most, whereas it is expected that larger applicants could easily absorb increased fees while appreciating the trade-off with Chapter 1043 of the Public Acts of 2016's otherwise reducing the number of services requiring applications.
2. The proposed rule should not affect projected reporting, recordkeeping and other administrative costs, including the type of professional skills necessary for preparation of the report or record.
3. The probable effect on impacted small businesses and consumers should be minimal, because few potential applicants are so small as to be deterred by fee increases in the proposed rule, given the relation to capital expenditures of most health care projects. If consumers need services that require a certificate of need, there is little doubt that an applicant would come forward, due to the profitability of most covered services.
4. There is no less burdensome, less intrusive or less costly alternative method of achieving the purpose and objective of the proposed rule that may exist, because it is necessary to comply with Chapter 1043 of the Public Acts of 2016.
5. There is no federal counterpart, and the reformation of this state's certificate of need laws through the Act makes comparisons to other states "apples and oranges."
6. The possible exemption of small businesses from all or any part of the requirements contained in the proposed rule would necessitate the fees to be increased further on remaining applicants.

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 proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The rule raises the filing fee for a certificate of need application from $2.25 per $1,000 of the estimated capital expenditure involved to $5.75 per $1,000 of the estimated capital expenditure involved, the minimum filing fee from $3,000 to $15,000, and the maximum filing fee from $45,000 to $95,000. It also clarifies that the agency may recoup certain costs in contested cases that are voluntarily dismissed; T.C.A. § 68-11-1610 provides "All costs of the contested case proceeding, including the administrative law judge's costs and deposition costs, such as expert witness fees, shall be assessed against the losing party in the contested case. If there is more than one losing party, the costs shall be divided equally among the losing parties. No costs shall be assessed against the agency."

(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;

Chapter 1043 of the Public Acts of 2016 ("Act") amended the Tennessee Health Services and Planning Act of 2002, T.C.A. § 68-11-1601, et seq. (CON statute), which amendments included the elimination of certain activities from the state's certificate of need (CON) requirement and the significant revenue generated by those applications annually. The Act requires the agency to develop quality standards and enforce annual reporting requirements on such standards for applications approved after July 1, 2016, while providing no funding for such activities. The Act requires the agency to be fiscally self-sufficient, which means no longer receiving monies from the General Fund above fees generated by CON applications. The Act requires the agency to prescribe fees in an amount that provides for the cost of administering the implementation and enforcement of the CON statute by the agency, and adjust fees as necessary to provide that the account is fiscally self-sufficient.

(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;

CON applicants and litigants

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

N/A

(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;

Chapter 1043 of the Public Acts of 2016 ("Act") eliminates approximately half of the agency's revenue, while requiring the agency to adjust fees to become self-sufficient. This requires the agency to look at budget cuts and adjust fees to cover the rest of its $1.2 million budget. The agency's fiscal note detailed the revenue foregone by the Act, and noted that the only way to make the bill revenue-neutral would be significant fee increases.

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

Melanie Hill, Executive Director, and Jim Christoffersen, General Counsel

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

Melanie Hill, Executive Director, and Jim Christoffersen, 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

Andrew Jackson Bldg., 9th Fl., 502 Deaderick St., Nashville, TN 37243 (615) 741-2364 Melanie.hill@tn.gov jim.christoffersen@tn.gov

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

STATE OF TENNESSEE
HEALTH SERVICES AND DEVELOPMENT AGENCY
502 Deaderick Street, 9th Fl.
Nashville, Tennessee 37243
(615)741-2364

MEMORANDUM

RE: RESPONSE TO ORAL AND WRITTEN COMMENTS REGARDING THE PROPOSED RULEMAKING RULES AMENDING 0720—10—.03 AND 0720—13—.02

DATE: 11/2/2016

1. The proposed fees were calculated by the Health Services and Development Agency ("HSDA") members at its public hearing on 6/22/2016 to comply with Chapter 1043 of the Public Acts of 2016 ("Act"), with the goal being the minimum fees increases as necessary to provide for the cost of administering the implementation and enforcement of this state's certificate of need laws by while being fiscally self-sufficient. The fees are not intended to enhance the operating budget, which will be reduced by cost-cutting measures to help offset revenue lost due to the Act.

2. The proposed fees are not expected to jeopardize innovation and expansion of healthcare in Tennessee, because most applicants will not be deterred by the fees, and most services requiring a CON are lucrative. The proposed fees are still but a small fraction of the overall capital expenditure for most health care projects; new-entrants to the home care business are likely the most-affected, but the state health plan's criteria and standards that guide certificate of need decisions show no need for new home care organizations in most counties.

3. Projections were based upon looking back at a three-year Fiscal Year period; FY 15/16 was not one of the years examined, because the number of ICF/ID home applications necessitated by the closure of Greene Valley Developmental Center renders the numbers for that year a red-herring, as few ICF/ID applications are expected in the next several years. The number of applications received during the three-year Fiscal Year period reviewed by the HSDA members varied from the forties to sixties, which underscores unpredictability of revenue. HSDA members ran several scenarios at its 6/22/2016 meeting, to ensure its budget would be covered even during the leanest Fiscal Year year of the period examined.

4. The HSDA had not performed calculations as to whether the proposed $15,000 minimum fee equates roughly to ½ percent of a project cost at $2.6 million.

5. It is noted that an attendee commented that while there is uncertainty regarding the impact of the Act's changes to the certificate of need laws, the certainty of fewer things subject to review, and therefore fewer application fees, consultant fees, and appeal fees, provides greater certainty even with the higher fees on remaining applications.

6. The proposed rule changes only pertain to 0720—10—.03 and 0720—13—.02. Further Rulemaking is in the pipeline for other changes necessitated by the Act.

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Sequence Number: 11-07-16
Rule ID(s): 6357-6358
File Date: 11/15/16
Effective Date: 2/13/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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

Agency/Board/Commission:	Health Services and Development Agency
Division:	N/A
Contact Person:	Jim Christoffersen, General Counsel
Address:	Andrew Jackson Bldg., 9th Fl., 502 Deaderick St., Nashville, TN
Zip:	37243
Phone:	(615) 741-2364
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Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0720-10	Certificate of Need Program – Scope and Procedures
Rule Number	**Rule Title**
0720—10—.03	Standard Procedures for Certificate of Need

Chapter Number	**Chapter Title**
0720-13	Rules of Procedure for Hearing Contested Cases
Rule Number	**Rule Title**
0720—13—.02	Contested Cases Before Administrative Judges Sitting Alone

RULES
OF
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY

CHAPTER 0720-10
CERTIFICATE OF NEED PROGRAM – SCOPE AND PROCEDURES

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0720—10—.01 Private Professional Practice Exemption
0720—10—.02 Activities Requiring Notification — Miscellaneous Provisions
0720—10—.03 Standard Procedures for Certificate of Need
0720—10—.04 Emergency Certificate of Need
0720—10—.05 Consent Calendar
0720—10—.06 Expiration, Revocation, and Modification of Issued Certificates

0720—10—.03 STANDARD PROCEDURES FOR CERTIFICATE OF NEED.

(5) Examination Filing Fee.

(a) The amount of the initial fee shall be equal to ~~$2.25~~ $5.75 per $1,000 of the estimated capital expenditure involved, but in no case shall this fee be less than ~~$3,000~~ $15,000 nor more than $95,000. ~~$45,000.~~

(b) Any unpaid balance of litigation costs previously assessed against the applicant or any related entity of the applicant by the ~~Tennessee Health Facilities Commission or the~~ Tennessee Health Services and Development Agency may be offset against any filing fees paid. An application will not be deemed complete until the full filing fee, as well as such off set amounts, are paid in full.

(c) A final fee will be determined upon The Agency's receipt of the final project report. The amount of the final fee shall be the difference between the initial fee and the total fee based on actual final project costs, as such fee is calculated based on ~~$2.25~~ $5.75 per $1,000 of project costs, but in no case shall the total fee be less than ~~$3,000~~ $15,000 nor more than $95,000.~~$45,000.~~

RULES
OF
TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY

CHAPTER 0720-13
RULES OF PROCEDURE FOR HEARING CONTESTED CASES

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0720—13—.01 General Procedures for Contested Cases
0720—13—.02 Contested Cases Before Administrative Judges Sitting Alone
0720—13—.03 Agency Review of Initial Orders
0720—13—.04 Declaratory Orders

0720—13—.02 CONTESTED CASES BEFORE ADMINISTRATIVE JUDGES SITTING ALONE.

(2) In all cases, whether heard by an Administrative Judge sitting alone, or by the full Agency, the petitioner and other parties with the exception of The Agency shall bear the cost for all court reporters and transcriptions, and charges billed to the Agency for the Administrative Judge's work/time; in a contested case where the petition is dismissed,

whether voluntarily or involuntarily, the petitioning party or parties shall be considered a "losing party" under TCA 68-11-1610. The original transcript and one copy of the transcript for each member of The Agency shall be provided to The Agency by the other parties, if the case is to be reviewed by the full Agency. ~~Other costs of the proceeding, including the Administrative Judge's costs shall be assessed by The Agency in accordance with T.C.A §§ 68—11—l609 and 68—11—l610.~~

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Robert S. Doolittle	x				
Thom Mills	x				
Joe Grandy	x				
Corey Ridgway	x				
Martin D. Fleming	x				
Jaclyn Harding	x				
Lisa Jordan	x				
Keith Gaither	x				
Todd Taylor	x				
Paul Korth	x				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Health Services and Development Agency on 10/26/2016, 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: *09/01/2016*

Rulemaking Hearing(s) Conducted on: (add more dates). *10/24/2016*

Date: November 2, 2016

Signature: Melanie M Hill

Name of Officer: Melanie M. Hill

Title of Officer: Executive Director

RHONDA FINCHUM
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: November 2, 2016

Notary Public Signature: Rhonda Finchum

My commission expires on: May 6, 2019

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

11/10/2016
Date

Department of State Use Only

Filed with the Department of State on: 11/15/16

Effective on: 2/3/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Commerce and Insurance

DIVISION: Fire Prevention

SUBJECT: One and Two Family Dwellings and Townhouses

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-120-101

EFFECTIVE DATES: February 2, 2017 through June 30, 2017

FISCAL IMPACT: None

STAFF RULE ABSTRACT:

In 0780-02-23-.01 Definitions, these rulemaking hearing rules amend several definitions to provide greater clarity to the chapter and to organize the definitions alphabetically.

In 0780-02-23-.02 Adoption by Reference, the rules update the adopted code pertinent to one (1) and two (2) family dwellings. The rules replace Chapter 11 (Energy Efficiency) of the 2006 edition of the International Residential Code "IRC" with Chapter 11 of the 2009 edition of the IRC. The rules also adopt the 2009 edition of the International Energy Conservation Code "IECC" except for Sections 402.4.2.1 (Testing option) and, 403.2.2, (Sealing Mandatory). In 2010, Tennessee accepted federal funds offered through the American Recovery and Reinvestment Act "ARRA" and agreed to adopt an energy code for residential buildings that meets or exceeds the 2009 IECC as one of three (3) conditions attached to the federal funds. The adoption of the 2009 IECC code satisfies the condition regarding residential buildings.

In 0780-02-23-.03 Conflicts, the rules replace the term "code" with the term "standard(s)" for consistency with the statute providing authority for these rules. The substance of the rule is not changed.

In 0780-02-23-.05 Permits, the rules clarify an existing contract provision which allows issuing agents to charge up to fifteen dollars ($15.00) for issuing a building permit, correct a code citation, include the requirement that the building permit list the street address where the work will be performed, and clarify the procedure for authorization of an extension for a building permit upon written request and showing of just cause by the permit holder.

In 0780-02-23-.07 Inspections, the rules add the requirement that construction of attached garages, superior wall systems, and fire renovations of one (1) and two (2) family dwellings be inspected and clarify that the monolith pour foundation does not require a separate inspection.

In 0780-02-23-.08 Fees, the rules add a one hundred dollar ($100.00) permit fee for an inspection of a superior wall system.

In 0780-02-23-.09 Certificates of Occupancy, the rules edit the language for grammatical correction.

In 0780-02-23-.10 Dispute Resolution, the rules correct the first level of dispute as the Director over Residential Inspections and not the Director of Codes Enforcement. Electrical, Residential, and Marina Inspections is the section which reviews disputes for residential construction and not the Codes Enforcement Section which oversees the construction of commercial, education, or other specific use buildings.

In 0780-02-23-.11 Equivalencies, the rules edit the language for conformity with the other rules, specifically replacing the term "codes" with the term "standard(s)." The substance of the rule has not been changed.

In 0780-02-23-.12 Local Governments Enforcing Residential Building Codes, the rules do not change the substance of the rule but the current language has been amended to clarify the audit process for local governments enforcing their own residential standards.

In 0780-02-23-.15 Dwelling Units, the new rule clarifies the types of dwellings to which the residential building standards would apply and the types of dwellings to which the commercial building standards would apply.

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.

Prior to the public rulemaking hearing on November 2, 2015, regarding the adoption of amendments to Tenn. Comp. R. & Regs. 0780-02-23 One- and Two-Family Dwellings and Townhouses, the State Fire Marshal's Office conducted several public information meetings across the state to introduce the proposed amendments to the rules and updated energy code adoption with various stakeholders, which included local fire officials from the Fire Service Coalition, building officials with the Tennessee Building Officials Association (TBOA) as well as representatives from the Tennessee Home Builders Association representing contractors and the home construction industries. Representatives of these associations and entities appeared in support of this rulemaking process. The Department of Environment and Conservation (TDEC) was also notified of this rulemaking.

Mr. Terrence Cobb, Director of the Department of Codes & Building Safety for Metropolitan Government of Nashville-Davidson County, appeared and spoke at the rulemaking hearing. Mr. Cobb expressed support, in general, of the proposed rules but expressed concern the new definition in the rules for "transient occupant" which does not appear in the International Residential Code (IRC). He also recommended increasing the occupancy limit for rental units with transient occupants to twelve (12) persons from the proposed limitation of ten (10) transient occupants. Mr. Cobb also submitted a written comment at the hearing supporting his oral statements and his recommendation to increase the maximum occupancy limit for short term rental properties. Mr. Christopher Bainbridge, Director of Codes Enforcement, responded in the hearing on behalf of the State Fire Marshal's Office that the determination to set the occupancy limit for short term rentals at ten (10) occupants resulted from research into the 2015 International Building Code (IBC) and the occupancy limitations therein for boardinghouses. Mr. Joseph Underwood, Chief Counsel for the State Fire Marshal's Office, expressed to Mr. Cobb that his suggestion for increasing the number of allowable transient occupants to twelve (12) persons will be communicated to Commissioner Julie Mix McPeak, who as the State Fire Marshal, will ultimately make the final determination as to the number of allowable transient occupants.

Ms. Susan Ritter, Executive Vice President of the Tennessee Home Builders Association, spoke at the hearing expressing her support for the adoption of the proposed amendments to the rules along with the amendments to the energy efficiency requirements. She also expressed support for the increasing the number of allowable transient occupants from ten (10) to twelve (12) persons. Ms. Ritter also asked for clarification regarding whether the State Fire Marshal's Office was only adopting Chapter 11: Energy Efficiency of the 2009 IRC, or the 2009 International Energy Conservation Code (IECC). Mr. Underwood explained that the amended rules will adopt both Chapter 11 of the 2009 IRC and the 2009 IECC as required for compliance with the American Recovery and Reinvestment Act (ARRA) of 2010. Representatives of the State Fire Marshal's Office also noted Ms. Ritter's comments and support on the record.

Mr. Steve Mills appeared and spoke at the rulemaking hearing representing the TBOA and as Director of the Department of Building & Codes for the City of Hendersonville, TN. Mr. Mills was, generally, in favor of the proposed amendments and rule changes but articulated concerns about the audit process of exempt local jurisdictions by the State Fire Marshal's Office. Mr. Mills also inquired about the State Fire Marshal's Office determination of what constituted a transient occupant. Mr. Gary Farley, Director of the Electrical, Residential and Marina Inspections Section of the State Fire Marshal's Office, responded on the record that the audit would be conducted to determine that exempt local jurisdictions have adopted and are enforcing standards equal to or more stringent than those adopted in these rules. Mr. Farley also explained the State Fire Marshal's Office reasoning for establishing the threshold of ten (10) transient occupants for one- and two-family residences in response to the various issues presented by short term rental units and the application of the IRC instead of the more stringent IBC on such structures. Mr. Mills also submitted two (2) written comments in support of the adopting the 2009 IRC even though he would have preferred the State Fire Marshal's Office adopt the 2012 edition of the IRC as many local governments and municipalities have already adopted the 2012 IRC. Mr. Mills expressed his concern with the rules proposal relating to "transient occupancies" of one- and two-family dwellings and his support that the provisions of the adopted edition of the IRC provide adequate safety and fire protections for one- and two-family residences utilized as short or long term rental properties. Mr. Underwood noted Mr. Mills'

comments and explained that that the State Fire Marshal's interpretation of the building codes provides that long term rentals are those units which are rented for thirty (30) days or more, and short term rentals are those units which are rented for any period of time less than thirty (30) days.

Mr. Joshua Beasley, President of Honest Abe Log Homes in Moss, TN, and who also serves as Vice-Chair of the National Association of Home Builders (NAHB) Log & Timber Homes Council's Steering Committee, made a comment on the record at the hearing and also submitted written comments in support of the amendments to the rules. Mr. Beasley was, in particular, in support of the considerations in the rules applicable to the log homes industry and relevant energy standards.

Mr. Paul Peebles, Commercial Sales with Perma-Chink Systems, Inc. in Knoxville, TN, spoke in support of the proposed rules and the advantages of the construction materials and techniques utilized in log built homes. Mr. Peebles also inquired into the requirement for the adoption of updated code within seven (7) years to which agency representatives responded that this requirement is stated in statute, Tenn. Code Ann. § 68-120-101(b)(5)(A).

Mr. Lynn Scott, Sherwood Forest Resort in Pigeon Forge, TN, spoke in support of the rules but also requested that short term occupancy limit be increased from the proposed number of ten (10) transient occupants. Mr. Underwood communicated that this suggestion will be presented to the Commissioner for consideration.

Mr. Chris Wood, Vice President/Sales of Hearthstone, Inc. in Dandridge, TN, spoke about the issues confronted by the log home industry and support of adoption of the amendments and the 2009 IECC along with ICC 400 in regards to energy standards for log home construction. Mr. Wood also submitted a letter in support of the adoption of the 2009 IECC with the ICC 400 amendments.

Mr. Mark W. Goins, from the Town of Pleasant View, TN, asked if the log house market does not need to comply with the Energy Code then conventional builders will be at a disadvantage, which seems unfair. Mr. Underwood explained that an energy standard for log homes does exist, but the standards are not specifically listed in the adopted energy code. The standards are included as a table in the reference section, which requires the State Fire Marshal to adopt the table as an addendum to the adopted energy standards for residential log cabin structures. Mr. Underwood also clarified that the table being adopted will be unchanged from those required in the current rules.

Ms. Shellie Valentine, Sales and General Manager of Jim Barna Log & Timber Homes in Oneida, TN, submitted a written comment in support of the rules which utilizes ICC 400 language and the amendments concerning energy code compliance for log homes.

Mr. Robert Lambert, President of Natural Element Homes in Athens, TN, submitted a written comment in support of the ICC 400 amendments and the adoption of the rules in regards to their application to log homes.

Mr. Underwood clarified that the ICC 400 language and the addendum table regarding energy efficiency standards for log homes provided in the amended rules will remain unchanged from those standards adopted in the previous rules.

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. Types and estimated number of small businesses directly affected:

   Small businesses involved in residential construction or renovation projects will be affected by the promulgation of these rules.

2. Projected reporting, recordkeeping, and other administrative costs:

   There is no foreseeable alteration in the existing reporting or recordkeeping utilized by small businesses that will result from the promulgation of these rules.

3. Probable effect on small businesses:

   Small businesses involved in residential construction or renovation projects will be affected by the promulgation of these rules.

4. Less burdensome, intrusive, or costly alternative methods:

   The amended rules are not anticipated to impact small businesses more than the current rules provide. There has not been a less burdensome, intrusive or costly alternative method identified or recommended for use.

5. Comparison with federal and state counterparts:

   There are no federal counterparts to these rules. A majority of local government jurisdictions have adopted and are enforcing similar building standards as proposed under these rules. These rules will establish the statewide minimum building construction safety standards for one (1) and two (2) family dwellings and townhouses. Furthermore, T.C.A. § 68-120-101(b) provides local government bodies with the option to exempt out of the applicability of any and all residential building construction standards for their respective jurisdictions.

6. Effect of possible exemption of small businesses:

   There are no possible exemptions for small businesses to the requirements contained in these rules.

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 proposed rules may impact a local government if the local government has determined not to be exempt from the application of residential building construction standards for their respective jurisdiction pursuant to T.C.A. § 68-120-101(b).

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;

In 0780-02-23-.01 Definitions, the proposed rules amend several definitions to provide greater clarity to the chapter and to organize the definitions alphabetically. In 0780-02-23-.02 Adoption by Reference, the proposed rules update the adopted code pertinent to one (1) and two (2) family dwellings. The proposed rules replace Chapter 11 (Energy Efficiency) of the 2006 edition of the International Residential Code ("IRC") with Chapter 11 of the 2009 edition of the IRC. The rules also adopt the 2009 edition of the International Energy Conservation Code ("IECC") except for Sections 402.4.2.1 (Testing option) and, 403.2.2, (Sealing Mandatory). In 2010, Tennessee accepted federal funds offered through the American Recovery and Reinvestment Act ("ARRA") and agreed to adopt an energy code for residential buildings that meets or exceeds the 2009 IECC as one of three (3) conditions attached to the federal funds. The adoption of the 2009 IECC code satisfies the condition regarding residential buildings. In 0780-02-23-.03 Conflicts, the proposed rules replace the term "code" with the term "standard(s)" for consistency with the statute providing authority for these rules. The substance of the rule is not changed. In 0780-02-23-.05 Permits, the proposed rules clarify an existing contract provision which allows issuing agents to charge up to fifteen dollars ($15.00) for issuing a building permit, correct a code citation, include the requirement that the building permit list the street address where the work will be performed, and clarify the procedure for authorization of an extension for a building permit upon written request and showing of just cause by the permit holder. In 0780-02-23-.07 Inspections, the proposed rules add the requirement that construction of attached garages, superior wall systems and fire renovations of one (1) and two (2) family dwellings be inspected and clarify that the monolith pour foundation does not require a separate inspection. In 0780-02-23-.08 Fees, the proposed rules add a one hundred dollar ($100.00) permit fee for an inspection of a superior wall system. In 0780-02-23-.09 Certificates of Occupancy, the proposed rules edit the language for grammatical correction. In 0780-02-23-.10 Dispute Resolution, the proposed rules correct the first level of dispute as the Director over Residential Inspections and not the Director of Codes Enforcement. Electrical, Residential and Marina Inspections is the section which reviews disputes for residential construction and not the Codes Enforcement Section which oversees the construction of commercial, education or other specific use buildings. In 0780-02-23-.11 Equivalencies, the proposed rules edit the language for conformity with the other rules, specifically replacing the term "codes" with the term "standard(s)." The substance of the rule has not been changed. In 0780-02-23-.12 Local Governments Enforcing Residential Building Codes, the proposed rules do not change the substance of the rule but the current language has been amended to clarify the audit process for local governments enforcing their own residential standards. In 0780-02-23-.15 Dwelling Units, the new proposed rule clarifies the types of dwellings to which the residential building standards would apply and the types of dwellings to which the commercial building standards would apply.

(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;

In 2010, the State of Tennessee and Governor Bredesen agreed to adopt energy codes for residential and commercial buildings which meets or exceeds the 2009 International Energy Conservation Code (IECC) as part of the conditions for accepting federal funds offered through the American Recovery and Reinvestment Act (ARRA). The adoption of the 2009 IECC for residential buildings has been determined to satisfy part of the state's obligation for receipt of the recovery funds.

(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;

Home builders, log cabin builders, building officials, fire service coalition, municipal and county governments and citizens will be affected by this rule. The Tennessee Home Builders Association, the Tennessee Building Officials Association (TBOA) and the fire service coalition were consulted during and in support of this rulemaking process. The Department of Environment and Conservation (TDEC) was also notified of this rulemaking. Prior to the rulemaking hearing, the State Fire Marshal's Office assembled an advisory committee comprising of representatives from various stakeholder groups previously mentioned above for the purpose of considering amendments to the rules for one- and two-family dwellings and townhouses. The State Fire

Marshal's Office also conducted several public meetings across the state to discuss the proposed amendments to the rules and updated energy code adoption with various stakeholders which included local fire and building officials as well as representatives from the contractors and the home construction industries. These town hall style public meetings were held in Clinton, TN on Sept. 22, 2015 and Sevierville, TN on Sept 23, 2015. Other meetings were held in Franklin, TN on Oct. 1, 2015 and Jackson, TN on Oct. 19, 2015.

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

The Division of Fire Prevention is unaware of any opinion of the attorney general or any judicial ruling that directly relates to these rules.

(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;

The rules are not anticipated to result in an increase or decrease in state and local government revenues and expenditures.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, Department of Commerce and Insurance and Gary Farley, Director of Electrical, Residential and Marina Inspections, Department of Commerce and Insurance.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, Department of Commerce and Insurance and Gary Farley, Director of Electrical, Residential and Marina Inspections, Department of Commerce and Insurance.

(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

Joseph Underwood, 500 James Robertson Pkwy, Davy Crockett Tower, 8th Floor, Nashville, TN 37243, (615) 741-3899 Joseph.Underwood@tn.gov; Gary Farley, 500 James Robertson Pkwy, Davy Crockett Tower, 9th Floor, Nashville, TN 37243, (615) 741-7170 gary.farley@tn.gov.

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

The Division of Fire Prevention held several public meetings across the state prior to developing and proposing amendments to these rules. Additionally, the Division met with representatives of several stakeholder groups regarding the drafting of the proposed rules.

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Sequence Number: 11-02-16
Rule ID(s): 6356
File Date: 11/4/16
Effective Date: 2/2/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Division of Fire Prevention
Contact Person:	Joseph Underwood
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Revision Type (check all that apply):

X Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
0780-02-23	One and Two Family Dwellings and Townhouses
Rule Number	**Rule Title**
0780-02-23-.01	Definitions
0780-02-23-.02	Adoption By Reference
0780-02-23-.03	Conflicts
0780-02-23-.05	Permits
0780-02-23-.07	Inspections
0780-02-23-.08	Fees
0780-02-23-.09	Certificate of Occupancy
0780-02-23-.10	Dispute Resolution
0780-02-23-.11	Equivalencies
0780-02-23-.12	Local Government Enforcing Residential Building Codes and Standards
0780-02-23-.14	Local Government Opting Out Of These Provisions
0780-02-23-.15	Dwelling Units

RULES
OF
DEPARTMENTS OF COMMERCE AND INSURANCE
DIVISION OF FIRE PREVENTION

CHAPTER 0780-02-23
ONE AND TWO FAMILY DWELLINGS AND TOWNHOUSES

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0780-02-23-.04	Application	0780-02-23-.11	Equivalencies
0780-02-23-.05	Permits	0780-02-23-.12	Local Government Enforcing Residential Building Codes and Standards
0780-02-23-.06	Issuance of Permits in Violation of this Chapter	0780-02-23-.13	Permit Issuing Agents
0780-02-23-.07	Inspections	0780-02-23-.14	Local Governments Opting Out of These Provisions
		0780-02-23-.15	Dwelling Units

0780-02-23-.01 DEFINITIONS.

(1) ~~As used in this chapter, unless the context otherwise requires:~~ For the purposes of this chapter, the following definitions are applicable. All other definitions shall be as provided by the building and electrical codes and standards currently adopted by the Department.

(a) Addition means an increase in floor area or height of structure.

(~~a~~b) Construction means the erection of a new building containing a detached one (1) or two (2) family dwelling or townhouse, a change of occupancy of an existing building to a one (1) or two (2) family dwelling or townhouse or, after October 1, 2011, an addition to an existing detached one (1) or two (2) family dwelling or townhouse of thirty (30) square feet or more of interior space. The term "construction" shall not be construed to include excavation, site preparation or renovation. The term "construction" shall also not be construed to include the construction or placement of a modular or manufactured home under T.C.A. Title 68, Chapter 126; however, the term "construction" shall include any additional on-site construction to a modular or manufactured home.

~~(b) Division means the Division of Fire Prevention of the Department of Commerce and Insurance.~~

(~~c~~b) Department means the Department of Commerce and Insurance.

(d) Deputy State Building Inspector (DBI) means any person who meets the qualifications in T.C.A. § 68-120-101(f)(1) and (2) and is appointed by the Commissioner of Commerce and Insurance to perform inspections of one (1) and two (2) family dwelling and townhouse construction.

(e) Division means the Division of Fire Prevention of the Department of Commerce and Insurance.

(f) Fire renovation means a renovation required after a fire regardless of whether the walls must be reconstructed.

(~~e~~g) Local government means any city, county, town, municipal corporation, metropolitan government, or political subdivision of the state of Tennessee.

(~~f~~h) One (1) and two (2) family dwelling means a building that contains one (1) or two (2) dwelling units used, intended, or designed to be built, used, rented,

leased, let or hired out to be occupied for living purposes.

~~(g)~~i) Property owner's permit means permit applied for by a record owner of the property in order to build a one (1) family dwelling in which the owner intends to live upon completion.

~~(h)~~j) Renovation means interior or exterior painting, papering, tiling, carpeting, cabinets installation, counter tops installation, reroofing, residing, glazing or replacing windows or doors, floor finishing, repairs to existing chimneys, stairs, porches, underpinnings, exterior siding or roof and similar activities, additions of exterior space and additions of less than thirty (30) square feet of interior space.

~~(i~~k) Townhouse means a single-family dwelling unit constructed in a group of three (3) or more attached units ~~in which each unit~~ that extends from foundation to roof, separated by a two (2) hour fire resistance rated wall assembly, not more than three (3) stories in height, with a separate means of egress, and an open space ~~with a yard~~ or public way on at least two (2) sides.

(l) Transient occupant means a person who occupies a single dwelling unit for not more than thirty (30) days.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.02 ADOPTION BY REFERENCE.

(1) Unless otherwise provided by applicable law or the provisions of this chapter, the required minimum codes and standards for the construction of one (1) and two (2) family dwellings and townhouses, and additions thereto of thirty (30) square feet or more of interior space, in the Sstate of Tennessee shall be those prescribed in the following publications:

(a) International Residential Code (IRC), 2009 edition, published by the International Code Council, Inc. (ICC), 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C., 20001, except for:

1. Section R313.2, ~~One and Two Family Dwellings~~ Automatic Fire Sprinkler Systems, pursuant to T.C.A. § 68-12002-101(a)(8); and

2. Chapters 34-43, relating to Electrical.

(b) International Energy Conservation Code (IECC), 2009 edition, published by the International Code Council, Inc., (ICC), except for:

1. Section 402.4.2.1, Testing option; and

2. Section 403.2.2, Sealing Mandatory.

(~~b~~c) Amendments to the Codes and Standards:

~~1. As an alternative to Chapter 11 of the International Residential Code, the International Energy Conservation Code, 2006 edition, published by the International Code Council, Inc., 500 New Jersey Avenue Northwest, 6th Floor, Washington, D.C., 20001.~~

~~2. Section 313.1, Townhouse automatic fire sprinkler systems, is amended by adding ";however, an automatic fire sprinkler system shall not be required in a~~

~~three (3) unit townhouse with less than five thousand (5,000) gross square feet and three (3) or fewer stories if each unit is separated by a two (2) hour fire wall" after "installed in townhouses" and before "."~~.

~~3~~1. IRC, Section R314.4, Power Source, relating to Smoke Alarms, is amended by deleting Exception 2 and replacing it with the following language:

Exception 2. Interconnection and hard-wiring of smoke alarms in existing areas shall not be required where the alterations or repairs do not result in the removal of interior walls or ceiling finishes exposing the structure.

~~4~~2. IECC Table N1102.1, Insulation and Fenestration Requirements by Component, ~~Table 402.1.1~~ is amended by adding the following as footnote "l~~h~~": "Log walls complying with ICC400 and with a minimum average wall thickness of 5" or greater shall be permitted in Zone 3 when a Fenestration U-Factor of .50 or lower is used, a Skylight U-Factor of .65 or lower is used, a Glazed Fenestration SHGC of .30 or lower is used, a 90 AFUE Furnace is used, an 85 AFUE Boiler is used, and a 9.0 HSPF Heat Pump (heating) and 15 SEER (cooling) are used.

~~5~~.3. IECC Table N1102.1, Insulation and Fenestration Requirements by Component, ~~Table 402.1.1~~ is amended by adding the following as footnote "m~~i~~": "Log walls complying with ICC400 and with a minimum average wall thickness of 5" or greater shall be permitted in Zone 4 when a Fenestration U-Factor of .35 or lower is used, a Skylight U-Factor of .60 or lower is used, a 90 AFUE Furnace is used, an 85 AFUE Boiler is used, and a 9.0 HSPF Heat Pump (heating) and 15 SEER (cooling) are used.

(2) Paragraph (1) of this rule shall not be construed as adopting any provision of the cited publications which establishes:

(a) any provision superseded by law; ~~or~~

(b) an optional or recommended, rather than mandatory, standard or practice; or

(c) any agency, procedure, fees or penalties for administration or enforcement purposes inconsistent with these rules.

(3) The provisions of the ~~code~~ cited publications adopted by reference in paragraph (1) shall govern the manner in which:

(a) the codes and standards ~~is~~are applied to construction of one (1) and two (2) family dwellings, townhouses and additions thereto of thirty (30) or more square feet of interior space as defined in this chapter;

(b) occupancies and types of construction are classified for the purpose of determining minimum ~~code~~ requirements of the codes and the standards; and

(c) the specific requirements of the codes and standards may be modified to permit the use of alternate materials or methods of construction.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.03 CONFLICTS.

(1) In the event of a conflict or inconsistency between the codes and standards adopted by reference in ~~rule~~ Tenn. Comp. R. & Regs. 0780-02-23-.02 and ~~Chapter~~ 0780-02-01-.02 (Electrical Installations) ~~of the Rules and Regulations of the State of Tennessee~~, the

most stringent provisions shall control.

(2) Nothing in this rule shall abrogate any right of appeal granted under T.C.A. Title 68, Chapters 102 and 120.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.04 APPLICATION.

(1) After October 1, 2010, the commencement of any construction, as defined in rule 0780-02-23-.01, of one and two family dwellings or townhouses undertaken shall be in compliance with the standards adopted by reference in rule 0780-02-23-.02.

(2) After October 1, 2011, the commencement of any construction, as defined in rule 0780-02-23-.01, of additions to one and two family dwellings or townhouses of thirty (30) square feet or more of interior space undertaken shall be in compliance with the standards adopted by reference in rule 0780-02-23-.02.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.05 PERMITS.

(1) After October 1, 2010, no construction of a one (1) or two (2) family dwelling or townhouse shall be started without securing a building permit from an issuing agent authorized by the Commissioner of Commerce and Insurance, except in an exempt jurisdiction or in the unincorporated areas of a county or in a municipality that have opted out of these provisions. The permit ~~must~~shall be secured in the area where the work is to be performed until a certificate of occupancy is issued. A separate permit shall be required for each unit of a townhouse. Issuing agents shall retain no more than fifteen dollars ($15.00) for each issued permit. This fifteen dollar ($15.00) fee shall be retained from the applicable permit fee for inspection referenced in Tenn. Comp. R. & Regs. 0780-02-23-.08.

(2) After October 1, 2011, no construction of an addition to a one (1) or two (2) family dwelling or townhouse of thirty (30) square feet or more of interior space shall be started without securing a building permit from an issuing agent authorized by the Commissioner of Commerce and Insurance, except in an exempt jurisdiction or in the unincorporated areas of a county or in a municipality that have opted out of these provisions. The permit ~~must~~shall be secured in the area where the work is to be performed until a certificate of occupancy is issued. Issuing agents shall retain no more than fifteen dollars ($15.00) for each issued permit. This fifteen dollar ($15.00) fee shall be retained from the applicable permit fee for inspection referenced in Tenn. Comp. R. & Regs. 0780-02-23-.08.

(3) A property owner's permit shall automatically expire upon completion of the work for which the permit was issued. All work done under such permit shall be subject to regular inspection requirements and fees and other applicable laws and regulations. Pursuant to T.C.A. § 62~~8~~-6-103, an individual may obtain only one (1) property owner's permit within a twenty four (24) month period.

(4) (a) When applying for a permit, an applicant shall complete a form prescribed by the Department containing at least the following information:

1. The location where the work will be performed, including street address, if available;

2. A description of the work to be performed;

3. The use and occupancy of the structure;

4. The valuation of the project;

5. The square footage of the construction; and

6. The signature of the applicant.

(b) When applying for a permit, an applicant shall present:

1. Payment in an acceptable form in the amount of the permit fee; and

2. Licensure pursuant to T.C.A. Title 62, Chapter 6 (except for a property owner's permit).

(c) When applying for a permit, an applicant shall certify and have proof available, if requested, of:

1. Availability of public sewer or a septic permit; and

2. Any license or permit required by state law or local ordinance.

(5) All building permits are non-transferable.

(6) In the event more than one (1) rejection is issued during the building inspection process, an additional inspection permit ~~must be applied for and~~shall be obtained for each subsequent rejection.

(7) (a) A building permit shall be void if the authorized work is not commenced within one hundred eighty (180) days after its issuance. If the work authorized by a permit is commenced and then suspended or abandoned for a period of one hundred eighty (180) days a building permit shall be void. The Commissioner of Commerce and Insurance, or designee ~~thereof~~, is authorized to grant~~, in writing,~~ one (1) or more extensions of time, for periods of not more than one hundred eighty (180) days each. ~~The~~All extensions ~~must~~shall be requested in writing and justifiable cause demonstrated.

(b) Every building permit shall expire two (2) years from the date of issue or upon the issuance of the certificate of occupancy unless:

1. the ~~inspector~~ Commissioner of Commerce and Insurance, or designee, determines that substantial progress has been made in the work authorized by the permit; and

2. the permit holder is granted an exception or extension after submitting a written request to the Commissioner of Commerce and Insurance, or designee ~~thereof~~.

(c) No construction work for which a permit is required shall be commenced in any building or premises until a permit to perform such work is obtained.

(8) The original permit, along with any other required state or local permit, shall be placed on site and readily available for inspection. Upon completion of a request form prescribed by the Department, a duplicate original permit may be obtained for a fee of ten dollars ($10.00) in the event of a loss or destruction ~~thereof~~of the original permit.

(9) It ~~is~~shall be the responsibility of all persons performing work on the site to comply with the required codes and standards.

(10) The issuance of a permit shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this chapter or of any state law or regulation or any ordinance of the local jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this chapter, any state law or regulation or any ordinance of the local jurisdiction shall not be valid. The issuance of a permit based on construction documents or other data shall not prevent the Division from requiring the correction of errors in the construction documents or other data. The Division is also authorized to prevent occupancy or use of a structure where there is a violation of the chapter or any state law or regulation.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.06 ISSUANCE OF PERMITS IN VIOLATION OF THIS CHAPTER.

(1) The Division may suspend or revoke a permit issued under the provisions of this chapter wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any state law or regulation or any of the provisions of this chapter.

(2) Upon notice from the Division to the issuer, the issuer shall immediately revoke any permit issued in violation of state law or regulation or this chapter, and any construction on such project must cease until proper approval is obtained and a new permit issued pursuant to this chapter.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.07 INSPECTIONS.

(1) Inspections of construction of one (1) family and two (2) family dwellings, townhouses begun after October 1, 2010, and additions thereto of thirty (30) square feet or more of interior space begun after October 1, 2011, will be conducted by deputy building inspectors appointed under contract with the Commissioner of Commerce and Insurance pursuant to T.C.A. § 68-120-101.

(a) Fees for such inspections for services in subparagraph (2)(a) are specified in rule 0780-02-23-.08.

(b) Fees charged for additional inspections, including consultation inspections, slab inspections, plumbing, mechanical and gas inspections and inspections necessitated by more than one (1) rejection on the project, are specified in rule 0780-02-23-.08.

(2) (a) Inspections ~~are~~shall be required on:

1. Foundations after poles or piers are set or trenches or basement areas are excavated and any required forms erected and any required reinforcing steel is in place and supported prior to the placing of concrete. The foundation inspection shall include excavations for thickened slabs intended for the support of bearing walls, partitions, structural supports, equipment and special requirements for wood foundations. Monolith poured slabs shall be inspected as the footing for the structure.

2. After October 1, 2011, plumbing and mechanical systems prior to covering or concealment, before fixtures or appliances are set or installed, and prior to or at the same time as the framing inspection.

3. Frame after roof, framing, fire stopping, draft stopping, bracing rough in

plumbing, rough in mechanical and rough in electrical are in place.

4. Attached garages.

5. Prefabricated walls.

6. Fire renovations.

7.~~4.~~ Final after the permitted work is complete and prior to occupancy.

(b) If a slab foundation, other than a monolith pour, is to be used, an inspection of the slab shall be required in addition to the foundation inspection. Monolith pour, or monolith slab foundation that consists of a single concrete slab with thickened portions of slab under loadbearing walls, does not require a separate inspection.

(c) Energy efficiency inspections shall occur during the required inspections specified in ~~rule~~ Tenn. Comp. R. & Regs. 0780-02-23-.08(2) as required by the adopted codes and standards.

(3) It shall be the duty of the permit holder or agent thereof to notify the building inspector through the permit issuing agent that such work is ready for inspection. It shall be the duty of the person requesting any inspections required to provide access to and means for inspection of such work.

(4) Inspections shall be conducted in the order set out in paragraph (2) of this rule. Work shall not be done beyond the point indicated in each successive inspection without first obtaining approval of the building inspector. The building inspector, upon notification, shall make the requested inspections and shall either indicate the portion of the construction that is satisfactory as completed, or shall notify the permit holder or an agent of the permit holder wherein the same fails to comply with the adopted codes and standards. Any portions that do not comply with the adopted codes and standards shall be corrected and such portions shall not be covered or concealed until authorized by the building inspector.

(5) The Commissioner of Commerce and Insurance, or designee ~~thereof~~, may waive an inspection if an inspection letter approving the work acceptable to the Division~~epartment~~ is signed and submitted by an architect or engineer currently registered in the s~~S~~tate of Tennessee.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.08 FEES.

(1) The fee shall be payable in full at the time of application for a building permit. The fee shall be determined based on actual expected construction costs; however, the actual costs shall not be less than the construction cost based on the latest available Building Valuation Data published by the International Code Council (using a 0.60 Cost Modifier, except for the footnotes). The fee for a permit for construction shall be as specified in the following table:

Total Construction Cost	Fee
$0.00 to $5,000	$100
$5,001 to $100,000	$350
$100,001 to $150,000	$400
$150,001 to $200,000	$450

$200,001 to $250,000	$500
$250,001 to $300,000	$550
$300,001 AND UP	$550 for the first $300,000; plus $50.00 for each additional fifty thousand dollars ($50,000) above $300,000 or fraction thereof.

(a) When the permit fee is to be collected from another state department or agency, the permit may be issued once all information needed to invoice or journal voucher the other state department or agency has been received.

(b) If the application for a building permit must be resubmitted because its issuance has become invalid under paragraph (3) of rule 0780-02-23-.05, the fee established in this rule ~~will~~shall be imposed.

(2) After October 1, 2011, the fee for a plumbing and mechanical inspection shall be one hundred dollars ($100.00) in addition to ~~the~~ other applicable fees ~~above~~.

(3) The fee for a slab inspection, other than monolith pours, shall be one hundred dollars ($100.00) in addition to ~~the~~other applicable fees ~~above~~.

(4) The fee for a prefabricated wall inspection shall be one hundred dollars ($100.00) in addition to other applicable fees.

(~~4~~5) The fee for a re-inspection necessitated by more than one (1) rejection on a project shall be one hundred dollars ($100.00).

(~~5~~6) The fee for a consultation inspection or a temporary certificate of occupancy shall be one hundred dollars ($100.00).

(~~6~~7) The Division may require appropriate documentation of costs (such as contractors' bids or invoice) if:

(a) in the Division's opinion, the construction cost of a project has been underestimated in a permit application based on the latest available Building Valuation Data published by the International Code Council (using a 0.60 Cost Modifier, except for the footnotes).

(b) After initial review, if such documentation warrants an additional permit charge it shall be computed, assessed, and paid promptly and no further construction shall be authorized pursuant to the authority of the permit until payment is made.

(~~7~~8) If a permit expires before completion of a project or a project is stopped before its completion, the permit holder shall be entitled to a refund of the inspection fees that would have been due to the deputy building inspector under their contract for any required inspection under ~~rule~~Tenn. Comp. R. & Regs. 0780-02-23-.08 that was not performed, provided that the permit holder requests such refund on a form prescribed by the Division ~~within~~ no less than sixty (60) days ~~of~~ prior to the expiration of the permit ~~or the date the project stopped~~.

(~~8~~9) Any person who begins any work on any building or structure before obtaining the necessary permit required under this chapter shall be subject to an additional fee of one hundred percent (100%) of the required permit fee for each violation ~~thereof~~.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.09 CERTIFICATE OF OCCUPANCY.

(1) A new one (1) or two (2) family dwelling, townhouse, where construction began after October 1, 2010, or any additions thereto of thirty (30) square feet or more of interior space regulated under this chapter, where construction began after October 1, 2011, shall not be occupied until the Division has issued a certificate of occupancy.

(2) A certificate of occupancy shall be issued after the passage of all inspections required by this chapter and passage of the final electrical inspection.

(3) The certificate of occupancy shall state:

(a) the building permit number;

(b) the address of the building;

(c) the name and address of the building owner;

(d) the name~~(s)~~ of the deputy building inspector~~(s)~~;

(e) the edition of the codes and standards the building permit was issued under; and

(f) the date of issuance.

(4) A temporary certificate of occupancy may be issued by the Division for a portion or portions of the construction that may be occupied safely prior to final completion of the building.

(5) The Division may suspend or revoke a certificate of occupancy issued under the provisions of this chapter ~~wherever~~ if the certificate of occupancy is issued in error, or on the basis of incorrect, inaccurate or incomplete information, or in violation of any state law or regulation or any of the provisions of this chapter.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.10 DISPUTE RESOLUTION.

(1) Disputes that arise during the inspection process shall be resolved as follows:

(a) When a dispute arises as to the interpretation or applicability of a ~~code~~ provision of the adopted codes and standards between the owner, designer or contractor on a project and the ~~D~~deputy ~~B~~building ~~I~~inspector inspecting the project, the dispute shall be submitted to the Director ~~of Codes Enforcement~~over residential inspections, or designee ~~thereof~~, for resolution.

(b) If the owner, designer or contractor disagrees with the decision of the Director ~~of Codes Enforcement~~ over residential inspections, or designee ~~thereof~~, the dispute shall be submitted to the ~~Assistant Commissioner for Fire Prevention~~Director's supervisor within the Division for resolution.

(c) If the owner, designer or contractor disagrees with the decision of the ~~Assistant Commissioner for Fire Prevention~~Director's supervisor within the Division, the dispute shall be submitted to the Commissioner of Commerce and Insurance, or ~~the Commissioner's~~ designee, for resolution.

(d) At any point during this process, the parties may agree to submit the dispute to the publisher of the ~~code section at issue~~ applicable codes and standards for a written

opinion.

(2) The entire dispute resolution process set forth in paragraph (1) above shall be completed as quickly as possible, but no more than thirty (30) calendar days from the date that the dispute is first submitted for resolution, unless the dispute is submitted to the ~~code~~ publisher of the codes and standards for an opinion.

(3) If there are any fees charged by the ~~code~~ publisher for rendering ~~its~~a written opinion, those fees shall be paid by the owner, designer or contractor of the project before a certificate of occupancy will be issued by the Division.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.11 EQUIVALENCIES.

(1) Wherever there are practical difficulties involved in carrying out the provisions of this chapter and the codes and standards adopted in this chapter, the Commissioner of Commerce and Insurance, or designee ~~thereof~~, shall have the authority to grant modifications for individual cases, upon application of the owner or owner's representative, provided the Commissioner of Commerce and Insurance, or designee ~~thereof~~, shall first find that the special individual reason makes the strict application of the codes and standards adopted in this chapter impractical and the modification is in compliance with the intent and purpose of the codes and standards adopted in this chapter and that such modification does not lessen, health, accessibility, life and fire safety, or structural requirements. The details of action granting modifications shall be recorded and kept in the files of the Division.

(2) The provisions of the codes and standards adopted in this chapter are not intended to prevent the installation of any material or to prohibit any design or method of construction not specifically prescribed by ~~this~~the codes and standards, provided that any such alternative has been approved. An alternative material, design or method of construction shall be approved where the Commissioner of Commerce and Insurance, or designee ~~thereof~~, finds that the proposed design is satisfactory and complies with the intent of the codes and standards adopted in this chapter, and that the material, method or work offered is, for the purpose intended, at least the equivalent of that prescribed by the codes and standards adopted in this chapter in quality, strength, effectiveness, fire resistance, durability and safety.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.12 LOCAL GOVERNMENT ENFORCING RESIDENTIAL BUILDING CODES AND STANDARDS.

(1) Purpose. Pursuant to T.C.A. § 68-120-101, a local government may be responsible for adopting and enforcing residential ~~codes~~ building construction and fire safety codes and standards for ~~the construction of new~~ one (1) and two (2) family dwellings, townhouses and additions thereto of thirty (30) square feet or more of interior space. The county or city is authorized to charge and receive a fee for each inspection performed. This rule sets forth the criteria by which local governments are authorized to adopt and enforce residential ~~codes~~ building codes and standards and procedures by which the Division may review such authorization.

(2) Initial Authorization.

(a) On or before July 1, 2010, or upon subsequent adoption thereof, a local government meeting the requirements of T.C.A. § 68-120-101, ~~relating to having~~

~~chosen~~ to adopt and enforce residential building construction and fire safety codes and standards for ~~the construction of new~~ one (1) and two (2) family dwellings, townhouses and additions thereto of thirty (30) square feet or more of interior space, shall provide the Division with the following information:

1. The title~~(s)~~ and edition~~(s)~~ of the residential building construction and fire safety code~~(s)~~ and standards for one(1) and two (2) family dwellings and townhouses ~~that are~~ adopted and enforced~~, which shall show that the local government has adopted a code(s) that is current within seven (7) years of the date of the latest edition~~by the local government;

2. The number and types of inspections that will be conducted;

3. A description of the permit issuance, enforcement and recordkeeping process for all residential inspection activities;

4.~~3.~~ The names of all persons who are employed by the local government to perform residential building inspections on the construction of one (1) and two (2) family dwellings, townhouses and additions thereto of thirty (30) square feet or more of interior space and who meet the training requirements of T.C.A. §§ 68-120-101(f)(1)(B), 68-120-113 and 68-120-118~~.~~; and

5. The Division may request any other documentation it deems necessary from a local government to evidence compliance with the requirements of T.C.A. §§ 68-120-101, 68-120-113 and 68-120-118, and may conduct an on-site review of the local government's residential building permit and inspection process.

(3) Except as provided in T.C.A. § 68-120-101, or otherwise approved in writing by the state fire marshal, no city, county, town, municipal corporation, metropolitan government, or political subdivision of the state of Tennessee shall adopt or enforce any ordinance prescribing less stringent standards of fire prevention, fire protection, or building construction safety than those established hereunder. The ~~local government's adopted~~ residential ~~code publication~~ building construction and fire safety codes and standards adopted by a local government shall be current within seven (7) years of the date of the latest edition ~~thereof published, unless otherwise approved in writing by the Commissioner of Commerce and Insurance.~~ Any amendments to the editions of the standards and codes adopted by the local government shall be designed to afford a reasonable degree of safety to life and property from fire and hazards incident to the design, construction, alteration, and repair of buildings or structures within the jurisdiction.

(4) Review of Local Government Authorization.

(a) For any local government that is authorized to adopt and enforce residential building construction and fire safety codes and standards for one (1) and two (2) family dwellings, townhouses and additions thereto of thirty (30) square feet or more of interior space, the Division will conduct a review of the local government's authorization at least once every three (3) years. The local government shall submit the following information on a form provided by the Division within thirty (30) days of its receipt of the form.

1. The title~~(s)~~ and edition~~(s)~~ of the residential building construction and fire safety code~~(s)~~ and standards for one (1) and two (2) family dwellings and townhouses ~~that will be~~ adopted and enforced by the local government;

2. The number and types of residential inspections that are conducted;

3. A description of the permit issuance, enforcement and recordkeeping process for all residential inspection activities;

4. The names of all persons who are employed by the local government to perform residential building inspections on the construction of one (1) and two (2) family dwellings, townhouses and additions thereto of thirty (30) square feet or more of interior space and who meet the training requirements of T.C.A. §§ 68-120-101(f)(1)(B), 68-120-113 and 68-120-118; and,

5. The Division may request any other documentation it deems necessary from the local government to evidence compliance with the requirements of T.C.A. §§ 68-120-101, 68-120-113 and 68-120-118, and may conduct an on-site review ~~to~~of the local government's ~~to review the~~ residential building permit and inspection process.

(b) Each local government ~~that is~~ selected for an on-site review pursuant to this paragraph ~~will~~shall be notified of the review in writing.

(c) Report of Review.

1. After conclusion of the review, the Division ~~will~~shall notify the local government in writing whether the local government's adopted residential building and fire safety codes and standards ~~is~~are current as required by law and whether there are any area~~(s)~~ in which the local government is not adequately enforcing the adopted ~~residential building~~ codes and standards, and whether the local government's personnel is ~~or~~ properly performing inspections.

2. If the local government has not adopted ~~a~~ current residential building codes and standards, ~~or~~ is not adequately enforcing the adopted ~~residential building~~ codes and standards, or is not properly performing inspections, the notification ~~will~~shall contain recommended corrective action, and the local government ~~will~~shall be directed to submit a plan of corrective action to the Division within thirty (30) days after its receipt of the notification. The plan of corrective action shall be sufficiently detailed so as to ensure compliance with all requirements for initial authorization.

3. Within thirty (30) days after receipt of the local government's plan of corrective action, the Division shall either approve or disapprove the plan. If the plan is approved, the Division may conduct periodic follow-up reviews to ensure continued compliance with the plan. If the plan is not approved, the Division may remove the local government's authorization to conduct building inspections on the construction of one (1) and two (2) family dwellings, townhouses and additions thereto of thirty (30) square feet or more of interior space.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.13 PERMIT ISSUING AGENTS.

(1) All individuals, including all business entities, local governments and cooperatives, who undertake to issue building permits under this chapter, must hold a current contract with the Department of Commerce and Insurance, as administered through the Division of Fire

Prevention.

(2) State deputy building inspectors and their immediate families are ineligible to become issuing agents. Additionally, without prior approval from the Department, no individual or business entity in any way related to or financially associated with any Department official will be allowed to become an issuing agent.

Authority: T.C.A. § 68-120-101(a), (b) and (d). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.14 LOCAL GOVERNMENT OPTING OUT OF THESE PROVISIONS.

Any local government opting out of the provisions of T.C.A. § 68~~2~~-120-101 regarding residential building codes and standards for ~~the construction of~~ one (1) and two (2) family dwellings, townhouses and additions thereto of thirty (30) square feet or more of interior space shall submit to the ~~state fire marshal~~Division the following:

(1) a certified copy of the resolution opting out of these provisions;

(2) the date of the next election for the legislative body; and

(3) the name and mailing address of the person responsible by law for recordkeeping for the legislative body and to whom any notifications should be sent.

Authority: T.C.A. § 68-120-101(b). **Administrative History:** Original rule filed March 29, 2010; effective June 27, 2010.

0780-02-23-.15 Dwelling Units

(1) A single dwelling unit providing complete independent living facilities including, but not limited to, permanent provisions for living, sleeping, eating, cooking and sanitation, may meet the requirements of a one (1) and two (2) family dwelling and shall not be subject to the provisions of Tenn. Comp. R. & Regs. 0780-02-03 (Review of Construction Plans and Specifications) if the dwelling unit:

(a) is three (3) stories or less;

(b) has a maximum occupancy of twelve (12) or fewer transient occupants; and,

(c) consists of a gross area of less than five thousand square feet (5,000).

(2) A dwelling unit shall be in compliance with Paragraph (1) of this rule in order to qualify for classification as a one (1) or two (2) family dwelling unit. Any noncompliance with a single criterion may result in the dwelling unit being classified as nonresidential.

(3) A boarding house or congregate living facility shall meet the requirements of the applicable standards adopted pursuant to T.C.A. § 68-120-101 and Tenn. Comp. R. & Regs. 0780-02-02 (Codes and Standards) and 0780-02-03 (Review of Construction Plans and Specifications).

Authority: T.C.A. § 68-120-101.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Not applicable					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of Commerce and Insurance (board/commission/ other authority) on 9/15/16 (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: 09/08/2015

Rulemaking Hearing(s) Conducted on: (add more dates). 11/02/15

Date: 9/15/16

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner of Commerce and Insurance

DENISE M. LEWIS STATE OF TENNESSEE NOTARY PUBLIC WILSON COUNTY TENNESSEE My Commission Expires

Subscribed and sworn to before me on: 9/15/16

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

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

Herbert H. Slatery III
Attorney General and Reporter

10/26/2016
Date

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PUBLICATIONS

Filed with the Department of State on: 11/4/16

Effective on: 2/2/17

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance, Regulatory Boards
DIVISION:	Board for Licensing Contractors
SUBJECT:	Licensing, Expedited Procedure for Military Personnel and Spouses; General Regulations for Home Improvement Contractors
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-3-1304, 62-6-108, 62-6-109, 62-6-111, 62-6-116, and 62-6-117
EFFECTIVE DATES:	February 15, 2017 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rules have been promulgated by the Contractors Licensing Board to ensure compliance with Tennessee Code Annotated, Section 4-3-1304. The rules will allow out-of-state military applicants and their spouses who have contractor related licenses in other states that meet the criteria set forth in Tennessee Code Annotated, Section 4-3-1304, to obtain temporary licensure in Tennessee related to contracting, and to expedite the licensing process for those applicants.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(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 proposed rules will not directly affect the more than 500 licensed contracting firms, only the individual licensees .

(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;

The projected reporting, recordkeeping, and other administrative costs will be expected to be kept at minimum in order to be in compliance with the proposed rule. There is no variation in reporting requirements for contracting firms in Tennessee of any size

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

The proposed rules are not intended to directly affect small businesses and consumers. However, the amount of competent, licensed contractors would likely increase due to the expedited licensure process for military personnel and their spouses, which would lead to an increased capability for small business contracting firms to meet consumer demand.

(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 are no less burdensome, less intrusive or less costly methods of achieving the purpose of these proposed rules.

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

There will be no conflict with other federal, state or local governmental rules because the Board is the sole authority for establishing minimum requirements for obtaining and maintaining a license for the profession it regulates. The proposed rule shares similarities with the rules and laws of 46 states that have enacted or proposed rules and laws resulting from the initiative of the Obama administration to streamline credentialing and licensing for service members, veterans, and their spouses.

(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.

The proposed rules will not directly affect the more than 500 licensed contracting firms, only the individual licensees.

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 Board does not foresee any impact on local governments by the promulgation of these rules.

Additional Information Required by Joint Government Operations Committee

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

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

The rules proposed herein have been promulgated by the Contractors Licensing Board to ensure compliance with T.C.A. § 4-3-1304. The rules will allow out of state military applicants and their spouses who have contractor related licenses in other states that meet the criteria set forth in T.C.A. § 4-3-1304 to obtain temporary licensure in Tennessee related to contracting and to expedite the licensing process for those applicants.

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

T.C.A. § 4-3-1304(d)(1) states that all boards attached to the division of regulatory boards shall establish a procedure by which to expedite licensure of military applicants and their spouses who meet certain criteria and who have been previously licensed in related professions in other jurisdictions.

(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;

Military applicants and their spouses that meet the criteria set forth in T.C.A. § 4-3-1304(d)(1) would be expected to be in favor of this rule. The stakeholders and board members urge adoption.

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

None known.

(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;

No fiscal impact foreseen.

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

Laura Martin, Assistant General Counsel; Carolyn Lazenby, Executive Director

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

Laura Martin, Assistant General Counsel; Carolyn Lazenby, Executive Director

(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

Laura Martin
500 James Robertson Parkway
Davy Crockett Tower
Legal Division 5th Floor
Nashville, TN 37243

Carolyn Lazenby, Executive Director
500 James Robertson Parkway
Davy Crockett Tower
Tennessee Board For Licensing Contractors, 4th Floor
Nashville, TN 37243

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

N/A

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Division of Publications
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Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 11-10-16
Rule ID(s): 6359-6360
File Date: 11/17/16
Effective Date: 2/15/17

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Board for Licensing Contractors
Division:	Division of Regulatory Boards Department of Commerce and Insurance
Contact Person:	Laura Martin
Address:	Davy Crockett Tower, 5th Floor 500 James Robertson Pkwy. Nashville, Tennessee
Zip:	37243
Phone:	615-741-3072
Email:	Laura.martin@tn.gov

Revision Type (check all that apply):

___ Amendment
_x_ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0680-01	Licensing
Rule Number	**Rule Title**
0680-01-.30	Expedited Procedure for Military Personnel and Spouses

Chapter Number	**Chapter Title**
0680-07	General Regulations for Home Improvement Contractors
Rule Number	**Rule Title**
0680-07-.15	Expedited Procedure for Military Personnel and Spouses

Chapter 0680-01
Licensing
New Rules

Chapter 0680-01, Licensing, Table of Contents is amended to include Rule 0680-01-.30 Expedited Procedure for Military Personnel and Spouses, and, as amended shall read:

TABLE OF CONTENTS

0680-01-.01 Application for License
0680-01-.02 Consideration of Applications
0680-01-.03 Special Meetings
0680-01-.04 Repealed
0680-01-.05 Repealed
0680-01-.06 Reinstatement of Invalid License
0680-01-.07 Repealed
0680-01-.08 Change of Address or Officers
0680-01-.09 Change in Mode of Operation
0680-01-.10 Renewal of Licenses
0680-01-.11 Joint Ventures
0680-01-.12 General and Specialty Classifications
0680-01-.13 Monetary Limitations
0680-01-.14 Request for Change of Classifications or Limitation
0680-01-.15 Review and Adjustment of Classifications and Monetary Limitation
0680-01-.16 Appendix A of Rule 0680-01-.12(Classification System)
0680-01-.17 Repealed
0680-01-.18 Unlawful Bidding
0680-01-.19 Civil Penalties
0680-01-.20 Fees
0680-01-.21 Citation Penalties
0680-01-.22 Exemption
0680-01-.23 Requalification of Agent
0680-01-.24 Bidding Procedures
0680-01-.25 Contracting in Correct Name; Change of Name
0680-01-.26 License Required for Property Owners
0680-01-.27 Misconduct
0680-01-.28 Emergency Actions
0680-01-.29 Limited Residential License
0680-01-.30 Expedited Procedure for Military Personnel and Spouses

Rule 0680-01-.30 Expedited Procedure for Military Personnel and Spouses is added to chapter 0680-01 and shall read as follows:

Rule 0680-01-.30 Expedited Procedure for Military Personnel and Spouses

(1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a license upon application and payment of all fees required for issuance of a regular license of the same type if, in the opinion of the Board, the requirements for certification or licensure of such other state are substantially equivalent to the requirements in Tennessee; or

(b) Be issued a temporary license as described herein if the Board determines the applicant's license is not substantially equivalent, as set forth in subsection (a) above, but the applicant could perform additional acts, including – but not limited to education, training, or experience ("applicant's additional requirements"). The Board may issue a temporary license upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient for the applicant to complete applicant's additional requirements.

1. After completing applicant's additional requirements and providing the Board with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary license and an expiration date as if the full license had been issued at that time, providing the Board determines that there have been no intervening issues to prevent such licensure.

2. A temporary license shall be issued for a period of less than the length of a renewal cycle for a permanent license.

3. A temporary license shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of applicant's additional requirements, as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary license cause the license to be in effect longer than the renewal cycle of a permanent license then the holder of the temporary license shall file a renewal application with such documentation and fees, as are required by the Board for all other renewals of a permanent license of the same type.

(2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Board if such military education, training, or experience is determined by the Board to be substantially equivalent to the education, training, or experience required for the issuance of such license.

(3) Any licensee who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without payment of late fees or other penalties.

(a) The license of a person described in paragraph (3) shall be eligible for renewal pursuant to this subsection for one (1) year from the person's release from active duty.

(b) Any person renewing under paragraph (3) shall provide the Board such supporting documentation evidencing activation as may be required by the Board prior to renewal of any license pursuant to this subsection.

Authority: T.C.A. §§ 4-3-1304, 62-6-108, 62-6-109, 62-6-111, 62-6-116, and 62-6-117.

Chapter 0680-07
General Regulations for Home Improvement Contractors
New Rules

Chapter 0680-01, Licensing, Table of Contents is amended to include Rule 0680-07-.15 Expedited Procedure for Military Personnel and Spouses, and, as amended shall read:

TABLE OF CONTENTS

0680-07-.01 Fees
0680-07-.02 Definitions
0680-07-.03 License for Home Improvement Contractors
0680-07-.04 Advertising
0680-07-.05 Notice of Change of Licensing Information
0680-07-.06 Time Limitations for Filing Complaints
0680-07-.07 Application for Licensure as Home Improvement Contractor
0680-07-.08 Temporary Licenses
0680-07-.09 License Renewals
0680-07-.10 Credit Reports
0680-07-.11 Financial Statement
0680-07-.12 Filing of Security Prior to Issuance of License
0680-07-.13 Bonds
0680-07-.14 County Adoption of Home Improvement Law
0680-07-.15 Expedited Procedure for Military Personnel and Spouses

Rule 0680-07-.15 Expedited Procedure for Military Personnel and Spouses is added to chapter 0680-07 and shall read as follows:

Rule 0680-07-.15 Expedited Procedure for Military Personnel and Spouses

(1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a license upon application and payment of all fees required for issuance of a regular license of the same type if, in the opinion of the Board, the requirements for certification or licensure of such other state are substantially equivalent to the requirements in Tennessee; or

(b) Be issued a temporary license as described herein if the Board determines the applicant's license is not substantially equivalent, as set forth in subsection (a) above, but the applicant could perform additional acts, including – but not limited to education, training, or experience ("applicant's additional requirements"). The Board may issue a temporary license upon application and payment of all fees required for issuance of a regular license of the same type which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient for the applicant to complete applicant's additional requirements.

1. After completing applicant's additional requirements and providing the Board with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the date of the original issuance of the temporary license and an expiration date as if the full license had been issued at that time providing the Board determines that there have been no intervening issues to prevent such licensure.

2. A temporary license shall be issued for a period of less than the length of a renewal cycle for a permanent license.

3. A temporary license shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of applicant's additional requirements, as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary license cause the license to be in effect longer than the renewal cycle of a permanent license then the holder of the temporary license shall file a renewal application with such documentation and fees, as are required by the Board for all other renewals of a permanent license of the same type.

(2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Board if such military education, training, or experience is determined by the Board to be substantially equivalent to the education, training, or experience required for the issuance of such license.

(3) Any licensee who is a member of the national guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without payment of late fees or other penalties.

(a) The license of a person described in paragraph (3) shall be eligible for renewal pursuant to this subsection for one (1) year from the person's release from active duty.

(b) Any person renewing under paragraph (3) shall provide the Board such supporting documentation evidencing activation as may be required by the Board prior to renewal of any license pursuant to this subsection.

Authority: T.C.A. §§ 62-6-506, 62-6-507, 62-6-513, and 4-3-1304

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Reese Smith	X				
Ronnie Tickle	X				
Keith Whittington	X				
Jerry Hayes	X				
Bill Mason	X				
Cindi DeBusk	X				
Randy Chase	X				
Mark Brodd	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 07/26/2016 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: October 17, 2016

Signature: Laura E. Martin

Name of Officer: Laura Martin

Title of Officer: Assistant General Counsel

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: October 17, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: November 21, 2017

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

11/10/2016
Date

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Filed with the Department of State on: 11/17/16

Effective on: 2/15/17

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Tennessee Board of Court Reporting
SUBJECT:	Organization and Administration; Reduction of Reinstatement Fee; Board Policies and Procedures; Licensure; Standards of Professional Conduct; Disciplinary Enforcement; Continuing Education
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 20-9-601
EFFECTIVE DATES:	February 15, 2017 through June 30, 2017
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rulemaking hearing rules remove references to the Administrative Office of the Courts, reduce the reinstatement fee to three hundred fifty dollars ($350), allow for the Board to review good cause in granting an additional temporary license, and remove the licensure by grandfathering regulations. The rules also clarify the late renewal requirements, establish requirements for military applicants, clarify Board authority with respect to standards of professional conduct, simplify investigation and complaint regulations, and increase civil penalties for violations. Finally, the rules remove the regulations related to formal and informal disposition of contested case, waiver of continuing education requirements and regulations for decisions of the board, clarify reinstatement regulations, and remove regulations regarding reapplication.

Public Hearing Comments
One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.
Comment: Jimmie Jane McConnell, written comment: Do the proposed rule and regulation changes only apply to changes and all other areas remain?
Response: The rules posted originally, were the proposed changes only. Upon publication of the redlined version of the rules, the public is able to see that unless the rules have a redlined change, the language remains the same. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Why was the military applicant rule included?
Response: The military applicant rule was added to comply with federal law and Tenn. Code Ann. §4-3-1304(d). There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: At the June 2015 meeting, amendments to the Standards of Professional Conduct, Tenn. Comp. R. & Regs. 0455-01-04-.01, were adopted and do not appear to be added to the current version of the rules. Ms. McConnell included proposed sections (p) through (v).
Response: The rules presented were not added at the June 2015 meeting for the Board of Court Reporting. There is no reference in the minutes from the aforementioned meeting. The Board of Court Reporting voted to not include the proposed changes, submitted by Ms. McConnell in the current rulemaking hearing rules. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Are subsections (1), (2), and (3) of Section 0455-01-05 still part of the rules.
Response: Yes, unless sections are specifically excluded, they remain a part of the rules. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Are sections .02, .03, and .04 of Section 0455-01-06 still part of the rules.
Response: Yes, unless sections are specifically excluded, they remain a part of the rules. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Ms. McConnell states that the Board previously approved additional continuing education credits be added as acceptable to Tenn. Comp. R. & Regs. 0455-01-.02, including services to a national or state association board; one (1) year of service on a committed verified by the chair; proctoring a national certification test; monitoring a national certification test; mentoring; outreach and additional activities; completing a proficiency test.
Response: The suggested additions will not be added as the existing continuing education rules sufficiently encompass of the listed activities. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Ms. McConnell made a suggestion that subsection 1(b) of Tenn. Comp. R. & Regs. 0455-01-06-.04 should be rephrased.
Response: The suggested change goes to a part of the rules that were not opened and/or published to public in the Notice of Rulemaking Hearing to be discussed. The proposed rule change will be discussed through a separate proposed change. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Why was Tenn. Comp. R. & Regs. 0455-01-06-.05 deleted?
Response: The section was deleted as it exceeded the authority of the Board of Court Reporting. There was no change to the rules as a result of the comment.

Comment: Jimmie Jane McConnell, written comment: Why was Tenn. Comp. R. & Regs. 0455-01-06-.06 deleted?
Response: The section was deleted as it exceeded the authority of the Board of Court Reporting. There was no

Rule of the Tennessee Board of Court Reporting
Chapter 0455-01
Rule 0455-01-01-.04-.05; 0455-01-02-.03-.04; 0455-01-03-.01-.04; 0455-01-04-.01; 0455-01-05-.04-.07; 0455-01-06-.01
change to the rules as a result of the comment.

Rule of the Tennessee Board of Court Reporting
Chapter 0455-01
Rule 0455-01-01-.04-.05; 0455-01-02-.03-.04; 0455-01-03-.01-.04; 0455-01-04-.01; 0455-01-05-.04-.07; 0455-01-06-.01

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;

Answer: The rule changes would affect any court reporter licensed or person attempting to be licensed in the State of Tennessee. There are 699 licensed court reporters currently.

(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;

Answer: The rule changes would create a more efficient and concise for licensed court reporters and applicants. The administrative skills and/or costs required for compliance with the proposed rules set forth an increase in civil penalties for violations.

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

Answer: These rules will have no effect on consumers. Small business may be required to alter the method of payment and amount of fees in addition to the process of investigations and complaints.

(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;

Answer: The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses.

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

Answer: With regards to temporary licenses, there are state regulations that provide for the granting of additional temporary licenses upon proof of good cause, extenuating circumstances, and/or approval by the state's Board of Court Reporting. The proposed rule is drafted in a similar fashion.

(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.

Answer: An exemption of small businesses from the aforementioned requirements would create an increased cost to each individual applicant and create an additional administrative process upon the agency, decreasing its standardization and efficiency in processing applications.

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)

There is no expected impact on local government by the promulgation of the proposed rules.

Rule of the Tennessee Board of Court Reporting
Chapter 0455-01
Rule 0455-01-01-.04-.05; 0455-01-02-.03-.04; 0455-01-03-.01-.04; 0455-01-04-.01; 0455-01-05-.04-.07; 0455-01-06-.01
Additional Information Required by Joint Government Operations Committee

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

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

The amended rules remove references to the Administrative Office of the Courts, reduce the reinstatement fee to $350, allow for the Board to review good cause in granting an additional temporary license, and remove the licensure by grandfathering regulations. The amended rules also clarify the late renewal requirements, establish requirements for military applicants, clarify Board authority with respect to standards of professional conduct, and simplify investigation and complaint regulations, and increases civil penalties for violations. Finally, the amended rules remove the regulations related to formal and informal disposition of contested case, waiver of continuing education requirements and regulations for decisions of the board, clarify reinstatement regulations and remove regulations regarding reapplication.

(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;

These amended rules are drafted under the Tennessee Court Reporter Act of 2009, where the goal is "to establish and maintain a standard of competency for individuals engaged in the practice of court reporting and for the protection of the public and for litigants whose rights to personal freedom and property are affected by the competency of court reporters." Tenn. Code. Ann. § 20-9-601(b).

(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;

All current licensed court reporters as well as future applicants will be affected by these amendments. The Department urges adoption of these rules.

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

There are no known opinions of the attorney general and reporter or any judicial ruling that directly relates to the amended rules.

(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;

The promulgation of these rules are not estimated to result in an increase or decrease in state and local government revenues and expenditures of two percent (2%) or greater or five hundred thousand dollars ($500,000).

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

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

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

Ashley N. Thomas
Assistant General Counsel
Division of Regulatory Boards
Department of Commerce and Insurance

(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

Ashley N. Thomas
500 James Robertson Parkway
Nashville, TN 37243
615-741-3072
ashley.thomas@tn.gov

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

No additional information requested.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 11-11-16
Rule ID(s): 6361 - 6366
File Date: 11/17/16
Effective Date: 2/15/17

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

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

Agency/Board/Commission:	Tennessee Board of Court Reporting
Division:	Department of Commerce and Insurance
Contact Person:	Ashley N. Thomas, Assistant General Counsel
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	615-741-3072
Email:	ashley.thomas@tn.gov

Revision Type (check all that apply):
X 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**
0455-01-01	Organization and Administration
Rule Number	**Rule Title**
0455-01-01-.04	Use of Forms
0455-01-01-.05	Maintenance and Inspection of Board Records

Chapter Number	**Chapter Title**
0455-01-02	Board Policies and Procedures
Rule Number	**Rule Title**
0455-01-02-.03	Verification of Tennessee License
0455-01-02-.04	Fees

Chapter Number	**Chapter Title**
0455-01-03	Licensure
Rule Number	**Rule Title**
0455-01-03-.01	Temporary License
0455-01-03-.02	Application for Licensure – Standard Process
0455-01-03-.03	Renewal
0455-01-03-.04	Military Applicants
0455-01-03-.05	Repealed
0455-01-03-.06	Repealed
0455-01-03-.07	Repealed

Chapter Number	Chapter Title
0455-01-04	Standards of Professional Conduct
Rule Number	**Rule Title**
0455-01-04-.01	Standards of Professional Conduct

Chapter Number	Chapter Title
0455-01-05	Disciplinary Enforcement
Rule Number	**Rule Title**
0455-01-05-.04	Investigations and Complaints
0455-01-05-.05	Uniform Administrative Procedures Act
0455-01-05-.06	Civil Penalties
0455-01-05-.07	Reinstatement of A Suspended or Revoked License
0455-01-05-.08	Repealed
0455-01-05-.09	Repealed
0455-01-05-.10	Repealed
0455-01-05-.11	Repealed

Chapter Number	Chapter Title
0455-01-06	Continuing Education
Rule Number	**Rule Title**
0455-01-06-.01	Continuing Education Requirements
0455-01-06-.05	Repealed
0455-01-06-.06	Repealed

(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://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Rule 0455-01-01-.04 is amended to read as follows:

0455-01-01-.04 USE OF FORMS.
Applications and forms shall be made on the prescribed forms approved by the Board. Copies of instructions and forms are available from the ~~Administrative Office of the Courts~~Board of Court Reporting.

Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-609, 20-9-610, 20-9-613 and 20-9-614.

Rule 0455-01-01-.05 is amended by amending paragraphs (1), (3), and (4) and deleting paragraph (5) so as to read as follows:

0455-01-01-.05 MAINTENANCE AND INSPECTION OF BOARD RECORDS.

(1) The Board shall maintain its records in ~~A~~accordance with the Tennessee Public Records law, T.C.A Title 10, Chapter 7.

(2) Public records maintained by the Board shall be subject to public disclosure pursuant to the Tennessee Public Meetings law, T.C.A. Title 8, Chapter 44 and the Tennessee Public Records law, T.C.A. Title 10, Chapter 7.

(3) Upon request to the Executive Director of the ~~Administrative Office of the Courts~~ Board of Court Reporting, public records maintained by the Board shall be available for inspection and duplication at the ~~Administrative Office of the Courts~~ Board of Court Reporting during regular business hours. The inspection and duplication of public records shall be under the supervision of the Executive Director of the ~~Administrative Office of the Courts~~ Board of Court Reporting or his/her designee.

(4) Any person wishing to obtain copies of public records shall submit a written request to the ~~Administrative Office of the Courts~~ Board of Court Reporting. Copies will be supplied upon payment of costs based on the most current version of the Schedule of Reasonable Charges issued by the Office of Open Records Counsel. ~~applicable under the Schedule of Reasonable Costs for Public Records published by the Administrative Office of the Courts~~.

~~(5) Public records maintained by the Board that are available for inspection and duplication include, but are not limited to:~~

~~(a) Names and business addresses of current licensees;~~

~~(b) Names of persons whose licenses have been suspended, revoked or subject to some other public discipline, including the type of license, date, infraction, the penalty incurred and the length of the penalty imposed;~~

~~(c) Rules and regulations of the Board as promulgated and published in accordance with the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5.~~

~~(d) Other written statements of policy or interpretations formulated, adopted or used by the Board in the discharge of its duties and functions; and~~

~~(e) Final orders, decisions, declaratory rulings and opinions issued by the Board.~~

Authority: T.C.A. §§ 20-9-604, 20-9-605 and 20-9-607.

Rule 0455-01-02-.03 is amended by amending paragraph (1) and deleting paragraph (2) so as to read as follows:

0455-01-02-.03 VERIFICATION OF TENNESSEE LICENSE.
(1)Verification of licensure will be available ~~on~~ through the Board's website~~, to be maintained by the Administrative Office of the Courts~~.

~~(2) Upon receipt of a written request, the Director of the Administrative Office of the Courts, or his/her designee, shall provide written verification of Tennessee licensure.~~

Authority: T.C.A. §§ 20-9-604, 20-9-605 and 20-9-607.

Rule 0455-01-02-.04 is amended by amending paragraph (6) and deleting paragraph (7), so as to read as follows:

0455-01-02-.04 FEES.

(1) Fees and civil penalties are not refundable.
(2) Fees are payable by certified check, cashier's check, corporate or business check, money order, personal check or electronic means.
(a) Counter checks are not an acceptable method of payment. Personal checks shall be imprinted with the name, address and account number of the applicant or licensee.
(b) Personal checks by third parties are not acceptable.
(c) Applicants or licensees who submit personal checks returned due to insufficient funds may be prohibited from paying any future fees or civil penalties by personal check.
(d) Statutory charges for returned checks shall be paid by the applicant or licensee, along with any penalties and fees authorized pursuant to T.C.A Title 47, Chapter 29.
(3) Civil penalties are payable by certified check, cashier's check, corporate or business check, money order or electronic means.
(4) Payment, regardless of method, that is not honored by the financial institution may result in disciplinary action and/or reporting to the appropriate legal authorities for possible prosecution.
(5) A license may not be issued until funds are received by the Board.
(6) Standard Fee Schedule Amount
(a) License Fee.....$200
(b) Application Fee.....$50
(c) Renewal Fee.....$200
(d) Late Renewal Fee.....~~10% of License Fee for each late month~~$20 per month up to six (6) months or portion thereof
(e) Temporary License Fee.....$50
(f) Temporary License Renewal Fee.....$50
(g) Reinstatement Fee.....$~~500~~350
~~(7) The Board will prorate license fees for any license that is issued for a period of less than twenty-four (24) months, pursuant to T.C.A. § 20-9-611.~~

Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-610, 20-9-611, 20-9-612, ~~20-9-613~~ and 20-9-614.

Rule 0455-01-03-.01 is amended by deleting the text of the rule in its entirety and substituting instead the following, so the rule, as amended, shall read:

0455-01-03-.01~~5~~ TEMPORARY LICENSURE.

Any person who provides to the board satisfactory proof of graduation from a court reporting program or its equivalent shall, upon application to the board on forms approved by the board and payment of a fee in an amount determined by the board, be issued a temporary license to practice as a court reporter. This temporary license shall expire sixty (60) days following the date upon which the next board-approved examination for licensure is given. ~~No more than three (3) additional temporary licenses shall be issued to any applicant who fails to pass the scheduled examination for licensure.~~ Up to three (3) additional temporary licenses may be granted upon sufficient proof of good cause for issuance.
~~(2) "Court reporting program" shall mean those educational programs, approved by the Tennessee Board of Court Reporting, that provide education related to court reporting as defined in T.C.A. § 20-9-602(2).~~

Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-609, 20-9-612 and 20-9-614

~~0455-01-03-.01 LICENSURE BY GRANDFATHERING – WORK EXPERIENCE.~~

~~(1) Any person who is engaged in the practice of court reporting on January 1, 2010 may apply for licensure by grandfathering. The application for grandfathering will require evidence that the court reporter is proficient in court reporting. Applications for grandfathering by work experience must be received by July 1, 2011. The application shall include:~~
~~(a) An affidavit setting forth past education and work experience as a court reporter;~~
~~(b) and an affidavit of either:~~
~~1. A judge for whom the person has worked as an official court reporter, or,~~

~~2. Affidavits of three (3) licensed attorneys, unrelated by blood or marriage to the person, and who have utilized the services of the court reporter, which attest to the court reporter's proficiency in court reporting, or,~~

~~3. Affidavits of two (2) licensed attorneys and one (1) court reporting firm owner, unrelated by blood or marriage to the person, and who have utilized the services of the court reporter or the affidavit of the court reporting firm owner may state that the applicant has engaged in the practice of court reporting, which attest to the court reporter's proficiency in court reporting, and;~~

~~(c) Payment of licensure fee.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-613.~~

Rule 0455-01-03-.02 is amended by deleting the text of the rule in its entirety and substituting instead the following, so the rule, as amended, shall read:

0455-01-03-.02~~6~~ APPLICATION FOR LICENSURE – STANDARD PROCESS.

(1) Any person may submit an application to be licensed as a court reporter. The application shall include:

(a) Proof of passage of the National Court Reporters Association registered professional reporter examination, the National Verbatim Reporters Association certified verbatim reporter examination, or the American Association of Electronic Reporters and Transcribers certified electronic court reporter examination.

(b) Applications for licensure shall be signed and sworn by the applicants and submitted on forms furnished by the ~~b~~Board.

(c) Payment of licensure fee.

Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-609.

~~0455-01-03-.02 LICENSURE BY GRANDFATHERING – PRIOR EXAMINATION PASSAGE.~~

~~Any person who is engaged in the practice of court reporting on January 1, 2010, upon payment of the licensure fee in an amount determined by the Board, and provides proof of passage of the National Court Reporters Association Registered Professional Reporter (RPR) examination, the National Verbatim Reporters Association Certified Verbatim Reporter (CVR) examination, or the American Association of Electronic Reporters and Transcribers Certified Electronic Court Reporter (CECR) examination shall be granted a license pursuant to this part.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-613~~

Rule 0455-01-03-.03 is amended by deleting the text of the rule in its entirety and substituting instead the following so the rule, as amended, shall read:

0455-01-03-.03~~7~~ RENEWAL.

(1) A newly issued court reporter license in Tennessee shall be valid for two (2) years or for other such period of time authorized by ~~statute~~ T.C.A. § 20-9-611. The holder of the license may renew such license during the 60 days preceding the expiration date thereof by paying the required fee and completion of the application for renewal.

~~(2) A license renewal is valid for a period of two (2) years or other such period of time authorized by T.C.A. § 20-9-612.~~

(2~~3~~) It is the responsibility of each licensee to notify the Board of any change of address within thirty (30) days. Failure to receive a renewal form from the Board shall not constitute an excuse for failure to renew licensure.

(3~~4~~) Late ~~R~~renewals applications may be received following expiration of license with the required fees.~~late renewal fee and application for renewal. Failure to renew a license within 180 days shall deem~~

~~the license suspended and subject to reinstatement, as defined in 0455-01-11.~~No late renewal will be granted if a completed application is not received by the Board within six (6) months of the expiration of the license. After six (6) months of the expiration of the license, the applicant shall apply for a new license.

Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-609, 20-9-611 and 20-9-612

~~0455-01-03-.03 LICENSURE BY GRANDFATHERING -- FOREIGN STATE LICENSURE.~~

~~Any person who is engaged in the practice of court reporting on January 1, 2010, upon payment of the licensure fee in an amount determined by the Board, and provides proof of a court reporter license issued by any state; provided, that the state has the same or more stringent requirements of this chapter, shall be granted a license pursuant to this part.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-613 and 20-9-614~~

Rule 0455-01-03-.04 is amended by deleting the text of the rule in its entirety and substituting instead the following so the rule, as amended, shall read:

~~0455-01-03-.04 LICENSURE BY GRANDFATHERING -- TENNESSEE COURT REPORTERS ASSOCIATION CREDENTIAL.~~

~~(1) Any member in good standing of the Tennessee Court Reporters Association who holds the certified court reporter examination designation on July 1, 2009, upon payment of the licensure fee in an amount determined by the board, shall be automatically granted a license pursuant to this part and thereby may practice as a court reporter.~~

~~(2) Any member in good standing of the Tennessee Court Reporters Association who holds the certified court reporter designation on July 1, 2009, and does not apply for licensure within one (1) year of July 1, 2010, shall be required to pass the licensed court reporter examination and pay applicable licensure fees in order to become a licensed court reporter.~~

~~(3) Any member in good standing of the Tennessee Court Reporters Association who holds the registered professional reporter designation, or higher, from the NCRA, NVRA or AAERT on July 1, 2009, upon payment of the licensure fee in an amount determined by the board, shall be automatically granted a license pursuant to this part and thereby may practice as a court reporter.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607, 20-9-609 and 20-9-613.~~

0455-01-03-.04 MILITARY APPLICANTS

(1) An applicant for licensure meeting the requirements of T.C.A. § 4-3-1304(d)(1) may:

(a) Be issued a license upon application and payment of all fees required for the issuance of such license, if, in the opinion of the Board, the requirements for licensure satisfied by the applicant in another state are substantially equivalent to that required in Tennessee; or

(b) Be issued a temporary permit as described herein if the Board determines that the applicant's license does not meet the requirements for substantial equivalency, but that the applicant could perform additional acts, including -- but not limited to – education, training, or experience, in order to meet the requirements for the license to be substantially equivalent. The Board may issue a temporary permit upon application and payment of all fees required for issuance of a regular license of the same type, which shall allow such person to perform services as if fully licensed for a set period of time that is determined to be sufficient by the Board for the applicant to complete such requirements.

1. After completing those additional requirements and providing the Board with sufficient proof thereof as may be required, a full license shall be issued to the applicant with an issuance date of the original issuance of the temporary permit and an expiration date as if

the full license had been issued at that time.

2. A temporary permit shall be issued for a period no longer than the length of a renewal cycle for a full license of the same type.

3. A temporary permit shall expire upon the date set by the Board and shall not be subject to renewal except through the completion of the requirements for substantial equivalency as required by the Board or by an extension of time granted for good cause by the Board.

4. Should an extension to a temporary permit cause the permit to be in effect longer than the renewal cycle of a full license, then the holder of the temporary permit shall file a renewal application with such documentation and fees, including completion of continuing education, as are required by the Board for all other renewals of a full license of the same type.

(2) Military education, training, or experience completed by a person described at T.C.A. § 4-3-1304(d)(1)(B)(ii)(a)-(c) shall be accepted toward the qualifications, in whole or in part, to receive any license issued by the Board if such military education, training, or experience is determined by the Board to be substantially equivalent to the education, training, or experience required for the issuance of such license.

(3) Any licensee who is a member of the National Guard or a reserve component of the armed forces of the United States called to active duty whose license expires during the period of activation shall be eligible to be renewed upon the licensee being released from active duty without:

(a) Payment of late fees or other penalties; or

(b) Obtaining continuing education credits when:

1. Circumstances associated with the person's military duty prevented the obtaining of continuing education credits and a waiver request has been submitted to the Board; or

2. The person performs the licensed occupation as part of such person's military duties and provides documentation sufficient to demonstrating such to Board.

(4) The license shall be eligible for renewal pursuant to Paragraph (3) for six (6) months from the person's release from active duty.

(5) Any person renewing under Paragraph (3) shall provide the Board such supporting documentation evidencing activation as may be required by the Board prior to the renewal of any license pursuant to Paragraph (3).

Authority: T.C.A. §§ 4-3-1304(d)(1) and 20-9-605.

Rule 0455-01-03-.05 is amended by deleting the text of the rule in its entirety.
Rule 0455-01-03-.06 is amended by deleting the text of the rule in its entirety.
Rule 0455-01-03-.07 is amended by deleting the text of the rule in its entirety.

Rule 0455-01-04-.01 is amended by amending paragraphs (1)(b), (1)(c), (1)(e), (1)(g), (1)(h), (1)(i), (1)(j), (1)(k), adding paragraph(1)(l) and renumbering current paragraphs (1)(l-o) to (1)(m-p), and amending the new paragraphs (1)(m) and (1)(p) so that the rule reads as follows:

0455-01-04-.01 STANDARDS OF PROFESSIONAL CONDUCT.

(1) In order to establish and maintain a high standard of integrity in the practice of court reporting, the following Standards of Professional Conduct shall be binding on every person holding a license, of any type, from the Board. A Tennessee licensed court reporter:

(a) Shall be fair and impartial toward each participant in all aspects of reported proceedings.

(b) Should only accept an assignment if ~~his/her~~ their level of competence will result in the preparation of an accurate transcript ~~and will remove the licensee from an assignment~~ , shall refuse an assignment if they believe their abilities are inadequate, ~~recommending or assigning~~ and shall recommend or assign an assignment to another licensee only if such licensee has the competence required for such assignment.
(c) Shall provide information regarding services to be rendered regarding administration of professional services to all parties and shall make timely delivery of transcripts. ~~The licensee must strive to meet promised delivery dates whenever possible, make timely delivery of transcripts when no date is specified and provide immediate notification of delays.~~
(d) Must immediately disclose any conflict of interest or appearance of impropriety as soon as it arises pursuant to T.C.A. § 24-9-136.
(e) Should immediately seek inactive status and refrain from practice if they become impaired and unable to function according to the standards of practice. ~~It is the licensee's responsibility to seek supervision and/or personal therapy for any problem that is interfering with the ability to perform professional services.~~
(f) Shall preserve the confidentiality and ensure the security of information, oral or written, entrusted to the licensee by any and all of the parties in the proceeding.
(g) Shall establish a plan for the security and preservation of shorthand notes and any backups, both paper and electronic. All such plans shall preserve notes and backups for a period of time that complies with statutory requirement or rules and guidelines of the court. In the absence of a law or rule, notes and backups must be retained for no less than five (5) years.
(h) Shall affix the licensee's signature, license number and expiration date to a transcript to certify to its accuracy.
(i) Shall not authorize the use of the licensee number on any transcript not produced through the personal effort or supervision, or both.
(j) Shall not permit the use of the licensee name or firm's name, nor shall a licensee be associated in business ventures with persons or firms that the licensee has reason to believe to be engaging in fraudulent or dishonest business practices.
(k) Shall inform ~~the Disciplinary Counsel of~~ the Board of Court Reporting if they have knowledge that another court reporter has committed a violation of the Standards of Professional Conduct or the Tennessee Court Reporter Act of 2009 that raises a substantial question as to that court reporter's honesty, trustworthiness, or fitness as a court reporter ~~in other respects. A licensee shall also cooperate with any investigation resulting from a complaint for disciplinary action.~~
(l) Shall cooperate with any investigation resulting from a complaint for disciplinary action.
~~(l)~~(m) Shall not commit a criminal act that ~~is a felony, or~~ reflects on the court reporter's honesty, trustworthiness or fitness as a court reporter ~~in other respects~~.
~~(m)~~(n) Shall be truthful and accurate when making public statements or when advertising qualifications or services provided.
~~(n)~~(o) Shall meet all mandated continuing education requirements and should keep abreast of current literature and technological advances and developments as related to the profession of court reporting.
~~(o)~~(p) Shall refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys or any other persons or entities associated with the litigation ~~(e.g., clients, witnesses, insurance companies, etc.), or to the representatives or agents of any of the foregoing~~, except for items that do not exceed twenty-five dollars ($25.00) in the aggregate per individual each year.

Authority: T.C.A. §§ 20-9-605 and 20-9-607

Rule 0455-01-05-.04 is amended by deleting the text of the rule in its entirety and substituting instead the following, so the rule, as amended, shall read:

~~0455-01-05-.04 INVESTIGATION.~~

~~(1) Upon self-disclosure or receipt of a written complaint on a TBCR Consumer Complaint Form signed by the person making the complaint, alleging that a court reporter has violated a statute or rule by committing one or more of the acts specified as grounds for disciplinary action, the Disciplinary Counsel, to be designated by the Board, shall perform a preliminary review to determine if there is merit and sufficient evidence to warrant formal proceedings. The Consumer Complaint Form must be complete~~

~~before an investigation is launched.~~
~~Complaints must be submitted to the Board within ninety (90) days of the alleged occurrence, or within ninety (90) days of the discovery of a violation.~~

~~(2) When the Disciplinary Counsel determines there may be merit and sufficient evidence exists to warrant proceedings, a hearing committee shall be formed consisting of three members, one of which must be an attorney and one of which must be a court reporter.~~

~~(a) Within five (5) days of self-disclosure or receipt of a written complaint, the Disciplinary Counsel shall provide the court reporter against whom the complaint was made written notification of the complaint, allegation(s), and investigation process by certified mail or other delivery service that provides confirmation of delivery. The court reporter may submit, to the Disciplinary Counsel a written response and any supporting documentation within 15 days of the receipt of the written notification.~~

~~(b) The committee shall review the complaint and other information submitted to determine if further investigation is warranted.~~

~~1. If an investigation is warranted, the Disciplinary Counsel will conduct further investigation, retaining an investigator, if necessary. If retained, the investigator shall work under the direction of the Disciplinary Counsel to conduct further investigation.~~

~~2. At the conclusion of the investigation, the investigator shall submit an investigation report to be reviewed by the Investigative Committee who has the authority to act on the report. The Investigative Committee shall send written notification to the complainant and the court reporter, against whom the complaint was made, of any action it decides to take in response to the investigation report.~~

~~(c) If the committee determines that an investigation is not warranted, the Disciplinary Counsel may close the investigative file, provided that the matter may be reinvestigated at any time if circumstances so warrant. The Disciplinary Counsel shall notify the complainant and the court reporter against whom the complaint was made.~~

~~(3) When a preliminary review discloses that further investigation is not warranted, the Disciplinary Counsel may close the investigative file upon approval of the Chair of the Board, provided that the matter may be reinvestigated at any time if circumstances so warrant.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

0455-01-05-.04 INVESTIGATIONS AND COMPLAINTS.

(1) The Board may investigate any person engaged, or suspected of engaging, in any business or activity regulated under the Tennessee Court Reporter Act of 2009.

(2) Upon receipt of any written complaint regarding any licensee or person engaged in unlicensed activity, the Board shall provide a copy of the written complaint to the accused party within five (5) days. Such party shall file a written answer to the complaint, within twenty (20) days, upon request by the Board.

Rule 0455-01-05-.05 is amended by deleting the text of the rule in its entirety and substituting and renumbering rule 0455-01-05-.06 so the rule, as amended, shall read:

0455-01-05-.0~~5~~6 UNIFORM ADMINISTRATIVE PROCEDURES ACT.

The Board hereby adopts by reference as its rules the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5, for governing contested cases, appeals, and related proceedings.

Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.

Rule 0455-01-05-.06 is amended by moving the text of the rule in its entirety to 0455-01-05-.05 and substituting instead the following so the rule, as amended, shall read:

0455-01-05-.06 CIVIL PENALTIES.

(1) With respect to any licensed court reporter or temporary licensed court reporter, the Board may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such licensee for each separate statutory or regulatory violation not to exceed five hundred dollars ($500.00) per violation.

(2) With respect to any person required to be licensed in this state as a court reporter, the Board may assess a civil penalty against such person for each separate statutory or regulatory violation not to exceed five hundred dollars ($500.00) per violation.

(3) Each daily violation constitutes a separate offense.

(4) In determining the amount of any penalty to be assessed pursuant to this rule, the Board may consider such factors as the following:

(a) Whether the amount imposed will be a substantial economic deterrent to the violator;
(b) The circumstances leading to the violation;
(c) The severity of the violation and the risk of harm to the public;
(d) The economic benefits gained by the violator as a result of noncompliance;
(e) The interest of the public; and
(f) Willfulness of the violation.

Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607, 20-9-608, and 56-1-308.

Rule 0455-01-05-.07 is amended by deleting the text of the rule in its entirety and substituting instead the following, so the rule, as amended, shall read:

~~0455-01-05-.07 FORMAL DISPOSITION OF CONTESTED CASES.~~

~~(1) At least twenty one (21) days prior to the administrative hearing, a notice of hearing and a copy of the charges shall be served on the applicant or court reporter personally or by registered or certified mail to the last known address shown on the records of the Board.~~

~~(2) The Board's complaint may be amended prior to the hearing but no amendment shall be permitted which is not germane to the charge or charges or which materially alters the nature of any offense charged. The Board shall have the right to determine the sufficiency of the complaint.~~

~~(3) A motion for withdrawal of the complaint may be filed with the Board's designee. The circumstances surrounding the attempt to withdraw the complaint may be explained by the person who is attempting to withdraw the complaint and the explanation shall be considered. No complaint that is well-founded will be dismissed solely upon the motion of the original complainant.~~

~~(4) Pleadings relating to disciplinary proceedings pending before the Board shall be filed with the Board's designee. Pleadings shall be deemed filed upon actual receipt.~~

~~(5) Requests for subpoenas shall be filed with the Board at least ten (10) days prior to the hearing along with the appropriate subpoena processing fee. Any expense for service by a sheriff, process server or other entity shall be the responsibility of the party requesting the subpoena. Any expenses incurred relative to subpoenas requested by a respondent, either for witnesses or related to production of documents, are the responsibility of the party who requested the issuance of said subpoena.~~

~~(6) The hearing shall be conducted by the Board in the presence of a hearing officer or by a hearing officer, pursuant to T.C.A. § 4-5-301. All testimony shall be under oath and shall be transcribed by a court reporter scheduled by the Board. Telephonic or other real-time electronic testimony is admissible at the discretion of the hearing officer.~~

~~(7) A continuance may be granted by the Board or its designee upon the filing of a written motion and affidavit detailing the reasons for the continuance. No motion for continuance shall be granted unless filed~~

~~at least five days prior to the hearing. This provision may be waived upon showing of an emergency.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

0455-01-05-.0~~7~~11 REINSTATEMENT OF A SUSPENDED OR REVOKED LICENSE.

(1) Application for reinstatement shall include evidence of corrective action taken by the licensee. ~~rehabilitation, or elimination or resolution of the conditions for revocation.~~ Such application shall be made utilizing the forms provided by the Board.

~~(2) Applications for reinstatement of a revoked license may be resolved informally or through the formal hearing process.~~

(2~~3~~) In considering reinstatement of a revoked license, the Board may evaluate factors that include but are not limited to:

(a) Severity of the act(s) that resulted in suspension or revocation of the license.
(b) Conduct of the applicant subsequent to the suspension or revocation of license.
(c) Lapse of time since suspension or revocation.
(d) Compliance with all reinstatement requirements stipulated by the Board.
(e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.
(f) ~~Whether the applicant is in violation of any applicable statute or rule.~~ Violation by the applicant of any applicable statute or rule.
(g) Directly or implied representation(s) ~~that the person was a licensed court reporter~~ of licensure by the individual during the period of revocation.

Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.

Rule 0455-01-05-.08 is amended by deleting the text of the rule in its entirety.

~~0455-01-05-.08 INFORMAL DISPOSITION OF CONTESTED CASES.~~

~~(1) Complaints or controversies may be considered and resolved by the Board or Board designee through alternative dispute resolution, informal conferences, meetings, or other informal means. Such informal measures shall be held without prejudice to the right of the Board thereafter to institute formal proceedings based upon the same or related material if circumstances so warrant.~~

~~(2) Informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default or by another method agreed upon by the parties in writing and as approved by the Board.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

Rule 0455-01-05-.09 is amended by deleting the text of the rule in its entirety

~~0455-01-05-.09 DECISIONS OF THE BOARD.~~

~~(1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition the Board action may be one or more of the following:~~

~~(a) Dismiss the complaint.~~
~~(b) Reprimand the respondent.~~
~~(c) The respondent's license placed on probation status, subject to any conditions imposed.~~
~~(d) Suspend the respondent's license. A suspended license is subject to expiration during the suspension period.~~
~~(e) Revoke the respondent's license.~~
~~(f) Deny approval of an application.~~
~~(g) Deny renewal or reinstatement of a license.~~

~~(h) Impose other sanctions, restrictions or conditions.~~

~~(2) The Board may levy a civil penalty not to exceed five hundred dollars ($500) per violation where any person undertakes or attempts to undertake the practice of court reporting for remuneration without first having procured a license, or knowingly presents or files false information with the board for the purpose of obtaining a license, or otherwise violates the Tennessee Court Reporter Act of 2009 or the rules promulgated thereunder. Each day of a violation after notice is considered a separate violation.~~

~~(3) The decisions of the Board shall be in writing in the form of an order, a copy of which shall be mailed or delivered to the respondent or the respondent's attorney.~~

~~(4) The decisions of the Board shall be subject to public dissemination.~~

~~(5) Appeals may be made pursuant to the Uniform Administrative Procedure Act provisions on contested cases, T.C.A. Title 4, Chapter 5, Part 3.~~

~~(6) All members of the Board, including the Chair, are entitled to vote and to make or second motions in disciplinary matters except for any Board Member who may also serve on the Investigative Committee, serve as the Complainant, or have a conflict of interest in the case being decided. A majority of those members on the Board present and voting on any matter shall decide that matter before the Board.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

Rule 0455-01-05-.10 is amended by deleting the text of the rule in its entirety.

~~0455-01-05-.10 APPLICATION FOLLOWING DENIAL OF LICENSURE.~~

~~(1) Application for a license following denial of licensure shall include evidence of rehabilitation, or elimination or resolution of the conditions for denial.~~

~~(2) Board action on applications following denial of licensure may be resolved either informally or through the formal hearing process.~~

~~(3) In considering a subsequent application for licensure, the Board may evaluate factors that include but are not limited to:~~

~~(a) The severity of the act(s) or omission(s) which resulted in the denial of license.~~
~~(b) The conduct of the applicant subsequent to the denial of license.~~
~~(c) The lapse of time since denial of license.~~
~~(d) Compliance with any conditions stipulated by the Board as a prerequisite for a subsequent application.~~
~~(e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant.~~
~~(f) Whether the applicant is in violation of any applicable statute or rule.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-606, 20-9-607 and 20-9-608.~~

Rule 0455-01-05-.11 is amended by deleting the text of the rule in its entirety.

Rule 0455-01-06-.01 is amended by amending paragraphs (1), (2), (4), (5), and adding paragraph (6) so that the rule reads as follows:

0455-01-06-.01 CONTINUING EDUCATION REQUIREMENTS.

(1) Beginning with the first renewal period and every renewal period thereafter, every licensee who applies for renewal of a license shall have completed two (2) credits of continuing education (CE) relevant to the practice of court reporting.

(2) A ~~R~~renewal ~~P~~period is the twenty-four (24) months preceding July 1 of the year of license expiration.

(3) A CE credit means ten (10) hours of continuing education.

(4) A CE hour means a minimum of fifty (50) minutes of actual clock time spent by a licensee in actual attendance at and completion of an approved CE activity. After completion of the initial CE hour, credit may be given in ~~one~~-half hour (.5) increments.

(5) Non-~~R~~ resident ~~L~~licensees shall comply with the CE Requirements set forth in this Section.

(6) Failure to obtain the requisite CE credits will result in an incomplete application and will cause the application to not be processed.

Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-612.

Rule 0455-01-06-.05 is amended by deleting the text of the rule in its entirety.

~~0455-01-06-.05 NON-COMPLIANCE WITH CONTINUING EDUCATION REQUIREMENT.~~

~~(1) Each renewal applicant's CE credit will be reviewed to ensure that the CE requirement has been met.~~

~~(2) Where there appears to be a lack of compliance with the CE requirement, an applicant shall be notified in writing. Such applicant may request an interview with the Board.~~

~~(3) The Board may recommend steps being taken to begin formal disciplinary proceedings for non-compliance with the CE requirement.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-612.~~

Rule 0455-01-06-.06 is amended by deleting the text of the rule in its entirety.

~~0455-01-06-.06 WAIVER OF CE REQUIREMENTS.~~

~~(1) Any renewal applicant seeking renewal of a license without having fully complied with these CE requirements shall file with the Board a renewal application along with the required renewal fee, a statement setting forth the facts concerning non-compliance and request a waiver of the CE requirements on the basis of these facts. A request for waiver shall be made prior to the renewal date. If the Board, finds from the documentation submitted that extreme hardship has been shown for granting a waiver, the Board shall waive enforcement of CE requirements for the renewal period for which the applicant has applied. Extreme hardship shall be determined on an individual basis by the Board and be defined as an inability to devote sufficient hours to fulfilling the CE requirements during the application pre-renewal period because of:~~

~~(a) Full-time service in the armed forces of the United States during a substantial part of the pre-renewal period;~~
~~(b) An incapacitating illness documented by a statement from a currently licensed physician;~~
~~(c) A physical inability to travel to the sites of approved programs documented by a currently licensed physician;~~
~~(d) Being retired from practice and not performing reporting services, or~~
~~(e) Any other similar extenuating circumstances.~~

~~(2) Any renewal applicant who, prior to the expiration date of the license, submits a request for a waiver, in whole or in part, pursuant to the provisions of this Section, shall be deemed to be in good standing until the final decision on the applicant is made by the Board.~~

~~Authority: T.C.A. §§ 20-9-605, 20-9-607 and 20-9-612.~~

Rule of the Tennessee Board of Court Reporting
Chapter 0455-01
Rule 0455-01-01-.04-.05; 0455-01-02-.03-.04; 0455-01-03-.01-.04; 0455-01-04-.01; 0455-01-05-.04-.07; 0455-01-06-.01
* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Ken Mansfield	X				
Britton Collins	X				
Earl Houston				X	
Terri Beckham				X	
John Rambo	X				
Ken Gibson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Court Reporting on 06/16/2016, 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: 04/26/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 06/16/2016

Date: 10/24/16

Signature: Ashley N. Thomas Esq.

Name of Officer: Ashley N. Thomas

Title of Officer: Assistant General Counsel

VANESSA HUNTSMAN
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY
MY COMMISSION EXPIRES 11-21-17

Subscribed and sworn to before me on: 10/24/16

Notary Public Signature: Vanessa Huntsman

My commission expires on: 11/21/17

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

11/8/2016
Date

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PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 11/17/16

Effective on: 2/15/17

Tre Hargett
Secretary of State