G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	
SUBJECT:	Student Code of Conduct; Student Rights and Responsibilities
STATUTORY AUTHORITY:	The parts of the rule relating to sexual misconduct, relationship violence, and stalking have been adopted to comply with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f.
EFFECTIVE DATES:	August 22, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	In 2013, UT Knoxville (UTK) initiated a comprehensive review of the Office of Student Judicial Affairs, the unit directly responsible for investigating and resolving issues concerning student conduct. The purpose of the review was to offer recommendations that would model best practices within the field of student conduct administration. The review team consisted of two (2) external reviewers and three internal reviewers. The review team met with UTK faculty, staff, and students over the course of three days in July 2013. In August 2013, the review team presented UTK with a report containing findings and recommendations. As a result of the review team's findings and recommendations, UTK has implemented a number of changes to its student conduct administration over the past three and a half years. UTK changed the name of the student conduct office to "Office of Student Conduct and Community Standards" (SCCS), and the office adopted a new philosophy, a new mission statement, and new learning outcomes.

In 2015, UTK's Division of Student Life solicited and received feedback from students and faculty regarding a new student Code of Conduct. At the fall 2015 Board meeting, the Board approved a new student Code of Conduct for UTK, which addressed other recommendations of the review team. The proposed Code was approved for legality by the Office of the General Counsel and the State Attorney General and was filed with the Tennessee Secretary of State. Before the proposed Code went into effect, however, UTK withdrew the proposed Code in order to make revisions that would comply with a provision in the Settlement Agreement in the Jane Doe Title IX lawsuit.

The relevant provision of the Settlement Agreement states:

> UTK will initiate a change to its student conduct rules to provide that current students will not be appointed to serve on student disciplinary boards in cases involving allegations of sexual misconduct unless both the respondent and the complainant consent to having students appointed to serve on the board hearing their case. Plaintiffs recognize that UTK is required to promulgate certain proposed policy changes, including this change, in accordance with the rulemaking provisions of the Uniform Administrative Procedures Act (UAPA), the last step of which involves review by the Tennessee General Assembly's Joint Operations Committee. Provided that UTK initiates the rule change, non-implementation of the rule change will not be deemed a breach of this Agreement.

In compliance with the Settlement Agreement, UTK revised the proposed Code by incorporating proposed Section .08(2)(b)(2) and Section .08(6)(g) and proposing those revisions to the University's Board of Trustees, who approved the revisions.

In addition, since the fall 2015 Board meeting, UTK took advantage of the opportunity to gather additional feedback on the proposed Code.

- In December 2015, University officials met with legislators and Greek alumni to discuss the proposed Code.

- The University held a public rulemaking hearing on October 13, 2016 at the first meeting of the Board's Subcommittee on Student Conduct, Rights, and Responsibilities. At the rulemaking hearing, the

University received oral comments from three UTK students. The University also received written comments from 82 people.

- Additional vetting with the campus community in Spring 2017 included:

    - The Student Government Association Undergraduate Student Senate (voted to support the proposed Code)
    - The Student Government Association Graduate Student Senate (voted to support the proposed Code)
    - Faculty Senate (voted to support the proposed Code)
    - Student Life Leadership Team (endorsed the proposed Code)
    - Chancellor's Cabinet (endorsed the proposed Code)
    - Council of Deans (endorsed the proposed Code)
    - Presentation, discussion, and Q&A with students – all student organization presidents were invited
    - An email was sent to all students inviting any questions and feedback on the proposed Code

Based on feedback received, additional evaluation, and continued research, the University has made the following substantive changes to the proposed Code since the fall 2015 Board meeting:

- Added a specific reference to UTK's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation in the Standards of Conduct

- Incorporated language to provide flexibility for potential legislative changes related to weapons

- Moved the definition of retaliation to the Standards of Conduct to improve clarity

- Added a requirement that SCCS provide written notification to students of their right to have an advisor assist them with the student conduct process

- Added language to provide further explanation of interim actions and restrictions

- Added process information related to research misconduct

- Established personal prejudice or bias of a Student Conduct Board member as a ground for appeal

- Consolidated the sections concerning a student's and a student organization's right to a formal hearing

Key aspects of the Student Code of Conduct include:

Philosophy

- The proposed Code establishes a more clearly stated philosophy of conduct that affirms a developmental and educational process, not just one that is punitive.

- The proposed Code is less adversarial and legalistic. The proposed Code is more detailed in order to ensure transparency and limit the discretion of student conduct officials.

Jurisdiction

- The University's jurisdiction related to off-campus conduct has been narrowed and clarified

Process

- SCCS will conduct an Educational Conference with the student alleged to have committed misconduct (Respondent). During the Educational Conference, the Respondent will learn about the allegations and have the opportunity to respond to the allegations and ask questions about the allegations, possible sanctions, and the student conduct process. SCCS will not determine sanctions prior to the Educational Conference.

- The proposed process establishes a uniform board composed of students, faculty, and staff (rather than only students) in an effort to provide a consistent and fair process for all students and student

organizations. However, there are exceptions providing for boards composed of only faculty in staff for certain cases involving sexual misconduct and research misconduct.

- SCCS may propose an alternative resolution process, such as mediation, to resolve misconduct issues.

- Students have the right to be assisted by an advisor throughout the student conduct process.

- An additional hearing option before a Student Life Hearing Officer is available.

- The process for appealing a decision of the Student Life Hearing Officer and/or Student Conduct Board is simplified.

- The appeal process for students is less intimidating by eliminating the Student Life Council as an appellate body.

Sanctions: Administrative & Developmental

- The sanction of indefinite suspension has been removed due to the confusion surrounding the sanction.

- The addition of the deferred suspension sanction allows students an opportunity to remain enrolled at the University, while providing an opportunity for the student to abide by the Code of Conduct.

- Developmental/educational sanction options are included.

Records Retention and Disclosure

- The proposed Code adds a policy on the retention and expungement of student disciplinary records. After a student is no longer enrolled, SCCS will disclose a student's disciplinary records to persons outside of SCCS only if one of the following sanctions was imposed on the student while the student was enrolled: suspension;

expulsion; withholding of degree; or revocation of degree.

- Additionally, SCCS will expunge the disciplinary records of a student seven (7) years after the student's graduation or last date of enrollment if the student did not receive a sanction of suspension or greater.

Good Samaritan/Amnesty Policy

- The proposed Code establishes a Good Samaritan/Amnesty policy to encourage students to notify appropriate officials in the event of a health or safety emergency (e.g., situation involving the abuse of alcohol or other drugs).

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.

Attached hereto are the responses to public comments.

THE UNIVERSITY OF TENNESSEE, KNOXVILLE

RESPONSES TO PUBLIC RULEMAKING HEARING COMMENTS

CHAPTER 1720-04-03 (STUDENT CODE OF CONDUCT)

On October 13, 2016, The University of Tennessee held a public hearing on a proposed rule for The University of Tennessee, Knoxville ("UTK"), Chapter 1720-04-03, which proposed a new Student Code of Conduct ("Proposed Code"). This document contains UTK's responses to comments timely submitted in connection with the public hearing on the Proposed Code, whether orally or in writing. UTK received three oral comments and 82 written comments.

The University reviewed and evaluated every comment that was timely received. In accordance with Tennessee Code Annotated § 4-5-222, UTK has grouped similar comments together and addressed those comments in one response. UTK's responses to comments are categorized and summarized below. While some suggested changes were made in response to comments, not every suggested change was incorporated in the final Student Code of Conduct ("Final Code") being proposed to The University of Tennessee Board of Trustees ("Board") on March 28-29, 2017. UTK has not responded to comments that did not address specific aspects of the Proposed Code.

The Model Student Code of Conduct ("Model Code") authored by student affairs professionals Ed Stoner and John Lowery was created as a guide for campuses to use as a reference to revise policies and procedures. The Model Code was used throughout the drafting process of UTK's proposed Student Code of Conduct and will be referenced throughout this document. A copy of the Model Code can be found at http://www.edstoner.com/uploads/stoner__lowery_JCUL_2004_cropped.pdf.

Philosophy, Accessibility, & Length of the Proposed Code

Several commenters commended the educational philosophy and process clarification in the Proposed Code. Other commenters expressed concerns related to the perceived legalistic nature of the Proposed Code, necessity for clarification, and length of the document. In an effort to address some of the stated concerns related to the aforementioned areas, UTK clarified multiple areas in the Final Code. Revisions were made in the following areas to address some concerns expressed by commenters: a more detailed explanation of retaliation in the Standards of Conduct (Section 4.7); the addition of required student notification of the right to an advisor (Section 5.3.3); and further explanation of UTK interim actions and restrictions (Section 6.4). UTK maintains that the Final Code establishes a more clearly stated educational philosophy that affirms a

developmental and educational process (e.g., creation of an Educational Conference, educational sanctions, and process simplification). The Final Code is slightly longer than the current Code of Conduct; however, it provides much needed process explanation and clarification, as well as additional components (e.g., medical amnesty). Upon successful promulgation, the Code will be accessible online.

Jurisdiction

Several commenters voiced concerns that the Proposed Code's description of UTK's jurisdiction over off-campus misconduct is vague and overbroad. The Final Code outlines the geographical limits of the Code in Section 2.1. The Final Code further outlines and clarifies when students will be held accountable for off-campus misconduct. The off campus jurisdiction outlined in the Final Code is consistent with peer Tennessee, SEC, and aspirant institutions. Additionally, several individuals voiced concerns regarding the inclusion of the clause "adversely affects the University's educational or reputational interests." That clause was removed from the Proposed Code prior to its passage by the Board in October 2015.

Legal Counsel

One commenter commended the Proposed Code for outlining the right of a student to have legal counsel present throughout the process. Several other commenters raised concerns about the absence of "active" legal counsel during the conduct process. The Proposed Code was not amended based on these comments. Allowing attorneys to actively speak on behalf of the student in a disciplinary proceeding diminishes many educational aspects of the conduct process, creates issues of fairness, and makes the conduct process much more legalistic in nature. Additionally, the current process of allowing students the right to a legal advisor meets the due process requirements as outlined by the Model Code and legal precedent. The Final Code does permit attorneys to be present during all stages of the process in an effort to maintain the educational and developmental nature of the proposed process, while allowing students the right to counsel. This process is consistent with other Tennessee, SEC, and aspirant institutions. Furthermore, if a student elects to have their disciplinary case heard pursuant to a contested case proceeding under the Tennessee Uniform Administrative Procedures Act ("UAPA"), then the student has the right to active representation by an attorney in the UAPA proceeding.

Burden of Proof

Three commenters voiced concerns regarding the standard of evidence used in the Proposed Code and several commenters raised an issue with the voting threshold used

in hearing decisions. The commenters who voiced concerns regarding the standard of evidence advocated for using the standard of clear and convincing evidence. The standard of evidence that is used in the Final Code is preponderance of the evidence. Using a preponderance of the evidence standard is consistent with other Tennessee institutions, the Model Code, federal guidance regarding Title IX cases, and the standard of evidence used in UTK's student conduct process for the past 40 years.

The commenters who expressed concern regarding the voting threshold used in hearing decisions advocated that the voting threshold should be higher (e.g., unanimous or 2/3 majority). In the proposed Code, board members will determine if a student is found responsible for the alleged misconduct by a majority vote. However, the burden of presenting information demonstrating that it is more likely than not the alleged misconduct occurred rests with the Conduct Officer, not with the student (Section 8.4.8). UTK believes that a majority decision by the board is sufficient in making a responsibility determination for a student conduct process. The Model Code also supports this practice.

Medical Amnesty/Good Samaritan Policy

Multiple commenters commended UTK for the inclusion of the medical amnesty policy in the Proposed Code. However, several commenters also expressed concerns with the application of the medical amnesty policy to organizations and the policy being "discretionary." In response to the concern about the application of the policy being discretionary, the medical amnesty policy states that unless an individual impaired student or an individual Good Samaritan has engaged in repeated or serious violations (e.g. sexual assault, theft, physical assault), then they will not be subject to formal disciplinary action. However, educational sanctions may be utilized in certain situations to facilitate a true learning experience and help address any health or safety concerns.

In regard to the application of this policy to student organizations, the proposed Code states that the utilization of the policy by student organizations will be considered a mitigating factor in determining the outcome and/or sanction for any alleged misconduct. Such an application of the policy to student organizations is consistent with peer institutions who have a medical amnesty policy.

Consolidation of Hearing Boards

Several commenters, including the then-President of the Panhellenic Council at UTK, commended the consolidation of the hearing boards for one or more of the following reasons: (1) eliminates preferential treatment for any particular group; (2) not all groups

on campus have a separate board; (3) the current separation of the boards creates a system of inequality for the rest of the campus; and (4) consolidation of the boards allows for more consistent enforcement for all students and student organizations.

Several commenters expressed concern with the elimination of the Greek Judicial Board. The absence of a Greek Judicial Board is consistent with all public, four-year Tennessee institutions, as well as many peer and aspirant institutions. UTK continues to maintain that the consolidation of the hearing boards provides a fair, equitable, and consistent process for all students and student organizations. All students, including Greek-affiliated students, will have the opportunity to apply to serve on the Student Conduct Board under the Final Code.

Chicago Principles

Several commenters voiced concerns that the Proposed Code does not include the "Chicago Principles." UTK did not adopt the Chicago Principles in the Final Code. UTK specifically references the First Amendment of the United States Constitution three times to address protected student rights. Based on feedback, further clarification was also added to the Final Code in the preamble section. The additional language states, "The Code shall be interpreted in a way that does not violate the students' constitutional rights including, without limitation, the rights protected by the First Amendment of the United States Constitution" (Article I). UTK believes multiple references to the Constitution are sufficient reminders of the Code's protections of the constitutional rights of students.

Rights of the Accused

Several commenters expressed concerns over the perceived elimination of the Fundamental Rights of the Accused despite the fact that the Fundamental Rights of the Accused were included in the Proposed Code in Article V. The Fundamental Rights of the Accused are included in the Final Code in Article V.

Grounds for Appeal

Several commenters stated that the bias of a hearing board member should be an automatic ground for appeal. This change was made and a ground for appeal based on "personal prejudice or bias" of a board member is now included in the Final Code (Section 8.6.3). One commenter also stated that "material procedural error" should be considered a ground for appeal. Material procedural error was already included as a ground for appeal in the Proposed Code and remains in the Final Code (Section 8.6.3).

Composition of the Student Conduct Board

Several commenters stated they were concerned with the composition of the Student Conduct Board, specifically in reference to faculty or staff representation being greater than student representation on the board. Based on feedback from the campus community prior to the passage of the Proposed Code by the Board in October 2015, the composition of the Student Conduct Board was amended. The Final Code states, "the student composition of the voting members of the SCB must be equal to or greater than the sum of the faculty and staff voting members," except for cases involving allegations of sexual misconduct and research misconduct (Section 8.2.2).

Additionally, two commenters submitted inquiries concerning the composition and training of the group of individuals able to serve on hearings. All students, faculty, and staff will be able to apply to serve on the Student Conduct Board and if selected these individuals will receive a comprehensive training. A Student Life Hearing Officer, who also has the ability to conduct hearings, is a UTK employee designated and trained on the procedures in the Proposed Code (Section 7.2.4).

Composition of the Student Conduct Board in Cases Involving Sexual Misconduct

Several commenters expressed concerns about the removal of student board members from cases involving allegations of sexual misconduct. The Proposed Code and the Final Code state that students shall not be appointed to serve on the Student Conduct Board (SCB) in cases involving the allegation of sexual misconduct, unless both the Respondent and Complainant agree to students serving on the Board (Section 8.2.2). This language is retained in the Final Code because UTK is required to propose this change to the Board to comply with an agreement to settle *Jane Doe I et al. v. University of Tennessee*, Case No. 3:16-cv-00199, United States District Court for the Middle District of Tennessee.

One commenter raised a question concerning the confidentiality of Student Conduct Board members. In response, board members are required to maintain confidentiality for all cases. The importance of confidentiality is also discussed at length in the trainings for board members.

One commenter mentioned UTK's efforts related to prevention and awareness. UTK has an office, the Center for Health Education and Wellness, dedicated to prevention and intervention efforts in this area.

One commenter also mentioned incorporating anonymity between parties involved in cases of alleged sexual misconduct. Additionally, an individual recommended changing

board composition by requiring even male and female representation on sexual misconduct boards. No changes were made to the Proposed Code in these areas because the recommended changes are not consistent with current UTK procedures.

Alcohol Policy

Several commenters indicated dissatisfaction with the current UTK alcohol policy, specifically alcohol being prohibited on campus. In response to these concerns, the Standard of Conduct related to alcohol on University-controlled property or in connection with a University-affiliated activity was amended to include additional language. The additional language states, "unless expressly permitted by University policy," which allows for any future change in the alcohol policy without the Code of Conduct impeding the change.

Amendments to Code Based on Feedback

Several commenters expressed concerns of a perceived lack of amendments or changes to the Proposed Code following feedback. These commenters also specifically mentioned a meeting that occurred with University administrators in December 2015. Changes were made to the proposed Code based on feedback received throughout the initial vetting process in 2015 (e.g., changes made to jurisdiction, clarification of organization responsibility). Changes also occurred following the aforementioned December 2015 meeting (e.g., the director of SCCS shall not appoint persons to serve on the SCB based on how they are anticipated to vote). Additional amendments followed the public rulemaking hearing in October 2016 (e.g., addition of student notification of the right to have an advisor and an addition of a ground for appeal based on personal prejudice or bias). All feedback received during the vetting process was evaluated and while some changes were incorporated based on feedback received, not every suggested change was integrated into the Final Code.

Vetting Process/Timeline of Proposed Code/Final Code

Several commenters noted their involvement, as students, in the vetting process of the Proposed Code. One commenter commended the process by stating that the Proposed Code reflects student voices from across campus.

Several commenters expressed concern about the timeline and the perceived lack of student involvement in the vetting process. The external review of the Office of Judicial Affairs (currently known as the Office of Student Conduct and Community Standards) occurred in 2013. This external program review recommended that UTK revise the Student Code of Conduct. The initial vetting process of the Proposed Code then began in

2015 and consisted of various presentations and discussions with groups across campus (e.g., Student Senate, Greek Leaders, and Faculty Senate). Additionally, students received various emails inviting questions and feedback on the Proposed Code (e.g., an email sent to all students and an email sent to Greek Chapter Presidents). Throughout the vetting process, feedback was gathered, assessed, and changes were made based on evaluation, as discussed above.

Definitions/Standards

Two commenters expressed concern with the withholding information clause in the Proposed Code (Section 4.3). In response, UTK wants to highlight that the Standard of Conduct pertaining to withholding information includes an exception for respondents. This exception can be found in the fundamental rights for the respondent, where the Final Code states that the respondent or student alleged to have violated the Code of Conduct has the "right to refrain from presenting information and witnesses...and the right to not have the Student Life Hearing Officer or SCB draw an inference adverse to the Respondent if the Respondent does not present information or witnesses" (Section 5.1, Fundamental Right 9).

Additionally, several commenters stated that the definitions of academic dishonesty and plagiarism are broad. UTK did not make any changes to these sections because UTK believes the Final Code clarifies and provides examples for each of these terms in Article X. The information in the Final Code concerning plagiarism and academic dishonesty provides clarity, examples, and is consistent with the current Code of Conduct.

One commenter stated that the definitions should be placed at the front of the Proposed Code. This change was not implemented because UTK believes that placing the definitions at the back of the Final Code allows students to have prior context for the material the definitions reference.

One commenter also stated that definitions in the Code should have ordinary meaning and that several definitions were too lengthy. UTK believes the length of the definitions provide clarity and necessary, detailed information on the meaning of terms used throughout the document. Specifically, this commenter expressed concern with the definition of consent and the perception of the burden of proof being with the accused student. This referenced definition of consent is located in UTK's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, which is separate from the Final Code and was previously approved by the Board. Additionally, the Final Code

clearly states that "the Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct" (Section 8.4.8).

Student Organization Responsibility

Several commenters expressed apprehension about student organization responsibility for violations of the Standards of Conduct. A few commenters stated that there needed to be an inclusion of an organization definition in the Code. This definition can be found in the definitions section of the Final Code (Article XIII). Additional concerns focused on the responsibility of an organization if just a few members were involved in the alleged violation of the Standards of Conduct, but the organization was not aware of the incident. Some commenters further expressed the desire for the Final Code to include a specific number of members at an event that would result in the event being considered an organization event. The Final Code outlines what criteria will be used to determine student organization responsibility for violations of the Standards of Conduct in Section 2.4. This section outlines and clarifies what will be used to determine if the conduct is fairly attributable to the student organization based on a totality of the outlined criteria. UTK did not change the Proposed Code to include a specific number of members at an event that would result in the event being considered an organization event. This is in an effort to avoid an event begin considered an organization event based solely on the number of individual members present. This is also consistent with other peer Tennessee and SEC institutions. Overall, UTK believes that outlining a set of criteria used to determine organization responsibility will provide clarity for organizations, as well as help prevent organizations from unfairly being held responsible for violations by individual members.

Advisors

One commenter expressed support for the additional option for an advisor detailed in the Proposed Code (Section 5.3).

One commenter inquired as to who the advisors are and if they receive training for this role. The Final Code outlines the various options students have for advisors, which includes a UTK employee, friend, or attorney (Section 5.3). The Office of Student Conduct and Community Standards will train UTK employees who serve as advisors. Upon the successful promulgation of the Final Code, a comprehensive training for advisors would be developed and include topics such as the role of an advisor, the Code of Conduct, and the student conduct process.

Hearing Process

One commenter commended the inclusion of collaborative solutions to conflicts reported to the Office of Student Conduct and Community Standards.

One commenter submitted questions and concerns surrounding the hearing process, including topics such as the timeline of the process and hearing logistics. One comment deals with allowing a video link to be a two-way link to allow both parties to interact with one another. The current process is to use a two-way device to allow for interaction between the involved parties if an individual video conferences for a hearing. In response to a question raised regarding Complainant and Respondent access to the hearing record, both parties will have access to the decision of the board and the Notice of the Appeal, if the decision of the Board is appealed (8.6.8). In response to the comment regarding a need for guidelines for a chairperson's authority, the Final Code outlines the role of the Chairperson (Section 8.4). An additional suggestion is to allow the reference of a respondent's student conduct records in the sanction discussion for a hearing. The Final Code states that the Respondent's conduct history can be provided for the determination of the sanction (Section 8.5.3). This commenter also asked if witness statements are required to be notarized. Witness statements are not currently required to be notarized.

One commenter expressed concerns regarding the timeline of the hearing process. The commenter stated that case information should be provided no less than seven business days in advance and that the pre-hearing review occur at least three days in advance. The Final Code requires the reporting of information to the Office of Student Conduct and Community Standards five business days in advance (Section 8.3.1). This allows the complainant and respondent ample time to prepare information they would like to present at the hearing. The pre-hearing review will take place no less than three business days prior to the hearing, as suggested above (8.3.2).

One commenter suggested seven business days as the minimum failure to request a formal hearing and two commenters suggest seven business days as the time allotment for requesting an appeal. In the Proposed Code, the Respondent has five business days upon notice of allegations to elect a Formal Hearing (Section 7.4.3). The Respondent also has five business days to submit a Notice of Appeal once provided with a copy of the Notice of Decision. UTK did not change this time allotment to seven business days in an effort to ensure that the adjudication process is completed in a timely manner.

Search Policy

Several commenters stated concerns about the UTK housing search policy. The University housing search policy and procedures are a separate UTK policy and are not a part of the Final Code.

Other

One commenter suggested the development of a Student Code of Conduct banner to be distributed in the lobby of UTK buildings to serve as a reminder for students, faculty, staff, and alumni. Upon promulgation of the Final Code, UTK will implement a plan to inform the campus community of the new Code of Conduct.

One commenter praised the adjustment of disciplinary records disclosure in the Proposed Code, by which records will only be released after a student is no longer enrolled if the sanction is suspension or greater (Article XIII).

One commenter mentioned the fourth paragraph of Article I and the absence of the mention of student organizations. Throughout the Final Code, the term "student" is used to refer to students and student organizations. The definition of student in the Final Code includes student organization (Article XIII).

One commenter requested that UTK continue the review and redrafting process. This comment was submitted as part of the rulemaking hearing in October 2016. Following the evaluation of comments presented at the rulemaking hearing, several revisions were made to the Proposed Code.

Oral Comments

One commenter recognized the necessary improvements to the Proposed Code and the subsequent benefits for students. The commenter specifically recognized the educational approach in Article I, the medical amnesty/Good Samaritan policy, the inclusion of an educational conference, and the elimination of the sanction of indefinite suspension. The commenter also mentioned a Student Government resolution passed in support of the medical amnesty/Good Samaritan policy in the Proposed Code. The commenter expressed a desire for additional conversations regarding the board composition change for sexual misconduct cases. The commenter acknowledged the value of consolidating the hearing boards, while also mentioning expressed concerns from the Greek community regarding the elimination of the Greek Judicial Board. The commenter stated that a separate Greek Judicial Board might take away from the consistency and efficiency of the process. However, the commenter also states that additional conversations should

take place regarding this issue. Lastly, an amendment to the Standard of Conduct related to alcohol on campus was recommended. This recommended change was implemented in the Final Code by the addition of the language "unless expressly permitted by University policy," which allows for any future change in the alcohol policy to occur, without the Code of Conduct impeding any change (Section 4.18).

Another commenter and member of the Greek community, voiced support for the consolidation of the hearing boards and the elimination of the Greek Judicial Board. The commenter discusses the leadership role they hold in the Greek community and the reasoning they support the removal of the Greek Judicial Board. The commenter contends that Greek organizations strive to hold themselves to a higher standard and that if this is true, it should not be a concern to appear before a uniform hearing board who hears cases for all students and organizations. Additionally, the commenter asserts that members of the hearing board would be individuals entrusted with making determinations for all students and therefore that trust should extend for Greek decisions, regardless of Greek affiliation. Additionally, the commenter stated that the board consolidation helps to eliminate separation between the Greek community and other students. Overall, the commenter states that the Proposed Code provides various improvements for students and that it is important for Greek students and alumni to consider this.

The final commenter stated opposition to the removal of student board members from cases involving allegations of sexual misconduct, and expressed concerns regarding potential consequences of this change. The commenter referenced a Student Government Association resolution detailing concerns with this change. The resolution did not pass because it was voted down following a tie vote. The commenter asserted that this is a divisive issue on campus. As stated above, the language is included in the Final Code to comply with an agreement to settle Title IX litigation. The commenter also mentioned that issues exist in the sexual misconduct process and that a review is needed in order to address these issues. Those issues are related to the Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation, which is a separate UTK policy.

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.

The rules are not anticipated to have an effect on small businesses.

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 rules are not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

In 2013, UT Knoxville (UTK) initiated a comprehensive review of the Office of Student Judicial Affairs, the unit directly responsible for investigating and resolving issues concerning student conduct. The purpose of the review was to offer recommendations that would model best practices within the field of student conduct administration. The review team consisted of two (2) external reviewers and three internal reviewers. The review team met with UTK faculty, staff, and students over the course of three days in July 2013. In August 2013, the review team presented UTK with a report containing findings and recommendations.

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The relevant provision of the Settlement Agreement states:

> UTK will initiate a change to its student conduct rules to provide that current students will not be appointed to serve on student disciplinary boards in cases involving allegations of sexual misconduct unless both the respondent and the complainant consent to having students appointed to serve on the board hearing their case. Plaintiffs recognize that UTK is required to promulgate certain proposed policy changes, including this change, in accordance with the rulemaking provisions of the Uniform Administrative Procedures Act (UAPA), the last step of which involves review by the Tennessee General Assembly's Joint Operations Committee. Provided that UTK initiates the rule change, non-implementation of the rule change will not be deemed a breach of this Agreement.

In compliance with the Settlement Agreement, UTK revised the proposed Code by incorporating proposed Section .08(2)(b)(2) and Section .08(6)(g) and proposing those revisions to the University's Board of Trustees, who approved the revisions.

In addition, since the fall 2015 Board meeting, UTK took advantage of the opportunity to gather additional feedback on the proposed Code.

- In December 2015, University officials met with legislators and Greek alumni to discuss the proposed Code.
- The University held a public rulemaking hearing on October 13, 2016 at the first meeting of the Board's Subcommittee on Student Conduct, Rights, and Responsibilities. At the rulemaking hearing, the University received oral comments from three UTK students. The University also received written comments from 82 people.
- Additional vetting with the campus community in Spring 2017 included:
  - The Student Government Association Undergraduate Student Senate (voted to support

the proposed Code)

- The Student Government Association Graduate Student Senate (voted to support the proposed Code)
- Faculty Senate (voted to support the proposed Code)
- Student Life Leadership Team (endorsed the proposed Code)
- Chancellor's Cabinet (endorsed the proposed Code)
- Council of Deans (endorsed the proposed Code)
- Presentation, discussion, and Q&A with students – all student organization presidents were invited
- An email was sent to all students inviting any questions and feedback on the proposed Code

Based on feedback received, additional evaluation, and continued research, the University has made the following substantive changes to the proposed Code since the fall 2015 Board meeting:

- Added a specific reference to UTK's Policy on Sexual Misconduct, Relationship Violence, Stalking, and Retaliation in the Standards of Conduct
- Incorporated language to provide flexibility for potential legislative changes related to weapons
- Moved the definition of retaliation to the Standards of Conduct to improve clarity
- Added a requirement that SCCS provide written notification to students of their right to have an advisor assist them with the student conduct process
- Added language to provide further explanation of interim actions and restrictions
- Added process information related to research misconduct
- Established personal prejudice or bias of a Student Conduct Board member as a ground for appeal
- Consolidated the sections concerning a student's and a student organization's right to a formal hearing

Key aspects of the Student Code of Conduct include:

Philosophy

- The proposed Code establishes a more clearly stated philosophy of conduct that affirms a developmental and educational process, not just one that is punitive.
- The proposed Code is less adversarial and legalistic. The proposed Code is more detailed in order to ensure transparency and limit the discretion of student conduct officials.

Jurisdiction

- The University's jurisdiction related to off-campus conduct has been narrowed and clarified

Process

- SCCS will conduct an Educational Conference with the student alleged to have committed misconduct (Respondent). During the Educational Conference, the Respondent will learn about the allegations and have the opportunity to respond to the allegations and ask questions about the allegations, possible sanctions, and the student conduct process. SCCS will not determine sanctions prior to the Educational Conference.

- The proposed process establishes a uniform board composed of students, faculty, and staff (rather than only students) in an effort to provide a consistent and fair process for all students and student organizations. However, there are exceptions providing for boards composed of only faculty in staff for certain cases involving sexual misconduct and research misconduct.
- SCCS may propose an alternative resolution process, such as mediation, to resolve misconduct issues.
- Students have the right to be assisted by an advisor throughout the student conduct process.
- An additional hearing option before a Student Life Hearing Officer is available.
- The process for appealing a decision of the Student Life Hearing Officer and/or Student Conduct Board is simplified.
- The appeal process for students is less intimidating by eliminating the Student Life Council as an appellate body.

Sanctions: Administrative & Developmental

- The sanction of indefinite suspension has been removed due to the confusion surrounding the sanction.
- The addition of the deferred suspension sanction allows students an opportunity to remain enrolled at the University, while providing an opportunity for the student to abide by the Code of Conduct.
- Developmental/educational sanction options are included.

Records Retention and Disclosure

- The proposed Code adds a policy on the retention and expungement of student disciplinary records. After a student is no longer enrolled, SCCS will disclose a student's disciplinary records to persons outside of SCCS only if one of the following sanctions was imposed on the student while the student was enrolled: suspension; expulsion; withholding of degree; or revocation of degree.
- Additionally, SCCS will expunge the disciplinary records of a student seven (7) years after the student's graduation or last date of enrollment if the student did not receive a sanction of suspension or greater.

Good Samaritan/Amnesty Policy

- The proposed Code establishes a Good Samaritan/Amnesty policy to encourage students to notify appropriate officials in the event of a health or safety emergency (e.g., situation involving the abuse of alcohol or other drugs).

(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 parts of the rule relating to sexual misconduct, relationship violence, and stalking have been adopted to comply with Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. § 1681, and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), 20 U.S.C. § 1092f.

(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, Knoxville are most directly affected by this rule. On multiple occasions through multiple methods prior to the UT Board of Trustees' adoption of the rule, the University's administration solicited feedback from students and revised drafts of the rule based on feedback they received from students. The student member of the UT Board of Trustees voted to approve the rule. A summary of comments received in connection with the rulemaking hearing, and the University's responses to those comments, accompanies this filing.

(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;

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;

None

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

Matthew Scoggins
General Counsel
The University of Tennessee

Vincent Carilli
Vice Chancellor for Student Life
The University of Tennessee, Knoxville

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

Matthew Scoggins
General Counsel
The University of Tennessee

Vincent Carilli
Vice Chancellor for Student Life
The University of Tennessee, Knoxville

(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
General Counsel
The University of Tennessee
719 Andy Holt Tower
Knoxville, TN 37996-0170
scoggins@tennessee.edu
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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

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Sequence Number: 05-16-17
Rule ID(s): 6529
File Date: 5/24/17
Effective Date: 8/22/17

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: University of Tennessee
Division:
Contact Person: Matthew Scoggins, 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
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**
1720-04-03	Student Code of Conduct
Rule Number	**Rule Title**
1720-04-03-.01	Preamble
1720-04-03-.02	Jurisdiction
1720-04-03-.03	Relationship Between the Code and Criminal Law
1720-04-03-.04	Standards of Conduct
1720-04-03-.05	Fundamental Rights
1720-04-03-.06	Student Conduct Process: Initial Stages
1720-04-03-.07	Student Conduct Process: Resolutions
1720-04-03-.08	Student Conduct Board: Hearings and Appeals
1720-04-03-.09	Sanctions
1720-04-03-.10	Honor Statement
1720-04-03-.11	Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention
1720-04-03-.12	Emergency Powers
1720-04-03-.13	Retention, Disclosure, and Expungement of Student Disciplinary Records
1720-04-03-.14	Definitions of Terms Used in the Code

Chapter Number	**Chapter Title**
1720-04-03	Student Rights and Responsibilities
Rule Number	**Rule Title**
1720-04-03-.01	Introduction

1720-04-03-.02	Disciplinary Regulations and Procedures
1720-04-03-.03	Standards of Conduct
1720-04-03-.04	Fundamental Rights of the Accused
1720-04-03-.05	Inspection and Search Policy
1720-04-03-.06	Requests to Report to an Administrative Office
1720-04-03-.07	Administrative Procedures
1720-04-03-.08	The Hearing Boards
1720-04-03-.09	Penalties
1720-04-03-.10	Appeal and Scope of Review
1720-04-03-.11	Honor Statement
1720-04-03-.12	Student Academic Conduct
1720-04-03-.13	Emergency Powers
1720-04-03-.14	Training and Advising
1720-04-03-.15	Termination of Student Employees
1720-04-03-.16	Termination of Financial Assistance
1720-04-03-.17	Withdrawal or Temporary Suspension due to Mental or Physical Problems

The University of Tennessee (Knoxville)
Chapter 1720-04-03
Student Rights and Responsibilities/Student Code of Conduct
Repealed/New Rule

Chapter 1720-04-03 Student Rights and Responsibilities is repealed in its entirety and substituted with the following title and language, so that the new rule shall read:

RULES
OF
THE UNIVERSITY OF TENNESSEE
(KNOXVILLE)

CHAPTER 1720-04-03
STUDENT CODE OF CONDUCT

1720-04-03-.01 Preamble.

(1) Students at the University of Tennessee are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner as well as in compliance with University rules and policies. In addition, the University has developed a set of aspirational goals titled, Principles of Civility and Community, which encourages all members of the University community to foster a learning environment where diversity is valued, respected, and celebrated.

(2) The University has established the Student Code of Conduct ("Code") in order to advance the mission of the University and sustain a culture of excellence by: maintaining a safe learning environment; requiring students to conduct themselves in ways that allow for their personal growth and development as well as others, in the most positive manner possible; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving the University's reputation and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.

(3) The University's behavioral standards are set forth in the Code's Standards of Conduct (Section .04). Students who engage in conduct that is inconsistent with the Standards of Conduct are subject to University disciplinary action. The process by which the University investigates and resolves alleged violations of the Standards of Conduct is called the student conduct process. The student conduct process resolves allegations of misconduct but also is an educational process designed to promote learning and development as it relates to appropriate decision making. The student conduct process is consistent, fair, and provides means of resolution that are commensurate with the skills and abilities of the participants in the process.

(4) The effectiveness of the student conduct process rests partially upon the participation of all members of the University community. Active participation in the process by students, faculty, and staff reflects a willingness to address the difficult issues brought before them for the betterment of individual students and the University community. This involvement is vital to the establishment of true community standards.

(5) Authority and responsibility relating to the Code are delegated to the Vice Chancellor for Student Life, who has delegated certain authority and responsibility to the Office of Student Conduct and Community Standards ("SCCS").

(6) The University is committed to respecting students' constitutional rights. The Code shall be interpreted in a way that does not violate students' constitutional rights, including, without limitation, the rights protected by the First Amendment to the United States Constitution.

(7) Students are responsible for being fully acquainted with and for complying with the Code, the applicable undergraduate or graduate catalog, the student handbook (Hilltopics), and other rules and policies relating to students.

1720-04-03-.02 Jurisdiction.

(1) Geographical Limits. The Code applies to conduct that occurs on University-controlled property. However, with respect to conduct that occurs off of University-controlled property, the University has the discretion under the Code to discipline a student for conduct that violates the Standards of Conduct only if the student's conduct: (1) occurs in connection with a University-affiliated activity including, without limitation, an overseas study program or a clinical, field, internship, or in-service experience; (2) consists of academic dishonesty or research misconduct; (3) is prohibited by local, state, or federal law, and the conduct was committed within the Knoxville Area (or, for UTSI students, the conduct was committed within Coffee County or Franklin County); (4) is fairly attributable to a student organization based on a consideration of the criteria in Section .02(4); (5) is committed against another member of the University community; or (6) threatens, or indicates that the student poses a threat to, the health, safety, or welfare of others or the security of any person's property including, without limitation, drug-related offenses, arson, assault, fraud, hazing, participation in group violence, sexual misconduct, relationship violence, stalking, and theft.

(2) Professional and Ethical Standards. Graduate or professional programs within the University may take separate and independent academic action against students for alleged violations of professional and/or ethical standards using procedures other than those contained in the Code.

(3) Responsibility for Conduct. Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if his/her conduct is not discovered until after a degree is awarded).

(4) Student Organizations' Responsibility for Violations of the Standards of Conduct. Notwithstanding anything in the Code to the contrary, a student organization may be found responsible for conduct that violates the Standards of Conduct only if the conduct is fairly attributable to the student organization. Whether conduct is fairly attributable to the student organization will be determined by SCCS based on a totality of the following criteria:

(a) Whether the misconduct was endorsed by one (1) or more officers of the student organization ("endorsed by" means: having prior knowledge that the misconduct was reasonably likely to occur and failing to take reasonable preventative or corrective action; failing to attempt to stop known misconduct while it is occurring; and/or helping to plan, promote, or carry out the misconduct);

(b) Whether the misconduct occurred in connection with an activity:

1. Financed by the student organization and/or one (1) or more members or alumni of the student organization who contributed personal funds in lieu of organizational funds;

2. Related to initiation into, admission into, affiliation with, or as a condition for continued membership in the student organization; and/or

3. Advertised, promoted, or publicized in such a way that a reasonable student viewing or hearing the advertisement, promotion, or publication would believe that the activity was affiliated with the student organization.

(c) Whether the misconduct occurred on property owned, controlled, rented, leased, and/or used by the student organization and/or any of its members/alumni acting on the student organization's behalf; and/or

(d) Whether a member of the student organization attempted to conceal the activity connected with the misconduct or conceal the misconduct of another member of the student organization.

1720-04-03-.03 Relationship Between the Code and Criminal Law.

(1) Independent Action. The Code has been adopted in furtherance of the University's interests and serves to supplement, rather than substitute for, the enforcement of civil and criminal law. Accordingly, University disciplinary action may be instituted against a student whose conduct potentially violates both criminal law and the Standards of Conduct without regard to the pending status of criminal charges or civil litigation. At the discretion of SCCS, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students alleged to have violated the Standards of Conduct may not challenge any aspect of the University's student conduct process on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or have not yet been adjudicated.

(2) University's Interaction with Other Entities. The University will cooperate with law enforcement and other government agencies in the enforcement of criminal law on University-controlled property and in the conditions imposed by criminal courts for the rehabilitation of students who have violated the criminal law.

(3) Withdrawals. If a Respondent voluntarily withdraws from the University before the conclusion of the student conduct process, SCCS retains the right to investigate and resolve the allegations made against the Respondent as a condition of the Respondent being allowed to re-enroll in the University. A disciplinary hold may remain in place or be implemented after the student withdraws in order to enforce this Section .03(3).

(4) Time Extensions and Rescheduling. Any time period described in the Code may be extended for good cause at the discretion of SCCS. Any meeting or hearing described in the Code may be rescheduled for good cause at the discretion of SCCS.

(5) Voluntary Impairment. A student's voluntary impairment to themselves resulting from the use and/or consumption of alcohol, drugs, chemicals, and/or other substances does not excuse or diminish a violation of the Code, except as provided in Section .11 (Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention).

(6) Other Rights – Sexual Misconduct, Relationship Violence, Stalking, or Retaliation. In addition to rights granted in the Code, in cases involving an allegation of sexual

misconduct, relationship violence, stalking, or retaliation, the Complainant and the Respondent shall have the rights outlined in the University's policies and procedures for investigating and resolving complaints of sexual misconduct, relationship violence, stalking, or retaliation in accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law.

1720-04-03-.04 Standards of Conduct. Students are prohibited from engaging in the following types of misconduct:

(1) Academic Dishonesty. Cheating, plagiarism, or any other act of academic dishonesty, including, without limitation, an act in violation of the Honor Statement.

(2) False Information. Providing false information to a University official.

(3) Misuse of Information in Connection with University Investigation or Hearing. Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing, except as provided in Section .05(1)(i).

(4) Misconduct Relating to Records or Identification. Forging, altering, destroying, falsifying, or misusing records or identification, whether in print or electronic form.

(5) Harm to Others. Causing physical harm to any person; endangering the health, safety, or welfare of any person; engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.

(6) Harassment. Unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

(7) Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation. Violating the University's Policy on Sexual Misconduct, Relationship Violence, Stalking, and/or Retaliation.

(8) Invasion of Privacy. Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, without limitation, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such nonconsensual recordings by any means is also prohibited.

(9) Private or Public Property. Any of the following conduct with respect to private or public property, including, without limitation, University-controlled property: theft; misappropriation; unauthorized possession, use, sale, duplication, or entry; vandalism; destruction; damage; or conduct that is reasonably likely to cause damage.

(10) Hazing. Any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health, safety, or welfare of that student, or which induces or coerces a student to endanger his or her mental or physical health, safety, or welfare. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.

(11) Disorderly Conduct. Fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.

(12) Lewd, Indecent, or Obscene Conduct. Engaging in lewd, indecent, or obscene conduct, including, without limitation, public exposure of one's sexual organs, public urinating, and public sexual acts.

(13) Imminent Lawless Action. Engaging in speech either orally or in writing that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

(14) Fire Safety. Any act of arson; falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency; setting off a false fire alarm; or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.

(15) University Keys, Access Cards, and Identification. Possessing, using, or duplicating University keys, University access cards, or University identification cards without authorization from the University.

(16) Information Technology. Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, without limitation: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the acceptable use of information technology resources.

(17) Weapons. Possessing, carrying, using, storing, or manufacturing any weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee or unless federal or state law affirmatively gives a student a right, irrespective of the Code, to possess or carry a weapon on University-controlled property or in connection with a University-affiliated activity.

(18) Alcohol-Related Conduct – University Property or University Activities. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity unless expressly permitted by University policy.

(19) Alcohol-Related Conduct Prohibited by Law. Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

(20) Providing Alcohol to Underage Person. Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.

(21) Drugs and Drug Paraphernalia. Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs, if prohibited by federal, state, or local law; using, manufacturing, possessing, distributing, or selling drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.

(22) Failure to Fulfill a University Financial Obligation. Failing to timely fulfill a University bill, account, or other financial obligation owed to the University.

(23) Failure to Respond, Comply, or Identify. Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties, except as provided in Section .05(1)(i); or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.

(24) Failure to Appear. Failing to appear at a University hearing, including, without limitation, a hearing of a University conduct board, following a request to appear either as a party or as a witness.

(25) Violation of Interim Administrative Actions, Disciplinary Sanctions, or Conditions of Re-Enrollment. Violating the terms of a no-contact directive, an interim restriction, a disciplinary sanction, or a condition of re-enrollment imposed by the University.

(26) Obstruction or Disruption of University Activity. Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University-affiliated activity, or the free flow of pedestrian or vehicular traffic on University-controlled property. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

(27) Violation of University Policy or Rule. Violating a University policy or rule, including, without limitation, University policies or rules relating to facilities' use, smoking, the acceptable use of information technology resources, research misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.

(28) Act Prohibited by Law. Committing an act that is prohibited by local, state, or federal law.

(29) Attempted Violation; Accessory to Violation. Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

(30) Retaliation. Engaging in retaliation. Retaliation is an act or omission committed by a student because of another person's participation in a protected activity that would discourage a reasonable person from engaging in protected activity. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include, without limitation: (1) an act or omission committed against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing; and (2) an act or omission committed by a student through a third party.

1720-04-03-.05 Fundamental Rights.

(1) Rights of the Respondent. The following summarizes the rights granted to a Respondent in the student conduct process:

(a) Right to be assisted by an Advisor during all stages of the student conduct process, in accordance with Section .05(3);

(b) Right to an opportunity for an Educational Conference, in accordance with Section .06(6);

(c) Right to resolve allegations of misconduct and/or sanctions through a Formal Hearing, in accordance with Section .07(2);

(d) Right to receive notice of meetings and hearings at which the Respondent may be present and receive access to records used during those meetings and hearings, as provided in the Code;

(e) Right to the presumption of innocence (i.e., the Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct, as alleged in the Notice of Allegations);

(f) Right to not be directly questioned in a hearing by anyone other than the Student Life Hearing Officer or the Chairperson of the Student Conduct Board ("SCB");

(g) Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;

(h) Right to have a SCB Hearing conducted in accordance with Section .08, including, without limitation, the right to present information to the SCB, the right to propose questions for the Chairperson to ask witnesses, the right to request that information be excluded from the SCB's consideration, and the right to make a closing statement;

(i) Right to refrain from presenting information and witnesses during a hearing before the Student Life Hearing Officer or the SCB, and the right to not have the

Student Life Hearing Officer or SCB draw an inference adverse to the Respondent if the Respondent chooses not to present information or witnesses;

(j) Right to Notice of Decision of the SCB, in accordance with Section .08(5);

(k) Right to appeal the decisions of the SCB that are contained in the Notice of Decision, in accordance with Section .08(6);

(l) Right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, SCCS, a Student Life Hearing Officer, the SCB, and/or the Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of Final Decision), simultaneously with the Complainant's receipt of a copy of the notice of the decision; and

(m) Right to appeal a decision issued by SCCS, a Student Life Hearing Officer, and/or the SCB, and receive a notice containing information about the right to appeal simultaneously with the Complainant's receipt of a notice of such information, in accordance with Section .07 and Section .08.

(2) Rights of the Complainant.

(a) A Complainant shall be granted equivalent rights to the rights granted to a Respondent under the Code including, without limitation:

1. Right to meet with SCCS to ask questions and receive information about the student conduct process, including, without limitation, the status of an investigation;

2. Right to receive notice of meetings and hearings at which the Complainant may be present and receive access to records used during those meetings and hearings, as provided in the Code;

3. Right to be assisted by an Advisor during all stages of the student conduct process, in accordance with Section .05(3);

4. Right to present information and witnesses during meetings and hearings, including, without limitation, investigations, or hearings before a Student Life Hearing Officer, and SCB Hearings;

5. Right to not be directly questioned in a hearing by anyone other than the Student Life Hearing Officer or the Chairperson of the Student Conduct Board ("SCB");

6. Right to challenge the fairness and/or impartiality of a Student Life Hearing Officer, a member of the SCB, or a member of the Appellate Board;

7. Right to receive a copy of a notice of an initial, interim, or final decision, or a change in such a decision, issued by the Vice Chancellor for Student Life, SCCS, a Student Life Hearing Officer, the SCB, and/or the Appellate Board (e.g., Notice of Allegations, Notice of Decision, Notice of

Final Decision), simultaneously with the Respondent's receipt of a copy of the notice of the decision;

8. Right to appeal a decision issued by SCCS, a Student Life Hearing Officer, and/or the SCB, and receive a notice containing information about the right to appeal simultaneously with the Complainant's receipt of a notice of such information, in accordance with Section .07 and Section .08; and/or

9. Right to otherwise participate in the student conduct process.

(b) Notwithstanding any provision of the Code to the contrary, including, without limitation, this Section .05(2), a Complainant shall not have the right to attend a meeting or hearing, receive information concerning, or otherwise participate in the student conduct process if such attendance, receipt of information, or participation would violate state or federal law.

(3) Right to an Advisor. The Complainant and the Respondent may choose to be assisted by one (1) Advisor during all stages of the student conduct process.

(a) Selection of an Advisor. SCCS encourages a Complainant or a Respondent who chooses to be assisted by an Advisor to consider selecting a University employee who has received training from SCCS about the student conduct process. The Complainant and the Respondent may obtain the names of trained advisors from SCCS. At their own expense, the Complainant and the Respondent may choose a person who is not employed by the University to serve as an Advisor (e.g., friend, attorney). The Complainant and the Respondent should select as an Advisor a person whose schedule allows attendance at the scheduled date, time, and place for meetings and hearings scheduled by SCCS because meeting and hearing delays generally will not be granted due to the scheduling conflicts of an Advisor.

(b) Role of an Advisor. The role of an Advisor is limited to assisting, advising, and/or supporting a Complainant or Respondent during the student conduct process. An Advisor is not permitted to speak for or on behalf of a Complainant or Respondent, appear in lieu of a Complainant or Respondent, participate as a witness, or participate directly in any other manner during any phase of the student conduct process, including without limitation, a SCB Hearing. However, in a UAPA Hearing, the Complainant and the Respondent are entitled to have an attorney advocate on their behalf.

(c) Notification of the Right to Have an Advisor. SCCS shall provide written notice to the Complainant and the Respondent of their rights to an Advisor. The notice shall contain an explanation of the role of an Advisor during the student conduct process.

1720-04-03-.06 Student Conduct Process: Initial Stages.

(1) Receipt and Review of Allegations of Misconduct. SCCS may initiate the student conduct process on the basis of written allegations received from any source, including, without limitation, a student, a faculty member, a University housing employee, or a law enforcement agency. SCCS also may initiate the student conduct process in the absence

of written allegations if SCCS becomes aware, through other means, of potential misconduct committed by a student. Upon receipt of written allegations or other information concerning potential student misconduct, SCCS will review the information and determine whether to initiate the student conduct process. SCCS's determination of whether to initiate the student conduct process generally will be based on: the preliminary investigation by SCCS or other University official(s), if any, into the allegations received by SCCS; SCCS's determination of whether the alleged conduct falls within the jurisdiction of the Code; and SCCS's determination of whether the alleged conduct, if true, violated the Standards of Conduct.

(2) Investigation of Allegations of Misconduct. SCCS may investigate the allegations against the Respondent by interviewing witnesses and obtaining other information. SCCS is not obligated to interview a witness identified by the Respondent or the Complainant if SCCS believes the witness is not likely to possess relevant information, is not likely to lead SCCS to the discovery of relevant information, or the information the witness is likely to possess is cumulative of other information gathered by SCCS. SCCS may re-interview the Complainant, the Respondent, and/or any other person at any time during the investigation in order to obtain additional and/or clarifying information. Investigations conducted by SCCS will be prompt, thorough, and equitable. In conducting an investigation, SCCS will act as a fair and impartial party rather than a representative of the person, office, unit, organization, or entity that submitted the allegations to SCCS. Parts of SCCS's investigation may occur before, during, and/or after the Educational Conference (Section .06(6)) and/or any other part of the student conduct process. At the conclusion of its investigation, SCCS may prepare a written report of the findings of the investigation. The report may include an assessment of the credibility of persons interviewed during the investigation and an assessment of whether it is more likely than not that the Respondent violated the Standards of Conduct. SCCS may delegate the investigation of certain types of allegations to other University offices in accordance with University policy (e.g., research misconduct; sexual misconduct, relationship violence, stalking, and retaliation).

(3) Fairness and Impartiality. A University employee shall not act on behalf of SCCS in the student conduct process in any case in which: (1) the employee is a Complainant or a witness; or (2) the employee determines, for any other reason (e.g., personal prejudice or bias), that he/she cannot be fair or impartial.

(4) Interim Administrative Actions.

(a) General. In certain situations, the University may impose interim administrative actions prior to the conclusion of the student conduct process. The University shall determine the appropriate interim administrative actions based on the totality of the circumstances. Examples of interim administrative actions include, without limitation, a no-contact directive (Section .06(4)(b)), a disciplinary hold (Section .06(4)(c)), and interim restrictions (Section .06(4)(d)).

(b) No-Contact Directive. In cases involving allegations of assault, injury, sexual misconduct, relationship violence, stalking, retaliation or in other cases where there is reason to believe continued contact between a student and specific persons may interfere with those persons' security, safety or ability to participate effectively in work or studies, the University may issue a written instruction to a student, called a no-contact directive, that prohibits a student from having verbal, physical, written, and/or electronic contact with specific other persons for a

definite or indefinite period of time. A no-contact directive also may prohibit a student from being present on designated University-controlled property. Any student, faculty or staff member or other person with a reasonable justification may request that a no-contact directive be issued to a student.

(c) Disciplinary Hold. The Respondent's academic record (including, without limitation, the release of the Respondent's official or unofficial transcript), degree, ability to register for classes, and/or ability to re-enroll may be placed on disciplinary hold by SCCS or by another appropriate University office at the request of SCCS for the following reasons: (1) to require the Respondent to participate in the student conduct process (SCCS will release the hold after the Respondent attends the Educational Conference but may reinitiate the hold in order to require the Respondent to participate in other parts of the student conduct process); or (2) to require the Respondent to satisfy the terms and conditions of disciplinary sanctions received (the hold shall be released after the terms and conditions have been satisfied). No diploma shall be given and no grades, academic credit, or degree shall be awarded to a student who has been placed on disciplinary hold.

(d) Interim Restrictions. Generally, the status of a student alleged to have violated the Standards of Conduct is not affected until the conclusion of the student conduct process (Section .07(4)). However, the Vice Chancellor for Student Life may impose interim restrictions prior to the conclusion of the student conduct process related to the alleged misconduct when the Vice Chancellor for Student Life has reasonable cause to believe that (1) a Respondent's continued presence on University-controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health, safety, or welfare of others or to property or (2) poses an imminent or ongoing threat to the disruption of, or interference with, the normal operations of the University. Interim restrictions shall be confirmed by notice to the Respondent that explains the basis for the interim restrictions and shall remain in effect until the conclusion of the student conduct process, which should be completed without undue delay. Within three (3) days of the imposition of the interim restrictions, the Respondent shall be offered an opportunity to appear before the Vice Chancellor for Student Life in order to discuss the following issues only: (1) the reliability of the information concerning the Respondent's conduct; and (2) whether the conduct and surrounding circumstances reasonably indicate that the Respondent's continued presence on University controlled property or at University-affiliated activities poses a significant risk of substantial harm to the health, safety, or welfare of others or to property or poses an imminent or ongoing threat of disruption of or interference with the normal operations of the University. Examples of interim restrictions include, without limitation, restricting the student's privileges to participate in University affiliated activities, restricting the student's privileges to access University-controlled property, University owned housing removal and/or reassignment, and/or interim suspension. Restrictions contained within no-contact directives (Section .06(4)(b)) are not interim restrictions. An interim suspension is an official separation of the student from the University until the conclusion of the student conduct process or the interim suspension is lifted, whichever occurs first. While on interim suspension, the student loses all University rights and privileges (e.g., enrollment privileges) except for the rights and privileges to contest the allegations pursuant to the Code, shall not represent the University in any official manner, and shall not be present on University-

controlled property or participate in University- affiliated activities without the prior approval of the Vice Chancellor for Student Life. When placed on interim suspension, the Respondent may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved. A Respondent who violates the terms of an interim restriction shall be subject to further disciplinary action and may be treated as a trespasser.

(5) Coursework. Coursework performed during the student conduct process shall be considered conditional. Credit for such coursework may be affected, delayed, denied, and/or revoked based on a final finding of misconduct and/or a sanction imposed under the Code. In addition, subject to the other provisions of the Code, a delay in the granting of a degree may be imposed and/or a degree that was awarded prior to a final decision under the Code may be revoked.

(6) Educational Conference.

(a) Scope of the Educational Conference. The Educational Conference is a meeting between SCCS and the Respondent in which the following generally occurs:

1. SCCS orally informs the Respondent about the allegations made against the Respondent and, if requested by the Respondent, provides the Respondent with a reasonable opportunity to review the written allegations, if any, received by SCCS.

2. SCCS provides the Respondent with an opportunity to respond to the allegations, including, without limitation, an opportunity to present information to SCCS concerning the allegations and identify witnesses whom the Respondent believes SCCS should interview to obtain additional information.

3. Both SCCS and the Respondent may ask questions to each other and seek clarifying information about the allegations, the possible sanction(s), and the student conduct process.

4. Based on information provided by the Respondent during the Educational Conference, SCCS may issue a no-action determination (Section .07(4)(a)) or continue its investigation in order to determine whether it is more likely than not that the Respondent violated the Standards of Conduct.

(b) Notice of Educational Conference. A Notice of Educational Conference is a written notice through which SCCS notifies the Respondent that SCCS has received allegations that the Respondent has engaged in misconduct; instructs the Respondent to attend or schedule an Educational Conference; and provides the Respondent with other information about the student conduct process. A Notice of Educational Conference generally will include the following information: (1) notice that SCCS has begun or will begin an investigation of allegations SCCS received concerning the Respondent's conduct; (2) notice of a disciplinary hold, if any, that the University has implemented or will implement with respect to the Respondent; (3) a brief description of the Respondent's alleged conduct; (4) a preliminary list of potential violations of the Standards of Conduct, based on the Respondent's alleged conduct; (5) notice of the Respondent's right to be assisted

and/or supported by an Advisor throughout the student conduct process, in accordance with Section .05(3); (6) the internet address where the Respondent can review a copy of the Code; (7) a date, time, and place for an Educational Conference with SCCS to discuss the incident, or, in the alternative, an instruction that the Respondent contact SCCS to schedule an Educational Conference within the time frame designated in the Notice of Educational Conference; and (8) notice of the consequences of failing to comply with SCCS's instruction to attend or schedule an Educational Conference.

(c) Consequences of Failing to Attend or Schedule an Educational Conference. If the Respondent fails to attend or schedule an Educational Conference after SCCS has sent the Respondent a Notice of Educational Conference, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose appropriate sanction(s) for the misconduct (unless the Respondent's absence is excused by SCCS for good cause). SCCS also may determine that the Respondent's failure to attend the Educational Conference constitutes a separate violation of the Standards of Conduct.

(7) Notice of Allegations. A Notice of Allegations is a written notice that informs the Respondent that SCCS has concluded that it is more likely than not that the Respondent violated the Standards of Conduct. A Notice of Allegations generally includes, without limitation, the following information: (i) a brief summary of the facts of Respondent's alleged misconduct; (ii) notice that SCCS has determined that it is more likely than not that Respondent violated the Standards of Conduct; (iii) notice of the specific Standard(s) of Conduct that SCCS has determined the Respondent more likely than not violated; (iv) the Respondent's option(s) to elect a Formal Hearing to contest SCCS's determination of responsibility for misconduct and/or the sanction(s); and (v) the names of witnesses likely to present information concerning the alleged misconduct if the Respondent elects to contest the allegations through a Formal Hearing. SCCS may provide the Respondent with a Notice of Allegations during the Educational Conference.

1720-04-03-.07 Student Conduct Process: Resolutions.

(1) Resolution by Agreement.

(a) Purpose and Effects of a Resolution Agreement. At any time during the student conduct process, a Respondent may resolve allegations of misconduct by signing a Resolution Agreement. By signing a Resolution Agreement, the Respondent: (1) accepts responsibility for violating the Standards of Conduct, as alleged by SCCS; (2) agrees to the imposition of the sanction(s) proposed by SCCS; and (3) waives all rights the Respondent may have to resolve the allegations through a Formal Hearing. A Resolution Agreement is not valid until it is signed by both the Respondent and SCCS.

(b) Revocation or Appeal of a Resolution Agreement. The Respondent may not revoke or appeal a Resolution Agreement signed by the Respondent.

(c) Resolution Agreement - Sexual Misconduct, Relationship Violence, Stalking, or Retaliation. After SCCS receives a Resolution Agreement signed by the Respondent in a case involving sexual misconduct, relationship violence,

stalking, or retaliation, SCCS will notify the Complainant about the proposed Resolution Agreement in writing and provide the Complainant with the opportunity to object to the sanction proposed by SCCS in the Resolution Agreement. A Complainant must notify SCCS of his/her objection in writing within five (5) business days from the date that SCCS informs the Complainant about the proposed Resolution Agreement. If the Complainant timely informs SCCS of his/her objection, then SCCS may address the Complainant's objection by modifying the sanction in a way that is agreeable to both the Respondent and the Complainant and having the Respondent sign the modified Resolution Agreement. Otherwise, SCCS will continue the student conduct process and resolve the allegations against the Respondent in accordance with the Code. Nothing in this Section .07(1) shall be construed to permit SCCS to conduct mediation in a case involving allegations of sexual assault.

(d) Resolution Agreement – Academic Dishonesty. In order to resolve an allegation that the Respondent violated Section .04(1) (academic dishonesty) through a Resolution Agreement, the Respondent shall agree to the imposition of the instructor's academic penalty in addition to agreeing to the other requirements contained in Section .07(1)(a).

(2) Resolution by Formal Hearing.

(a) Types of Formal Hearings. A Formal Hearing is a process through which a Respondent has a right to contest allegations of misconduct and/or the sanctions proposed by SCCS by presenting information (including, without limitation, witnesses) to a decision maker other than the University employee(s) who conducted the investigation and/or Educational Conference. The Code provides for three types of Formal Hearings, depending on the gravity of the disciplinary sanctions that have been proposed by SCCS:

1. A hearing before a Student Life Hearing Officer, which is described in Section .07(2)(d);

2. A hearing before the SCB ("SCB Hearing"), which is described in Section .08; and

3. A contested case hearing under the Uniform Administrative Procedures Act ("UAPA Hearing"), which is conducted in accordance with the University's procedures for conducting contested case proceedings under the UAPA, Chapter 1720-01-05.

(b) Rights to a Formal Hearing. In every case, the Respondent has the right to resolve allegations of misconduct and/or proposed sanctions through a hearing before a Student Life Hearing Officer. A Respondent also has the right to resolve allegations of misconduct and/or the proposed sanctions through a SCB Hearing or a UAPA Hearing when SCCS proposes one (1) or more of the following sanctions: (1) deferred suspension; (2) suspension; (3) expulsion; (4) University housing removal; (5) withholding of degree; (6) revocation of degree; or (7) revocation or suspension of the student organization's University registration.

(c) How to Request a Formal Hearing. A Formal Hearing may be requested by the Respondent only in writing using the form(s) approved by SCCS. Orally

requesting a Formal Hearing shall not constitute a valid request for a Formal Hearing. If a Respondent timely requests a Formal Hearing and has a right to have either a UAPA Hearing or a SCB Hearing, then the University will conduct a UAPA Hearing unless the Respondent executes a written waiver of the right to a UAPA Hearing.

(d) Hearing before a Student Life Hearing Officer. A Student Life Hearing Officer is a University employee designated and trained by SCCS to conduct a Formal Hearing consistently with the procedures outlined in the Code for SCB Hearings (e.g., Section .08), except as provided in this Section .07(2)(d). In conducting a Formal Hearing, a Student Life Hearing Officer has the same authority of the Chairperson of the SCB except that, unlike the Chairperson of the SCB, but like the voting members of the SCB, the Student Life Hearing Officer is the decision maker concerning whether the Respondent violated the Standards of Conduct, and, if so, what sanction(s) to impose. The decision of a Student Life Hearing Officer may be appealed to the Appellate Board using procedures consistent with the procedures outlined in the Code for appeals of decisions of the SCB.

(e) Consequences of Failing to Timely Elect a Formal Hearing. If the Respondent fails to elect a Formal Hearing within five (5) business days of SCCS transmitting a Notice of Allegations in writing to the Respondent, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose sanction(s) deemed appropriate by SCCS (unless SCCS extends the time for the Respondent to request a Formal Hearing for good cause). If SCCS extends the time for the Respondent to request a Formal Hearing and the Respondent fails to elect a Formal Hearing within the additional time granted by SCCS, then the Respondent waives all rights to a Formal Hearing, and SCCS has the discretion to deem the Respondent to have accepted SCCS's determination of responsibility for misconduct and may impose sanction(s) deemed appropriate by SCCS.

(3) Resolution through an Alternative Resolution Process.

(a) Proposal of an Alternative Resolution Process. At any time during the student conduct process, SCCS may propose to the Respondent and the Complainant that they attempt to resolve the allegations against the Respondent through an alternative resolution process. Before proposing that the allegations be resolved through an alternative resolution process, SCCS shall determine whether an alternative resolution process would be an appropriate method of resolution based on the facts and circumstances of the case, and, if so, what type of alternative resolution process should be used. Examples of alternative resolution processes that may be proposed by SCCS include mediation, facilitated dialogue, conflict coaching, and restorative justice. An alternative resolution process is a voluntary process that may or may not result in an Alternative Resolution Agreement. If an Alternative Resolution Agreement is not reached, then the student conduct process will proceed, and the allegations against the Respondent will be resolved through one of the other resolution methods in the Code.

(b) Unavailability of an Alternative Resolution Process. SCCS shall not use an alternative resolution process to resolve allegations against a Respondent: (1) in

a case in which the Complainant and the Respondent have not mutually agreed, in writing, to the alternative resolution process; or (2) in a case involving allegations of sexual assault (restriction limited to mediation only).

(c) Alternative Resolution Agreement. An Alternative Resolution Agreement is a written agreement that confirms an agreement reached during an alternative resolution process to resolve the allegations against the Respondent. To be valid, an Alternative Resolution Agreement shall be signed by SCCS, the Respondent, and the Complainant and shall include a waiver of the Respondent's right, if any, to have a Formal Hearing on the allegations. Neither the Respondent nor the Complainant may revoke or appeal an Alternative Resolution Agreement.

(4) Conclusion of the Student Conduct Process. This Section .07(4) summarizes the different ways in which the student conduct process may be concluded. If more than one (1) of the following events occur, then the student conduct process concludes on the date of the last event to occur. SCCS generally will provide the Respondent with written notice about the conclusion of the student conduct process within a reasonable time after the conclusion of the process. If permitted or required by law, SCCS also will provide the Complainant with written notice about the conclusion of the student conduct process within a reasonable time after the conclusion of the process.

(a) No Action Determination. The student conduct process concludes when SCCS makes a final determination at any point in the process that no action will be taken (e.g., SCCS determines that it is not more likely than not that the Respondent violated the Standards of Conduct; a Complainant declines to participate in the student conduct process, and SCCS does not have sufficient information or witnesses to move forward with the student conduct process). SCCS may reinitiate the student conduct process upon receipt of new information; however, after SCCS has determined to take no action, SCCS may reinitiate the student conduct process after a student has graduated only in cases involving Section 4.1 (academic dishonesty) or a violation of the University's policy on research misconduct. A Complainant who is informed by SCCS of a no action determination may appeal the decision to the SCCS, in writing, within five (5) business days of the date that SCCS transmitted notice of the no action determination to the Complainant. The decision of SCCS is final and may not be appealed.

(b) Failure to Attend or Schedule an Educational Conference. In accordance with Section .06(6)(c), the student conduct process concludes when: SCCS has issued a Notice of Educational Conference; the Respondent either fails to attend an Educational Conference or fails to comply with SCCS's instruction to contact SCCS to schedule an Educational Conference within the time frame designated in the Notice of Inquiry; and SCCS does not exercise its discretion to excuse the Respondent's failure for good cause.

(c) Failure to Request a Formal Hearing after Notice of Allegations. In accordance with Section .07(2)(e), the student conduct process concludes when the Respondent fails to elect a Formal Hearing within five (5) business days of SCCS sending or delivering a Notice of Allegations to the Respondent, and SCCS does not exercise its discretion to excuse the Respondent's failure for good cause.

(d) Resolution Agreement. The student conduct process concludes when a Resolution Agreement is executed in accordance with Section .07(1).

(e) Alternative Resolution Agreement. The student conduct process concludes when an Alternative Resolution Agreement is executed in accordance with Section .07(3).

(f) Notice of Decision of a Student Life Hearing Officer – No Valid Appeal. The student conduct process concludes when a Student Life Hearing Officer has issued a Notice of Decision and neither the Respondent nor the Complainant has submitted a valid Notice of Appeal.

(g) Notice of Decision of a Student Conduct Board – No Valid Appeal. The student conduct process concludes when a Student Conduct Board has issued and transmitted a Notice of Decision under Section .08(5) and neither the Respondent nor the Complainant has submitted a valid Notice of Appeal under Section .08(6).

(h) Notice of Final Decision. The student conduct process concludes when the Appellate Board has issued a Notice of Final Decision.

(i) UAPA. The student conduct process concludes when a Formal Hearing has concluded under the University's rules for conducting contested case proceedings under the UAPA, Chapter 1720-01-05.

(j) Expiration and Satisfaction of All Sanctions. The student conduct process concludes when SCCS determines that the time periods for all sanctions given to the Respondent have expired (except for the sanction of expulsion, which does not expire), and the Respondent has satisfied all other terms and conditions of all sanctions that the Respondent received.

1720-04-03-.08 Student Conduct Board: Hearings and Appeals.

(1) Notice of SCB Hearing.

(a) When a Notice of SCB Hearing is Sent. If the Respondent requests a SCB Hearing in accordance with Section .07(2), then SCCS will send the Respondent and the Complainant a Notice of SCB Hearing at least seven (7) business days in advance of the date of the hearing.

(b) Information in the Notice of SCB Hearing. The Notice of SCB Hearing generally will contain, or be accompanied by, the following information: (1) the date, time, and place of the SCB Hearing (SCCS may reschedule the SCB Hearing for good cause and issue a revised Notice of SCB Hearing that contains a new date, time, and place of the SCB Hearing); (2) a copy of the Notice of Allegations; (3) the sanction(s) that the Conduct Officer will request the SCB impose on the Respondent; (4) the names of all witnesses through whom the Conduct Officer is likely to present information during the SCB Hearing; (5) a notice of the right to the assistance and/or support of an Advisor during the SCB Hearing; and (6) a description of all tangible or electronic information that the Conduct Officer is likely to present to the SCB, such as an investigative report, police report,

incident report, witness statements, video or audio recordings, photographs, text messages, or phone records.

(c) More than One Respondent. In cases involving more than one (1) Respondent, SCB Hearings concerning each Respondent's conduct may be conducted separately upon written request of a Respondent submitted at the time of the Respondent's request for a Formal Hearing. SCCS has the discretion to make the final determination of whether to grant such a request and will notify the Respondents of the decision.

(d) Consequences of Failing to Attend a SCB Hearing. If the Respondent fails to attend a SCB Hearing, then the Respondent waives all rights to a SCB Hearing. The SCB may: proceed with the SCB Hearing without the Respondent's participation; hold the Respondent accountable for all decisions made in the Respondent's absence, including, without limitation, decisions concerning responsibility for alleged violations of the Standards of Conduct; and may determine that the Respondent's failure to attend the hearing constitutes a separate violation of the Standards of Conduct. If the SCB determines, in the Respondent's absence, that it is more likely than not that the Respondent violated the Standards of Conduct, then SCCS may implement the sanctions imposed by the SCB and conclude the student conduct process.

(2) Composition of the Student Conduct Board.

(a) Eligible Pool. The University shall annually appoint a pool of persons who are eligible to serve on a SCB. The University may appoint University students, University faculty members, or University staff employees; however, an employee who works in SCCS is ineligible to serve on a SCB. Persons appointed by the University will be trained by SCCS to serve on a SCB.

(b) Appointment of the SCB.

1. General. The SCB is appointed ad hoc for each hearing by the Director of SCCS from the pool described in Section .08(2)(a). SCCS shall appoint a SCB consisting of one (1) non-voting Chairperson and seven (7) voting members. SCCS shall not appoint persons on the basis of how SCCS anticipates that they will vote. The Chairperson shall be a University faculty member or staff employee who has received training from SCCS on how to conduct a SCB Hearing. Five (5) voting members and one (1) non-voting Chairperson constitute a quorum of the SCB that was appointed by SCCS; however, SCCS will make reasonable efforts to seat a SCB consisting of seven (7) voting members. In seating any SCB, except as provided in Section .08(2)(b)(2) or Section .08(2)(b)(3), the student composition of the voting members of the SCB must be equal to or greater than the sum of the faculty and staff voting members. Regardless of the number of voting members present, all classifications of the University community (students, faculty, and staff) must be represented by at least one (1) voting member, except as provided in Section .08(2)(b)(2) or Section .08(2)(b)(3).

2. Exception for Cases Involving Allegations of Sexual Misconduct. Notwithstanding anything to the contrary in Section .08(2)(b)(a), SCCS

shall not appoint students to serve on the SCB in a case involving an allegation of sexual misconduct unless both the Respondent and the Complainant consent to having students appointed to serve on the SCB hearing their case.

3. Exception for Cases Involving Allegations of Research Misconduct. Notwithstanding anything to the contrary in Section .08(2)(b)(a), SCCS shall not appoint students to serve on the SCB in a case involving an allegation of research misconduct.

(c) Fairness and Impartiality of SCB Members. Any member of the SCB who determines that they cannot decide a case fairly and impartially for any reason (e.g., having a personal prejudice or bias) shall excuse themselves from serving on the SCB, in which case SCCS shall appoint a substitute member of the panel in accordance with the rules in Section .08(2)(b).

(3) General Rules Governing SCB Hearings.

(a) Required Pre-Hearing Information and Copies – Complainant and Respondent.

1. At least five (5) business days prior to the SCB Hearing, the Complainant and the Respondent must provide the following to SCCS in writing:

(i) The name of their Advisor, if any, who will attend the SCB Hearing;

(ii) The names of all witnesses through whom they plan to present information to the SCB and a brief summary of the information that they reasonably anticipate that each witness will provide to the SCB;

(iii) A copy of all tangible or electronic information that they plan to present to the SCB (e.g., witness statements, video or audio recordings, photographs, text messages, phone records, medical bills, diagrams). However, they are not required to provide copies of information that is not in a form that allows copying (e.g., weapon; piece of clothing), in which case they should describe the information in writing; and

(iv) A copy of a statement, if any, that they want the SCB to consider in determining the appropriate sanction to impose on the Respondent if the SCB finds that the Respondent violated a Standard of Conduct. The Complainant's statement may include a description of the impact of the Respondent's alleged conduct on the Complainant. The Respondent's statement may include a description of any factors the Respondent believes mitigates the alleged misconduct.

2. During the SCB Hearing, the Complainant and the Respondent may present witnesses who were not identified in the Notice of Formal Hearing only if they comply with this Section .08(3)(a) (i.e., other witnesses not identified to SCCS in writing at least five (5) business days

prior to the SCB Hearing will not be allowed). The Complainant and the Respondent are responsible for contacting witnesses who were not identified in the Notice of Formal Hearing, informing them about the date, time, and place of the SCB Hearing, and securing their attendance at the SCB Hearing.

(b) Pre-Hearing Review of Information. Individuals involved with the hearing are responsible for contacting SCCS to arrange a time to review the information prior to the hearing if such review is desired and the information has not been made available electronically. No less than three (3) business days prior to the hearing, SCCS will make copies of information submitted by the Complainant, the Respondent, and the Conduct Officer available for review by the Complainant, Respondent, their respective Advisors, and members of the SCB. Those individuals will be notified by SCCS when materials are available for review. SCCS may make the information available electronically. In their sole discretion, SCCS may redact irrelevant information prior to making information available.

(c) Recording of the SCB Hearing. The University shall be responsible for making a verbatim record (e.g., digital recording) of a SCB Hearing. Deliberations of the SCB shall not be recorded. The record of the SCB Hearing shall be the property of the University. The Complainant and the Respondent may take notes during a SCB Hearing, which shall be their own property, but neither the Complainant nor the Respondent may record the hearing using any other method of recording. However, the University will provide a copy of the verbatim record to the Complainant and the Respondent upon request.

(d) Attendance and Participation. Attendance during a SCB generally is limited to members of the SCB, the Conduct Officer, the Complainant and the Complainant's Advisor, the Respondent and the Respondent's Advisor, and witnesses. The Conduct Officer, the Complainant, the Respondent, Advisors, and witnesses may not be present during the deliberations of the SCB. Witnesses may attend the SCB Hearing only while they are presenting information to the SCB, unless the witness is the Complainant or the Respondent. The Chairperson and SCCS have the discretion to allow other persons to attend the SCB Hearing, in accordance with state and federal law. The Complainant and the Complainant's Advisor may attend any part of the SCB Hearing (excluding the deliberations of the SCB), but the Complainant and the Complainant's Advisor shall be excused from the hearing room when the Respondent's Education Records or information obtained from the Respondent's Education Records are disclosed unless the information is also part of the Complainant's Education Records. However, the previous sentence shall not apply, and the Complainant and the Complainant's Advisor shall have the right to attend the entire SCB Hearing, in cases of sexual misconduct, relationship violence, and stalking. The Chairperson may accommodate concerns for the personal safety, well-being, and/or fears of confrontations of the Complainant, the Respondent, and/or witnesses by permitting attendance or participation by closed circuit television, video conferencing, or other appropriate means, as determined in the discretion of the Chairperson. However, the identity of all persons who present information to the SCB must be made known to the Respondent and the Complainant. The Respondent and the Complainant must be allowed to view and hear a person who is attending or participating by closed circuit television, video conferencing, or other similar means.

(4) Procedural Rules for SCB Hearings.

(a) Right to Challenge the Selection of a SCB Member. At the beginning of the SCB Hearing, the Chairperson shall allow the Complainant and the Respondent to request the removal of a member of the SCB on the grounds that the person cannot be fair and impartial in deciding the case. If the Chairperson determines that the person cannot be fair and impartial, then SCCS may appoint a substitute member of the SCB in accordance with Section .08(2)(b) or, if a quorum of the SCB still exists, remove the SCB member and allow the SCB Hearing to continue without appointing a substitute member.

(b) Authority of the Chairperson. The Chairperson has the authority to maintain order and make all decisions necessary for the fair, orderly, and expeditious conduct of the SCB Hearing. The Chairperson shall be the final decision maker concerning what, how, and in what order information and witnesses are presented to the SCB.

(c) Exclusion of Information. Upon the Chairperson's initiation or upon request by the Conduct Officer, the Complainant, the Respondent, or a member of the SCB, the Chairperson may exclude the following information from the SCB's consideration: (1) irrelevant information; (2) information that unreasonably repeats information already provided to the SCB; (3) information that was not provided in advance of the hearing in accordance with Section .08(3)(a), or information from witnesses who were not disclosed in advance of the hearing in accordance with Section .08(3)(a); (4) information that is protected from disclosure under federal or Tennessee law; and/or (5) information about a person's character or character trait, if the information is being presented to show that on a particular occasion the person acted in accordance with the character or character trait. Generally, in cases involving an allegation of sexual misconduct, neither the Complainant's nor the Respondent's prior sexual history is relevant to the issue of whether sexual misconduct occurred and will not be considered by the SCB. However, when the Respondent contends that the Complainant gave consent for a particular sexual act, the prior sexual history between the Complainant and the Respondent may be relevant to assess the manner and nature of communications between the parties, although the mere existence of a current or previous dating, romantic, intimate, or sexual relationship with the other person does not allow a Respondent to imply or infer consent. The Complainant's and the Respondent's prior sexual history may also be relevant in other limited circumstances, such as to show intent, motive, absence of mistake, or to explain an injury or physical finding.

(d) Persons Who May Present Information. The only persons who may present information and/or witnesses during a SCB Hearing are the Conduct Officer, the Complainant, and the Respondent. The Complainant and the Respondent are responsible for presenting their own information and/or witnesses, if any, to the SCB (an Advisor shall not present information and/or witnesses to the SCB).

(e) Formal Rules. Formal rules of process, procedure, and/or technical rules of evidence, such as those applied in criminal or civil court, are not used in SCB Hearings. The Chairperson shall decide all procedural questions that arise

during a SCB Hearing. The Chairperson may consult with SCCS for assistance in resolving procedural questions fairly and in accordance with the Code.

(f) Questioning of Witnesses. Witnesses will provide information to the SCB and answer questions from the Chairperson. The Chairperson may ask questions and/or submit a request for additional information to the Respondent, the Complainant, the Conduct Officer, and/or witnesses. The Conduct Officer, the Respondent and/or the Complainant shall not directly ask questions to each other or other witnesses. The Conduct Officer, the Respondent, the Complainant, and/or members of the SCB may propose questions for the Chairperson to ask witnesses by submitting the proposed questions to the Chairperson in writing during the hearing. The Chairperson has the discretion whether to ask a witness a question proposed by the Conduct Officer, the Respondent, the Complainant, and/or members of the SCB. The method of questioning witnesses outlined in this Section .08(4)(f) is used to preserve the educational tone of the SCB Hearing and to avoid the creation of an adversarial environment.

(g) Closing Statements. At the close of the SCB Hearing, the Chairperson may allow the Conduct Officer, the Complainant, and the Respondent equal opportunities to make statements to the SCB summarizing the information presented to the SCB and/or advocating the decision that the SCB should reach. The Conduct Officer and the Complainant may advocate that the SCB impose a specific sanction(s), and the Respondent may respond; however, the Respondent's record of student conduct maintained by SCCS shall not be disclosed to the SCB by the Conduct Officer or the Complainant during the hearing except in accordance with Section .08(5)(c).

(h) Burden of Presenting Information Demonstrating Misconduct. The Conduct Officer bears the burden of presenting information demonstrating that it is more likely than not that the Respondent violated a Standard of Conduct, as alleged in the Notice of Allegations. Neither the Complainant nor the Respondent is required to present information or witnesses concerning the Respondent's alleged misconduct. The SCB shall not draw an inference adverse to the Conduct Officer, the Complainant, or the Respondent if the Complainant or the Respondent chooses not to present information or witnesses to the SCB.

(5) Notice of Decision of the Student Conduct Board.

(a) Deliberation of the SCB. After the Chairperson determines that all relevant information has been received by the SCB, the SCB will deliberate in private and decide, for each Standard of Conduct alleged in the Notice of Allegations to have been violated, whether it is more likely than not that the Respondent violated the Standard of Conduct. The SCB will decide by majority vote whether the Respondent violated the Standards of Conduct. The Chairperson shall not vote on the decision of whether the Respondent is responsible for violating the Standards of Conduct or what sanctions should be imposed unless there is a tie vote of the SCB.

(b) Basis of Decision. The SCB shall not base its decision on information not presented during the SCB Hearing. However, if the SCB requests that additional information be provided after the SCB Hearing, the SCB may consider and base its decision on the additional information, as long as the Conduct Officer, the

Respondent, and the Complainant have had a chance to review and respond to the additional information either in a resumption of the SCB Hearing or in writing.

(c) Determination of Sanction(s). If the SCB decides that the Respondent violated the Standards of Conduct, then the SCB will decide the appropriate sanction(s) by majority vote. In deciding the appropriate sanctions for a Respondent's misconduct, the SCB may consider: (1) statements submitted by the Complainant and/or the Respondent to the SCB concerning the appropriate sanctions; and (2) a statement about the Respondent's conduct history, which shall be provided to the Chairperson by SCCS in a sealed envelope prior to the SCB Hearing.

(d) Issuance of Notice of Decision. Issuance of Notice of Decision. Within three (3) business days of the conclusion of the SCB Hearing, the Chairperson shall issue a Notice of Decision and transmit a copy of the Notice of Decision to SCCS. SCCS shall notify the Respondent about the Notice of Decision and provide a copy of the Notice of Decision. If permitted or required under law, SCCS shall notify the Complainant about the Notice of Decision (simultaneously with the notification to the Respondent) and provide a copy of the Notice of Decision to the Complainant.

(e) Information in Notice of Decision. The following information shall be included in the Notice of Decision: (1) for each Standard of Conduct identified in the Notice of Allegations, the SCB's decision concerning whether it is more likely than not that the Respondent violated the Standard of Conduct and the SCB's rationale for the decision concerning the alleged violation of the Standard of Conduct, including, without limitation, a brief summary of the information upon which the SCB relied in making its decision; (2) the sanction(s), if any, that the SCB has imposed on the Respondent; and (3) information about the Respondent's and the Complainant's options, if any, to appeal the decision of the SCB.

(6) Appealing Decisions of the Student Conduct Board.

(a) Appealable Decisions. The Conduct Officer, the Complainant and/or the Respondent may appeal the decisions of the SCB that are contained in the Notice of Decision, but the grounds for appeal are limited to those described in Section .08(6)(c).

(b) Notice of Appeal. An appeal is procedurally valid only if all of the following requirements are met: (1) an appeal shall be submitted in writing by fully completing a form approved by SCCS called a "Notice of Appeal;" (2) the Notice of Appeal shall be received by SCCS within five (5) business days of the date that SCCS transmitted the Notice of Decision; and (3) the Notice of Appeal shall not include information that is not included in the record of the SCB Hearing, except the Notice of Appeal may contain a summary of the new information described in Section .08(6)(c)(3).

(c) Grounds for Appeal. The Notice of Appeal shall explain the grounds for the appeal, which shall be limited to one (1) or more of the following grounds:

1. Clearly Unreasonable Sanction. The sanction(s) imposed by the SCB is clearly unreasonable (i.e., has no sound basis or justification in reason).

2. Material Procedural Error. A procedural error occurred prior to or during the SCB Hearing, and the procedural error reasonably could have had a material impact on the SCB in reaching its decision. Neither the failure of the Respondent or the Complainant to secure the attendance of an Advisor or witness nor the failure of an Advisor or witness to attend or otherwise participate in any phase of the student conduct process constitutes a material procedural error. The failure of the Respondent or the Complainant to attend the SCB Hearing does not constitute a material procedural error.

3. New Information. New information has been discovered, the information reasonably could have had a substantial impact on the SCB in reaching its decision, and the person submitting the Notice of Appeal did not know and reasonably could not have known about the information at the time of the SCB Hearing.

4. Personal Prejudice or Bias of a SCB Member. A SCB member had a personal prejudice or bias that precluded them from fairly and impartially hearing the case. The fact that a SCB member voted to find a Respondent responsible or not responsible for violating a Standard of Conduct does not, by itself, demonstrate that the SCB member had a personal prejudice or bias for or against the Respondent, the Complainant, or the University.

(d) Effective Date of Sanction. The sanction(s) imposed by the SCB shall not be effective during the period in which a Notice of Appeal may be submitted, or, if a procedurally valid Notice of Appeal has been submitted (as determined by Section .08(6)(b)), until a Notice of Final Decision is issued by the Appellate Board, whichever is later. In cases in which the sanction of degree revocation is imposed, the sanction shall be presented to the Chancellor for approval before the sanction is imposed.

(e) Appellate Board. The Appellate Board is the University body that considers appeals of decisions of the SCB, after a procedurally valid Notice of Appeal has been submitted to SCCS. SCCS will appoint a pool of persons trained by SCCS who are eligible to serve on an Appellate Board. SCCS may appoint University students, University faculty members, or University staff employees to be members of that pool. SCCS shall not appoint persons on the basis of how SCCS anticipates that they will vote.

(f) Determination of Procedural Validity of Notice of Appeal. Within five (5) business days after the receipt of a Notice of Appeal, SCCS will determine whether the Notice of Appeal is procedurally valid. A Notice of Appeal is procedurally valid only if it has been fully completed, timely submitted to SCCS, does not contain information outside of the record of the SCB Hearing, and does not contain a ground for appeal not listed in Section .08(6)(c). If a Notice of Appeal is procedurally invalid and the time for submitting a Notice of Appeal under this Section .08(6)(f) has expired, then SCCS shall send the Conduct Officer, the Respondent, and the Complainant (if permitted or required by law) a notice that the decision of the SCB has become final and any sanction(s) imposed will become effective immediately. However, in a case in which the Notice of Appeal

contains information outside of the record of the SCB Hearing or a ground for appeal not listed in Section .08(6)(c), SCCS may proceed with appointing an Appellate Board after removing from the Notice of Appeal information that was not included in the record of the SCB Hearing and/or the impermissible ground for appeal.

(g) Appointment of Appellate Board. If the Notice of Appeal is procedurally valid, then SCCS shall appoint an Appellate Board to hear the appeal from the pool of persons who are eligible to serve on an Appellate Board. An Appellate Board shall be composed of one (1) non-voting Chairperson and three (3) voting members. At least one (1) voting member of the Appellate Board shall be a University student; except, however, SCCS shall not appoint students to serve on an Appellate Board in a case involving an allegation of research misconduct or involving an allegation of sexual misconduct unless both the Respondent and the Complainant consent to having students appointed to serve on the Appellate Board hearing their case. The Director of SCCS shall not appoint a person to serve as Chairperson or a voting member of the Appellate Board if the person served as a Chairperson or a voting member of the SCB whose decision is being appealed. In addition, an employee who works in SCCS or whose direct supervisor is the Conduct Officer who participated in the SCB Hearing shall be ineligible to serve as a member of the Appellate Board.

(h) Transmittal of Notice of Appeal. After the appointment of the members of the Appellate Board, SCCS shall transmit a copy of the Notice of Appeal to persons who have a need to know about the Notice of Appeal, including, without limitation, the members of the Appellate Board and all non-appealing parties (e.g., if the Respondent appeals, the Conduct Officer and the Complainant would be the non-appealing parties). A non-appealing party may submit a written response to the Notice of Appeal to the Appellate Board within three (3) business days of SCCS's transmittal of the Notice of Appeal. The written response shall be limited to: (1) responding to issues raised in the Notice of Appeal and shall not contain information that is not included in the record of the SCB Hearing; and (2) request the removal of a member of the Appellate Board on the grounds that the person cannot be fair and impartial in deciding the case. If SCCS determines that the person cannot be fair and impartial, then SCCS may appoint a substitute member of the SCB in accordance with Section .08(6)(g).

(i) Recusal. Any member of the Appellate Board who determines that they cannot decide the appeal fairly and impartially for any reason shall recuse themselves from serving on the Appellate Board, in which case SCCS shall appoint a substitute member of the Appellate Board in accordance with this Section .08(6)(g).

(i) Review of the Record. The Appellate Board's final decision shall be based on its review of the record of the hearing before the SCB, which shall be limited to: (1) the Notice of Allegations; (2) the Notice of Formal Hearing; (3) the Notice of Decision; (4) the recording and the transcript, if any, of the hearing, and all other information submitted to the SCB during the hearing; and (5) the Notice of Appeal and any written responses, in accordance with Section .08(6)(h).

(k) Potential Decisions of the Appellate Board. The Appellate Board shall reach one (1) of the following decisions, by a majority vote, if the appeal is determined to be procedurally valid:

1. Affirm both the SCB's finding that the Respondent violated the Standards of Conduct and the sanctions imposed by the SCB;

2. In a case involving a clearly unreasonable sanction, the Appellate Board may modify the sanctions imposed by the SCB by imposing a greater or lesser sanction(s);

3. In a case involving a material procedural error, the Appellate Board shall remand the case for a new hearing to be conducted by a new SCB or the same SCB. The Appellate Board should recommend to the Chairperson how to correct the procedural error. SCCS may appoint a substitute member for any member of the SCB who is unavailable to participate in the new hearing; or

4. In a case of new information that fits the criteria described in Section .08(6)(c)(3), remand the case to the same SCB for the limited purpose of hearing the new information and reconsidering its decision based on the new information. SCCS may appoint a substitute member for any member of the SCB who is unavailable to participate in hearing the new information or the reconsideration of the decision.

5. In a case in which a SCB member had a personal prejudice or bias, remand the case for a new hearing to be conducted by a new SCB.

(l) Notice of Final Decision. The Appellate Board shall communicate its decision through a written notice called a Notice of Final Decision. The Notice of Final Decision should be issued within ten (10) business days of the submission of the Notice of Appeal. The Notice of Final Decision shall be sent to SCCS, who will notify the Conduct Officer, the Respondent, the Chairperson of the SCB, and, if permitted or required by law, the Complainant about the Notice of Decision and provide them with a copy of the Notice of Decision. The decision of the Appellate Board is final and is not subject to appeal.

(7) Other Issues Heard by the SCB. In addition to hearing disputes concerning violations of the Standards of Conduct, the Student Conduct Board shall also be the University body that hears disputes concerning the interpretation of the Student Government Constitution and disputes concerning the results of Student Government elections.

1720-04-03-.09 Sanctions.

(1) General Rules.

(a) Purposes of Sanctions. The purposes of sanctions include, without limitation: (1) to educate the Respondent about appropriate conduct; (2) to promote the personal and professional development of the Respondent; (3) to discourage the Respondent and other students from violating the Standards of Conduct; and (4) to protect other members of the University community. The sanctions imposed on a Respondent should be proportional to the Respondent's misconduct and

appropriate for the particular case based on the gravity of the offense (including, without limitation, how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the Respondent's conduct record; whether the Respondent acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; the Respondent's academic classification (e.g., undergraduate, graduate, freshman, sophomore, junior, senior); and other aggravating or mitigating factors.

(b) Administrative and Developmental Sanctions. A student who accepts responsibility or is found responsible for violating the Standards of Conduct generally will be given one (1) or more administrative sanctions. A student may also be given one (1) or more developmental sanctions.

(2) Administrative Sanctions.

(a) Warning. A warning is a written notice to a student that informs the student that the student has violated the Standards of Conduct, that the misconduct must cease and/or not reoccur, and that further misconduct will likely result in the imposition of more serious sanctions.

(b) Disciplinary Probation. Disciplinary probation is imposed for a specified period of time during which the student may continue to be enrolled but must demonstrate conduct that conforms to the Standards of Conduct. Conditions may be placed on the student's continued enrollment. A student may be placed on disciplinary probation for moderate misconduct or in the case of repeated minor misconduct. Also, a student allowed to re-enroll following a suspension will be placed on disciplinary probation. Subsequent violations of the Standards of Conduct during a period of disciplinary probation may result in more serious sanctions such as suspension or expulsion from the University.

(c) Deferred Suspension. A deferred suspension is a designated period of time during which a student, while continuing to be enrolled, is given an opportunity to demonstrate the ability to abide by the Standards of Conduct. A student may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student is found responsible for any additional violation(s) of the Standards of Conduct while the student is on deferred suspension, then the sanction of suspension will be the minimum sanction that will be imposed in a Formal Hearing on the subsequent misconduct. Students who are placed on deferred suspension are also generally given developmental sanctions.

(d) Suspension. A suspension is an official separation of a student from the University for a specific period of time and/or until certain conditions are met. A suspension may be imposed for serious misconduct and/or for a violation of deferred suspension. Suspension may include conditions that must be satisfied prior to a student being allowed to re-enroll and/or conditions that will be in place if the student is allowed to re-enroll. The effective date of a suspension may be imposed retroactively to the date that the misconduct occurred. While suspended, the student loses all University rights and privileges (e.g., enrollment privileges), shall not represent the University in any official manner, and shall not be present on University-controlled property without the prior approval of the Vice Chancellor for Student Life. The student may be required to meet with an

assigned Student Life staff member periodically while suspended to ensure the student is making satisfactory progress regarding the developmental sanctions issued. The Vice Chancellor for Student Life will determine whether the student is eligible for consideration for re-enrollment by the University's admissions office(s). Students who are permitted to return to the University following a period of suspension will automatically be placed on disciplinary probation by SCCS for a designated period of time, which is designed to facilitate a smooth transition back to the University community. A student on post-suspension disciplinary probation must abide by the Standards of Conduct and all terms and conditions placed on the student's re-enrollment.

(e) Expulsion. Expulsion is a sanction that permanently bars a person from re-enrolling as a student at the University. This sanction generally is imposed when the student's misconduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; and/or when, by the student's repeated misconduct, a student has exhibited a blatant disregard for the health, safety, or welfare of other members of the University community or the University's right to establish rules of conduct. A person who has been expelled shall not be present on University-controlled property without the prior approval of the Vice Chancellor for Student Life.

(f) Withholding of Degree. The University may withhold a degree as a disciplinary sanction for a specified period of time or until the student's completion of all other sanctions imposed, whichever occurs later.

(g) Revocation of Degree. The sanction of the revocation of a degree may be imposed if a student has obtained a degree at least in part through cheating, plagiarism, other academic dishonesty, or through research misconduct. Revocation of a degree shall be approved by the Chancellor before the revocation is effective. If approved by the Chancellor, this sanction will be noted on the student's academic transcript on a permanent basis.

(h) Disciplinary Probation for Student Organizations. A student organization given the sanction of disciplinary probation is permitted to retain University student organization registration on a probationary status. As a condition of the disciplinary probation, the student organization also may be given developmental sanctions.

(i) Social Probation for Student Organizations. Social probation prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events or participate in University-affiliated activities. Any exceptions to social probation must be approved, in advance, by the Vice Chancellor for Student Life.

(j) Revocation or Suspension of University Registration. In cases of serious or repeated misconduct, a student organization's University registration may be suspended or revoked.

(3) Developmental Sanctions. In addition to an administrative sanction(s), one (1) or more of the following developmental sanctions may be imposed in an effort to foster student learning and development.

(a) Educational Activities. Educational activities are designed to educate the student about why certain conduct was inappropriate. Examples of such activities include, without limitation, offering a formal apology (in writing and/or in person); attending an educational class, training, or workshop; giving or attending a presentation; preparing and submitting a research project or paper on a designated topic; or offering a written reflection responding to a prompt given by SCCS.

(b) Restitution. Restitution is compensation for loss, damage, and/or injury incurred as a result of the student's conduct. Compensation may take the form of money, service, and/or material replacement. Restitution may be required to be made to the University, a specific individual, or a specific organization. Normally, all restitution must be paid or made within two weeks of the imposition of the sanction.

(c) Supervised Work/Service. A student may be assigned unpaid work or service that is both beneficial to the University community and/or likely to assist the student in understanding the effects of the student's conduct.

(d) Loss or Restriction of Privileges. Specified student privileges are lost or restricted. Such privileges include, without limitation, representing the University in any official manner, the use of or access to University-controlled property, University parking privileges, or participation in University-affiliated activities (e.g., extracurricular activities).

(e) University Housing Reassignment or Removal. A student may be assigned to a different residence hall or residence hall room. A student's residence hall contract also may be terminated, and the student may be prohibited from residing in University housing for a definite or indefinite period of time.

(f) Mandatory Education. A student may be required to participate in one (1) or more educational programs, classes, or workshops relating to the student's misconduct, including, without limitation, education concerning alcohol or drugs. The student may be held responsible for the payment of expenses relating to the educational program/class/workshop(s).

1720-04-03-.10 Honor Statement.

(1) Honor Statement. An essential feature of the University is a commitment to maintaining an atmosphere of intellectual integrity and academic honesty. As such the University utilizes an Honor Statement that reads, "As a student of the University, I pledge that I will neither knowingly give nor receive any inappropriate assistance in academic work, thus affirming my own personal commitment to honor and integrity."

(2) Informing Students and Faculty. The following methods will be used to inform students and faculty members about the Honor Statement: (1) the Honor Statement appears on undergraduate and graduate applications for admission, and applicants will be required to acknowledge his/her affirmation of the Honor Statement in writing; (2) information regarding the Honor Statement is included in the undergraduate and graduate catalogs, Hilltopics; (3) the Honor Statement is discussed during student orientation programs; (4) faculty members are encouraged to discuss the Honor Statement with students in entry-level English courses; (5) faculty members are encouraged to include the Honor

Statement in their course syllabus; (6) implementation methods and alternatives are discussed during faculty orientation programs; and (7) the enforcement of the Honor Statement is through the Standards of Conduct (Section .04(1)) and the student conduct process.

(3) Academic Dishonesty. The Honor Statement prohibits cheating, plagiarism, and any other type of academic dishonesty.

(4) Plagiarism. Plagiarism is using the intellectual property or product of someone else without giving proper credit. The undocumented use of someone else's words or ideas in any medium of communication (unless such information is recognized as common knowledge) is a serious offense, subject to disciplinary action that may include failure in a course and/or dismissal from the University. Specific examples of plagiarism include, but are not limited to: (1) using without proper documentation (quotation marks and citation) written or spoken words, phrases, or sentences from any source; (2) summarizing without proper documentation (usually a citation) ideas from another source (unless such information is recognized as common knowledge); (3) borrowing facts, statistics, graphs, pictorial representations, or phrases without acknowledging the source (unless such information is recognized as common knowledge); (4) collaborating on a graded assignment without the instructor's approval; and (5) submitting work, either in whole or partially created by a professional service or used without attribution (e.g., paper, speech, bibliography, or photograph).

(5) Examples of Other Types of Academic Dishonesty. Specific examples of other types of academic dishonesty include, but are not limited to: (1) providing or receiving unauthorized information during an examination or academic assignment, or the possession and/or use of unauthorized materials during an examination or academic assignment; (2) providing or receiving unauthorized assistance in connection with laboratory work, field work, scholarship, or another academic assignment; (3) falsifying, fabricating, or misrepresenting data, laboratory results, research results, citations, or other information in connection with an academic assignment; (4) serving as, or enlisting the assistance of, a substitute for a student in the taking of an examination or the performance of an academic assignment; (5) altering grades, answers, or marks in an effort to change the earned grade or credit; (6) submitting without authorization the same assignment for credit in more than one course; (7) forging the signature of another or allowing forgery by another on any class or University-related document such as a class roll or drop/add sheet; (8) gaining an objectively unfair academic advantage by failing to observe the expressed procedures or instructions relating to an exam or academic assignment; and (9) engaging in an activity that unfairly places another student at a disadvantage, such as taking, hiding, or altering resource material, or manipulating a grading system.

(6) Responsibilities Associated with the Honor Statement. All members of the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the University community. Each student is responsible for his/her own personal integrity in academic life. Each student is responsible for knowing and adhering to the terms and conditions of the Honor Statement and may acknowledge his/her adherence to the Honor Statement by writing, "Pledged," and signing on a graded class assignment or examination. Although there is no affirmative duty to report the academic dishonesty of another, each student, given the dictates of his/her own conscience, may choose to report any violation of the Honor Statement to a faculty member or to SCCS. The prevention of academic dishonesty, and

the response to academic dishonesty, is the immediate responsibility of the instructor. However, students are not excused from complying with the Honor Statement because of an instructor's failure to prevent or discourage academic dishonesty.

(7) Academic Dishonesty – Resolution by the Academic Department.

(a) Notice of Academic Dishonesty and Informal Opportunity to Respond to Allegations. When an act of alleged academic dishonesty is discovered by, or brought to the attention of an instructor, the instructor shall notify the student about the alleged academic dishonesty, describe the information supporting the allegation, and give the student an informal opportunity to respond to the allegation(s) and information. The instructor may proceed with imposing an academic penalty for academic dishonesty if the student has not responded to the instructor's notice to the student concerning the alleged academic dishonesty within five (5) business days of the notice. The instructor does not have the authority under the Code to impose a sanction identified in Section .09(2) or Section .09(3). An academic penalty shall not take effect until after the deadline for an appeal has passed under Section .10(7)(c), or, if the student appeals the penalty, the student conduct process has concluded and the penalty has been upheld, whichever is later.

(b) Decision Whether to Impose an Academic Penalty. After giving the student notice and an informal opportunity to respond, if the instructor concludes that the student engaged in academic dishonesty, then the instructor may impose an academic penalty of a failing or reduced grade in the academic exercise, assignment, examination, and/or course; loss of credit for the work involved; an assignment to repeat the work, to be graded on its merits; and/or an oral or written reprimand. An instructor may impose more than one (1) academic penalty. If the instructor decides to impose an academic penalty, then the instructor shall transmit a notice to the student of the allegations, information, findings, academic penalty imposed, and information on the student's options to appeal the findings and/or penalties under Section .10(7)(c). The notice should be countersigned by the department head. Copies of the notice to the student shall be submitted to SCCS, the dean or other chief administrative head of the instructor's academic unit, and, where different, the dean or other chief administrative head of the academic unit in which the student is enrolled. The instructor is not required to notify a student that a complaint has been made to SCCS.

(c) Appeals of Academic Penalties. Within five (5) business days of the transmittal of the notice to the student described in Section .10(7)(b)(2), the student may appeal the academic penalty imposed by the instructor by submitting a written Notice of Appeal of Academic Penalty to SCCS, using a form approved by SCCS. The SCB hears appeals of academic penalties. If SCCS does not issue a Notice of Allegations, then the instructor shall serve as the Conduct Officer in the SCB Hearing. The decision of the SCB, or the Appellate Board if the decision is appealed, shall be the final decision of the University concerning the academic penalty. For example, if the SCB's decision, if not appealed to the Appellate Board, is to reverse a grade of "F" for the course, then SCCS will inform the University's Registrar of the SCB's decision and request the Registrar to enter the grade for the course that the student would have received if the student had not been accused of academic dishonesty. If there is a question about what

grade the student would have received if the student had not been accused of academic dishonesty, the question will be referred to the Provost for resolution.

(8) Academic Dishonesty – Resolution through the Student Conduct Process. After receiving notice from the instructor under Section .10(7)(b), SCCS may proceed with the student conduct process and determine of whether to issue a Notice of Allegations for violating Section .04(1). A decision by SCCS not to issue a Notice of Allegations shall not be used by the student to support an appeal of an academic penalty imposed by the student's instructor. In addition, SCCS may issue a Notice of Allegations for violating Section .04(1) regardless of the response of the instructor to the alleged academic dishonesty. If an instructor alleges that a student engaged in academic dishonesty and the student wants to appeal the academic penalty and/or SCCS issues a Notice of Allegations containing an allegation of a violation of Section .04(1), then the allegations against the student and the issue of the appropriate academic penalty shall be resolved through a Resolution Agreement, a Formal Hearing, or an Alternative Resolution Process.

(9) College of Law. The University of Tennessee College of Law has adopted and promulgated its own Code of Academic Conduct, Chapter 1720-04-09. Chapter 1720-04-09 shall control in the event of a conflict between this Chapter and Chapter 1720-04-09.

(10) Research Misconduct. Notwithstanding anything in this Code to the contrary, allegations of research misconduct shall be reported, assessed, inquired into, investigated, and resolved consistently with the University's Policy on Misconduct in Research and Service.

1720-04-03-.11 Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention.

(1) Background. The University of Tennessee holds paramount the health, safety, and welfare of students. Accordingly, all University students are expected to alert appropriate officials in the event of a health, safety, or welfare emergency, including, without limitation, a situation involving the abuse of alcohol or other drugs.

(2) Expectations. When individual students know or reasonably should have known that other individual students are in need of emergency medical attention, the individual students are expected to: (1) contact appropriate people to report the incident and request assistance (e.g., University staff members, law enforcement), and provide those people with the names and contact information for the individual students reporting the incident and the impaired individual students; and (2) demonstrate cooperation and care by remaining with the impaired individual students and providing reasonable assistance during and after the incident. Individual students who take all of the steps described in this Section .11(2) will be referred to as a "Good Samaritan" under the Code. The individual students in need of emergency medical attention will be referred to as an "impaired individual student" under the Code.

(3) Amnesty for Individual Good Samaritans. Unless individual Good Samaritans have engaged in a repeated or serious violation of the Standards of Conduct (e.g., physical or sexual assault, property destruction, disorderly behavior, theft, second incident of misconduct involving alcohol or drugs), individual Good Samaritans will not be subject to formal University disciplinary action for misconduct discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, the individual students who acted as a Good Samaritan may be required to

meet with a University staff member to discuss the individual Good Samaritan's misconduct and adhere to appropriate remedial and/or educational recommendations.

(4) Amnesty for Individual Impaired Students. Unless individual impaired students have engaged in a repeated or serious violation of the Standards of Conduct (e.g., physical or sexual assault, property destruction, disorderly behavior, theft, second incident of misconduct involving alcohol or drugs), individual impaired students will not be subject to formal University disciplinary action for misconduct discovered by the University as a result of the Good Samaritan's report. While no formal University disciplinary action may be taken, the individual impaired students may be required to meet with a University staff member, participate in educational activities, and/or establish that the individual students have addressed issues that contributed to the misconduct.

(5) Application of the Amnesty Policy to Student Organizations. Student organizations, through their officers and members, are also expected to take responsible action in emergency situations. While the Policy on Amnesty for Individual Good Samaritans and Students in Need of Emergency Medical Attention may not fully apply, adherence to steps described in Section .11(2) by a student organization's officers and/or members will be considered a mitigating factor when determining the outcome of or sanction for misconduct. Additionally, the University will consider a failure of officers and/or members to adhere to steps described in Section .11(2) to be an aggravating factor when determining the outcome of or sanction for misconduct.

1720-04-03-.12 Emergency Powers. When, in the judgment of the University's Chancellor, conditions are such that it is impractical for the Student Conduct Board to function, the Vice Chancellor for Student Life may suspend these procedural regulations and appoint an ad hoc committee to hear a conduct matter. Any such ad hoc committee shall follow procedures that will insure that the Respondent is provided with due process. The final decision of the ad hoc committee may be appealed to the Vice Chancellor for Student Life, but the grounds for appeal are limited to those outlined in Section .08(6)(c).

1720-04-03-.13 Maintenance, Disclosure, and Expungement of Student Disciplinary Records.

(1) Maintenance of Student Disciplinary Records. The University maintains student disciplinary records separately from student academic records.

(2) Disclosure of Student Disciplinary Records while a Student is Enrolled. While a student is enrolled in the University, SCCS may disclose disciplinary records to University officials who have a legitimate educational interest in the disciplinary records or to students who request to inspect their disciplinary records. SCCS may disclose disciplinary records to other persons only in accordance with state or federal law.

(3) Disclosure of Student Disciplinary Records after a Student is no Longer Enrolled. After a student is no longer enrolled in the University, SCCS will disclose a student's disciplinary records to persons outside of SCCS only if one (1) of the following sanctions was imposed on the student while the student was enrolled in the University: suspension; expulsion; withholding of degree; or revocation of degree. Notwithstanding the previous sentence, SCCS will disclose disciplinary records as required by state or federal law (e.g., subpoena, judicial order).

(4) Expungement of Student Disciplinary Records. SCCS permanently maintains student disciplinary records for students who have received the following sanctions (or their equivalents under previous versions of the Code): suspension; expulsion; withholding of

degree; or revocation of degree. SCCS expunges student disciplinary records for other students seven (7) years after graduation or the last date of enrollment, except as prohibited by law or a University litigation hold.

1720-04-03-.14 Definitions of Terms Used in the Code. The following words, terms, or phrases, when used in the Code, shall have the following meanings:

(1) Attend: To participate in a meeting or hearing electronically or in person.

(2) Business Day: Any weekday not designated by the University as a holiday or administrative closure day. When calculating a time period of business days specified in the Code, the business day of the event that triggers a time period is excluded.

(3) Chairperson: A faculty or staff member appointed by SCCS to preside over and facilitate a SCB Hearing.

(4) Code, Code of Conduct, or Student Code of Conduct: The University of Tennessee, Knoxville's Student Code of Conduct, Chapter 1720-04-03.

(5) Complainant: An individual who may have been subjected to student conduct that violates the Standards of Conduct, regardless of whether that individual makes a complaint or report to SCCS. This term does not imply pre-judgment concerning whether the Respondent violated the Standards of Conduct. SCCS is the final decision maker with respect to whether an individual is a Complainant for purposes of the Code.

(6) Conduct Officer: A University employee designated by SCCS to present information on behalf of SCCS to the Student Conduct Board. The Conduct Officer shall be employed in the Division of Student Life but is not required to be employed by SCCS. However, in a case involving alleged academic dishonesty in which SCCS has not issued a Notice of Allegations, the instructor generally will be designated as the Conduct Officer.

(7) Disciplinary Hold: The University hold described in Section .06(4)(c).

(8) Disciplinary Records: A written record that personally identifies a Respondent and is maintained by SCCS.

(9) Faculty Member or Instructor: A person hired by the University to conduct teaching, research, or supervised clinical placements.

(10) Formal Hearing: A SCB Hearing, a hearing before a Student Life Hearing Officer, and/or a UAPA Hearing.

(11) Good Faith: Having a belief in the truth of information that a reasonable person in the same position could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(12) Knoxville Area: The geographical area that consists of the following counties in the state of Tennessee: Knox, Anderson, Union, Grainger, Jefferson, Sevier, Blount, Loudon, and Roane.

(13) Member of the University Community: A person who is a student, University employee, University volunteer, invited visitor to University-controlled property, or participant in a University-affiliated activity.

(14) Notice or Notify (given to students): Written notice transmitted by United States mail, courier service, or hand delivery to the address the University's Registrar has on file for the student; and/or by e-mail to a student's University-provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent. A student's University-issued email address is the official method of communication used by SCCS.

(15) Possession: Direct control of a substance or property, actual knowledge of a substance or property, and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.

(16) Protected Activity: A person's good faith: (1) opposition to conduct prohibited under the Standards of Conduct; (2) report to the University about conduct prohibited under the Standards of Conduct to the University; (3) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (4) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act.

(17) Reasonable Person: A sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(18) Relevant Information: Information having any tendency to make the existence of any fact that is of consequence to determining whether the Respondent violated the Standards of Conduct more probable or less probable than it would be without the information.

(19) Respondent: A student or student organization who has been accused of violating the Standards of Conduct and/or whose conduct is being investigated by SCCS.

(20) Sanction: An administrative sanction and/or a developmental sanction.

(21) SCB: Student Conduct Board.

(22) SCCS: The Office of Student Conduct and Community Standards, which acts through University employees designated by the Director of SCCS to act on behalf of the University in the student conduct process, including, without limitation University employees who work in SCCS and University employees who work in University Housing.

(23) Staff Member: A person employed by the University on a part- or full-time basis, primarily involved in planning, organizing, staffing, directing and controlling efforts to achieve the goals and objectives of the University.

(24) Standards of Conduct: Chapter 1720-04-03-.04.

(25) Student: For purposes of the Code, the term "student" means:

(a) A person enrolled or registered for study at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies, as well as non-degree and non-credit programs and courses;

(b) A student organization;

(c) A person who has completed the immediately preceding academic term and is eligible for re-enrollment;

(d) A person who is not officially enrolled but who has a continuing relationship with the University (e.g., on educational leave or other approved leave status);

(e) A person who attended the University during a previous academic term and who engaged in misconduct during the time of enrollment; and/or

(f) A person who has been admitted to the University and later matriculates at the University, with respect to misconduct:

1. That occurs as part of the application process; or

2. That occurs post-admission and pre-matriculation and falls within the jurisdiction of the Code (e.g., occurs on University-controlled property).

(26) Student Life Hearing Officer. As more fully described in Section .07(2)(d), a University employee designated by the Director of SCCS to conduct a Formal Hearing.

(27) Student Organization: An organization that is composed solely of University students that has submitted a pending application or has completed the process for registration according to University rules.

(28) UAPA: Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301 et seq.

(29) UAPA Hearing: A hearing conducted by a University administrative judge or hearing officer in accordance with the University's procedures for conducting a contested case hearing pursuant to the UAPA, Chapter 1720-01-05.

(30) University: The University of Tennessee, Knoxville; the University of Tennessee Institute of Agriculture; and their campuses, centers, institutes, and constituent parts including, without limitation, their academic, administrative, or auxiliary departments or divisions.

(31) University-Affiliated Activity: means an activity on or off University-controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.

(32) University-Controlled Property: All land, grounds, structures, or any other property owned, controlled, or operated by the University. For purposes of this rule, University-controlled property includes, without limitation, all streets, alleys, sidewalks, and public ways abutting such property. University-controlled property also includes computers and network systems owned, controlled, or operated by the University or funded by the University.

(33) University Official: An employee of the University, including, without limitation, faculty members and staff members, or, for purposes of this Code, a University-recognized volunteer, when acting in the performance of their duties. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).

(34) Vice Chancellor for Student Life: The University's chief student affairs officer, to whom the Chancellor has delegated responsibility for the administration of the Code. For the purposes of the Code, the term also includes any University employee whom the Vice Chancellor for Student Life designates to act in place of the Vice Chancellor for Student Life.

(35) Weapon: Any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, without limitation, firearms (loaded and unloaded, real firearms and devices that would reasonably appear to a law enforcement officer to be real firearms), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than four (4) inches. The term "weapon" does not include pocket knives that fold (but not excluding switchblades); chemical repellents available over-the-counter for self-defense; instruments used solely for personal hygiene, preparation of food, maintenance, University-related instruction, or University employment-related duties.

(36) Written: To communicate words either on paper and/or electronically. For example, a notice delivered via e-mail constitutes a written notice under the Code.

RULES
OF
THE UNIVERSITY OF TENNESSEE
(KNOXVILLE)

CHAPTER 1720-04-03
STUDENT RIGHTS AND RESPONSIBILITIES

1720-04-03-.01 INTRODUCTION.

(1) Students at the University of Tennessee are members of both the University community and the larger community of which the University is a part. Accordingly, students are responsible for conducting themselves in a lawful manner and in compliance with University rules and policies. The University has established the following rules in order to advance the mission of the University by maintaining a safe and secure learning environment; protecting the rights and privileges of all members of the University community; providing a basis for orderly conduct of the affairs of the University; promoting a positive relationship between the University and its surrounding community; preserving institutional integrity and property; encouraging students to engage in conduct that brings credit to themselves and the University; and ensuring that each student who matriculates at the University graduates ready to contribute to society as an ethical and law-abiding citizen.

(2) The University of Tennessee is committed to respecting students' constitutional rights. Nothing in this chapter is intended or shall be interpreted to restrict students' constitutional rights, including, but not limited to, rights of freedom of speech and assembly.

(3) Students are responsible for being fully acquainted and for complying with the University catalog, handbook, and other rules and policies relating to students. Failure or refusal to comply with the rules and policies established by the University may subject a student to disciplinary action up to and including permanent dismissal from the University.

1720-04-03-.02 DEFINITIONS.

(1) The term "University" means the University of Tennessee.

(2) 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 students. Persons not officially registered or enrolled for a particular term but who are eligible to enroll or have a continuing relationship with the University also are considered students for purposes of these rules.

(3) The term "student organization" means an organization composed of University students that has submitted a pending application or completed the process for registration according to University rules.

(4) The term "University controlled property" means all land, buildings, facilities, grounds, structures, or any other property owned, leased, used, maintained, or operated by the University. For purposes of this rule, University controlled property includes all streets,

~~alleys, sidewalks, and public ways abutting such property. University controlled property also includes computers and network systems owned, maintained, or controlled by the University or funded by the University.~~

~~(5) The term "University affiliated activity" means any activity on or off University controlled property that is initiated, aided, authorized, sponsored, or supervised by the University.~~

~~(6) The term "University official" means an employee of the University, including faculty members and staff, or for purposes of this rule a University recognized volunteer. Student employees may be considered University officials when acting in the performance of their duties (e.g., event staff, resident assistants, and teaching assistants).~~

~~(7) The term "member of the University community" means any person who is a student, University official, campus visitor, or participant in a University sponsored or University affiliated activity.~~

~~(8) The term "possession" means actual knowledge of a substance or property and/or being in such close proximity to the substance or property that it is a reasonable presumption that one had knowledge of the substance or property.~~

~~(9) The term "weapon" means any device, instrument, or substance that is designed to, or reasonably could be expected to, inflict a wound, incapacitate, or cause serious bodily injury or death, including, but not limited to, firearms (loaded and unloaded, real firearms and devices that appear to a law enforcement officer to be real firearms), ammunition, electronic control devices (such as tasers and stun guns), devices designed to discharge an object (such as bb guns, air guns, pellet guns, potato guns, and slingshots, but not water guns), explosives, dangerous chemicals (such as mace, tear gas, and oleoresin capsicum), martial arts weapons, bows and arrows, artificial knuckles, nightsticks, blackjacks, dirks, daggers, swords, and knives with fixed blades longer than four (4) inches. The term "weapon" does not include pocket knives that fold (but not excluding switchblades), chemical repellents available over the counter for self defense, instruments used solely for personal hygiene, preparation of food, maintenance, University related instruction, or University employment related duties.~~

~~(10) The term "notice" means notice given in writing and transmitted by United States mail, courier service, and/or hand delivery to the address the University's Registrar has on file for the student, and/or by e-mail to the student's University provided e-mail account. When a notice is transmitted by United States mail or courier service, the notice is effective on the date that it is mailed or delivered to the courier service. When a notice is transmitted by hand delivery, the notice is effective on the date that it is delivered to the person to whom the notice is addressed. When a notice is transmitted by e-mail, the notice is effective on the date that the e-mail is sent.~~

~~(11) The term "coercion" means words and/or conduct that, viewed from the perspective of a reasonable person, substantially impair(s) a person's ability to voluntarily choose whether to engage in a particular sexual act (e.g., sexual contact or sexual intercourse). Coercion is something more than mere seduction or persuasion. Coercion includes, without limitation, physical force, and words and/or conduct that would cause a reasonable person to fear imminent harm to the person's health, safety, or property or that of a third person; threat of the loss or impairment of a job benefit; threat of the loss or impairment of an academic benefit; kidnapping of the person or a third person; or disclosure of~~

~~sensitive personal information (e.g., disclosure of a person's sexual orientation, gender identity, or gender expression).~~

~~(12) The term "consent" means an affirmative and voluntary agreement by a person to engage in a specific sexual act. Consent must be obtained, and the responsibility for obtaining consent rests with the individual who voluntarily and physically initiates a specific sexual act, even if the other person initiated the sexual encounter.~~

~~(a) One's own use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain Consent from the other person. Moreover, another person's use of alcohol, drugs, or other substances does not diminish one's responsibility to obtain consent from that person.~~

~~(b) The term "affirmative," as used in the definition of consent, means that consent is communicated only through words and/or non-verbal actions that convey a clear agreement to engage in a specific sexual act. Whether person has communicated an agreement to engage in a specific sexual act generally is evaluated from the perspective of what a reasonable person who perceived the individual's words and/or non-verbal actions would have understood; however, in the context of a long-term relationship between persons that has involved sexual activity and a pattern of communicating consent, whether consent has been communicated may be evaluated based on a subjective standard (i.e., what did the specific person who initiated the specific sexual act conclude?). A verbal "no" (or words equivalent to "no") or the nonverbal communication of "no," even if it sounds or appears insincere or indecisive, always means that consent has not been communicated, or if previously communicated has been withdrawn. The absence of a verbal "no" or the absence of a nonverbal communication of "no" does not necessarily mean that consent has been communicated. Because interpreting non-verbal actions may lead to misunderstanding and a violation of this policy, students are strongly encouraged to err on the side of caution and not rely solely on the non-verbal actions of another person in concluding that the other person has communicated consent. The University urges students to communicate with one another before engaging in a sexual act to ensure that they both wish to engage in the same sexual act.~~

~~(c) Consent cannot be obtained by or inferred from:~~

~~1. silence that is not accompanied by non-verbal actions conveying a clear agreement to engage in a particular sexual act;~~

~~2. consent communicated by the other person on a previous occasion;~~

~~3. consent communicated to another person;~~

~~4. the other person's failure to resist physical force (however, for purposes of this policy, the other person's resistance to physical force will be viewed as a clear demonstration that the person has not communicated consent);~~

~~5. the sexual arousal of the other person;~~

6. a current or previous dating, romantic, intimate, or sexual relationship with the other person;

7. currently or previously cohabitating with the other person;

8. the other person's attire;

9. the other person's reputation;

10. the other person's giving or acceptance of gifts; or

11. the other person's extension or acceptance of an invitation to go to a private residence, room, or location.

(d) Consent is not voluntary if it is obtained by coercion. Nor is consent voluntary if it is obtained from a person who is incapacitated if one knows (or a reasonable person would know) that the other person is incapacitated. Because the incapacitation of another person may be difficult for one to discern, students are strongly encouraged to err on the side of caution (i.e., when in doubt, assume that the other person is incapacitated and therefore unable to give consent.)

(e) Consent must be continual, which means that consent must exist from the beginning to the end of each sexual encounter and for each specific sexual act that occurs during a sexual encounter. A person has a right to change his/her mind; thus, consent to engage in a specific sexual act may be withdrawn by a person at any time. A withdrawal of consent is communicated through clear words and/or clear non-verbal actions that indicate that a person no longer agrees to engage in a specific sexual act. Once a person's withdrawal of consent has been communicated, the other person must cease the specific sexual act and must obtain consent before reinitiating the specific sexual act or any other sexual act. Consent is automatically withdrawn when a person becomes incapacitated. Consent to one type of sexual contact or sexual intercourse (e.g., oral intercourse) does not constitute or imply consent for another type of sexual contact or sexual intercourse (e.g., vaginal intercourse), whether during a sexual encounter or during a previous sexual encounter. The University urges students to communicate with one another throughout a sexual encounter to ensure that any progression of sexual activity is done with consent.

(13) The term "course of conduct" means two (2) or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.

(14) The term "dating violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim of the violence. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship. Dating violence includes, without limitation, sexual or physical abuse or the threat of such abuse.

(15) The term "domestic violence" means a felony or misdemeanor crime of violence

committed:

(a) by a current or former spouse or intimate partner of the victim;

(b) by a person with whom the victim shares a child in common;

(c) by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

(d) by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or

(e) by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

(16) The term "good faith" means having a belief in the truth of information that a reasonable person in the same situation could have, based on the information known to the person communicating the information at the time the information was communicated by that person. Information is not communicated in good faith if it is communicated with knowing or reckless disregard for information that would negate the former information.

(17) The term "incapacitated" or "incapacitation" means a temporary or permanent physical or mental state in which a person cannot make informed, rational judgments (e.g., judgments concerning sexual contact, sexual intercourse, or sexual exploitation) because: the person lacks the physical or mental capacity to understand the nature or consequences of their words and/or conduct; and/or the person is unable to physically or verbally communicate consent. Incapacitation can be voluntary or involuntary. Incapacitation is determined based on the totality of the circumstances. Incapacitation may result from: sleep; unconsciousness; intermittent consciousness; temporary or permanent physical or mental disability; involuntary physical restraint; or the influence of alcohol, drugs, or other substances, including, without limitation, substances used to facilitate sexual assault (e.g., Rohypnol, Ketamine, GHB, and Burundanga). Alcohol and drugs are common causes of incapacitation. When alcohol or drugs are involved, incapacitation is a state beyond mere drunkenness or intoxication. The impact of alcohol and drugs varies from person to person; however, warning signs of incapacitation may include, without limitation: lack of control over physical movements (e.g., inability to dress/undress without assistance; inability to walk without assistance); lack of awareness of circumstances or surroundings; vomiting; unresponsiveness; and inability to communicate coherently. A person who is under the age of eighteen (18) (i.e., a minor) is incapable of giving consent; however, a person who is at least the age of thirteen (13) and less than the age of eighteen (18) is capable of giving consent to sexual acts with another person who is less than four (4) years older than them.

(18) The term "reasonable person" means a sober, objectively reasonable person in the same situation, and with the same sex, gender identity, and sexual orientation as the person whose words and/or conduct are being evaluated.

(19) The term "relationship violence" means dating violence and/or domestic violence.

(20) The term "retaliation" means an act (i) taken by a student (including an act taken through a third party) because of another person's participation in a protected activity (ii) that

~~would discourage a reasonable person from engaging in protected activity. Protected activity includes a person's good faith: (i) opposition to conduct prohibited under the Standards of Conduct; (ii) report to the University about conduct prohibited under the Standards of Conduct to the University; (iii) participation (or reasonable expectation of participation) in any manner in an investigation, meeting, hearing, or interim measure; or (iv) exercise of rights or responsibilities under any provision of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. Retaliation violates the Standards of Conduct regardless of whether the underlying allegation of a violation of the Standards of Conduct is ultimately found to have merit. Retaliation can include an act taken against a person's family, friends, advisors, and/or other persons reasonably expected to provide information in connection with a University investigation or hearing.~~

~~(21) The term "sexual assault" means engaging in sexual contact or sexual intercourse with another person without the consent of that person.~~

~~(22) The term "sexual contact" means the intentional touching of another person (including another person's clothing) in a sexual manner with any part of one's body or with any object. Sexual contact also means intentionally causing another person to touch themselves (including their clothing) in a sexual manner. Whether a touching was done in a sexual manner is determined from the perspective of a sober, objectively reasonable person in the same situation and with the same sex, gender identity, and sexual orientation as the person who was touched.~~

~~(23) The term "sexual exploitation" means an act or attempted act by a person for the purpose of sexual arousal or gratification, financial gain, or other personal benefit through the abuse or exploitation of another person's sexuality. Examples of sexual exploitation include, without limitation observation of a person who is undressed or engaging in sexual contact or sexual intercourse, without the consent of all persons being observed (in a place where a person has a reasonable expectation of privacy); creation or distribution of images, photography, an audiotape, or a videotape of sexual contact, sexual intercourse, or a person's intimate parts (i.e., genitalia, groin, breasts, buttocks) without the consent of all persons being recorded or photographed; prostituting another person; allowing others to observe, either in person or electronically, sexual contact or sexual intercourse without the consent of all persons involved in the sexual contact or sexual intercourse (in a place where a person has a reasonable expectation of privacy); and knowingly exposing another person to a sexually transmitted infection without informing the other person that one has a sexually transmitted infection.~~

~~(24) The term "sexual harassment" means with respect to the conduct of a student, unwelcome conduct of a sexual nature that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall the term "sexual harassment" be construed to prohibit speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech). Sexual harassment may include, for example, unwelcome sexual advances, requests for sexual favors, and acts of sexual assault. The term "sexual harassment" also means, with respect to the conduct of a student employee (when acting as a student employee), unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's participation in an educational program; submission to or rejection of such conduct by an~~

~~individual is used as the basis for evaluation or advancement in an educational program, or such conduct has the purpose or effect of unreasonably interfering with an individual's educational performance or creates an intimidating, hostile or offensive educational environment. Sexual harassment is a form of sex discrimination. To determine whether conduct constitutes sexual harassment, consideration shall be given to the totality of the circumstances, including without limitation: the context in which the conduct and/or words occurred, and the frequency, nature, and severity of the conduct and/or words.~~

~~(25) The term "sexual intercourse" means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person.~~

~~(26) The term "sexual misconduct" means sexual harassment, sexual assault, and/or sexual exploitation.~~

~~(27) The term "stalking" means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person's safety or the safety of others; or (2) suffer substantial emotional distress. For the purposes of this definition, the term "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.~~

~~(28) The term "substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.~~

~~*1720-04-03-.03 JURISDICTION.*~~

~~(1) The Standards of Conduct, Chapter 1720-04-03-.05, apply to conduct that occurs on University controlled property.~~

~~(2) The University also has the discretion to discipline a student for an act in violation of the Standards of Conduct that occurs off University controlled property if the conduct adversely affects the interests of the University, including, but not limited to, conduct which:~~

~~(a) occurs in connection with a University affiliated activity, including, but not limited to, an overseas study program or a clinical, field, internship, or in service experience;~~

~~(b) involves another member of the University community; or~~

~~(c) threatens, or indicates that the student may pose a threat to, the health or safety of him/herself or others or the security of any person's property, including, but not limited to, alcohol related offenses, drug related offenses, arson, battery, fraud, hazing, participation in group violence, rape, sexual assault or misconduct, stalking, and theft.~~

~~(3) The Standards of Conduct have been adopted in furtherance of the University's interests and serve to supplement, rather than substitute for, the enforcement of the civil and criminal law. Accordingly, University disciplinary action may be instituted against a student charged with conduct that potentially violates both the criminal law and the Standards of Conduct without regard to the pendency of criminal charges or civil~~

~~litigation. At the discretion of the Vice Chancellor for Student Affairs, or his/her designee, disciplinary action relating to a violation of the Standards of Conduct may be carried out prior to, simultaneously with, or following criminal proceedings. Students accused of violating the Standards of Conduct may not challenge the University disciplinary proceedings on the grounds that criminal charges, civil litigation, or other University proceedings regarding the same incident are pending or have been terminated, dismissed, reduced, or not yet adjudicated.~~

~~(4) Each student shall be responsible for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment (and even if conduct is not discovered by the University until after a degree is awarded). Should a student withdraw from the University with disciplinary charges pending, the student's academic record and/or ability to register for classes may be encumbered by the appropriate University office.~~

~~(5) Graduate or professional programs within the University may initiate charges against students for alleged violations of professional standards or ethics as a separate issue or as an extension of alleged acts of academic dishonesty or other violations of the Standards of Conduct.~~

~~1720-04-03-.04 FUNDAMENTAL RIGHTS.~~

~~(1) Students and student organizations charged with violating the Standards of Conduct, Chapter 1720-04-03-.05, are entitled to the following rights under the University of Tennessee, Knoxville's student judicial system.~~

~~(a) Notice of charge(s), account of the alleged misconduct, witnesses, and notice of the scheduled hearing delivered 72 hours before the hearing. The student may request additional time by showing good cause.~~

~~(b) Notice of the maximum allowable penalty (i.e., permanent dismissal).~~

~~(c) The right to a hearing closed to the public.~~

~~(d) The right to (i) a non-adversarial hearing before the Director of Judicial Affairs or his/her designee, or (ii) an adversarial hearing before a University hearing board with jurisdiction.~~

~~(e) The right to be assisted by a Student Judicial Advisor before a University hearing board. If an adversarial criminal proceeding has been initiated against a student (e.g., a criminal charge or indictment) arising out of the same conduct at issue in the disciplinary hearing, then the student also has a right to have an attorney present during the hearing before a University hearing board. The attorney's role shall be limited to advising the student about answering questions that may be self-incriminating.~~

~~(f) Testify or remain silent in a University hearing at his/her option. However, a University hearing board is not prohibited from drawing an adverse inference against a student if the student remains silent or refuses to attend a disciplinary hearing or testify in response to evidence offered against him/her. A University hearing board shall not base its decision solely on a student's failure to attend a~~

~~hearing or a student's refusal to testify or remain silent.~~

~~(g) Present the testimony of witnesses and other evidence.~~

~~(h) The presumption of innocence. The burden of proof rests with the University, such that the University must prove the student's guilt by a preponderance of the evidence.~~

~~(i) A written decision specifying the rule violated, penalty assessed, and right of appeal.~~

~~(j) Challenge the seating of any board member for good cause. The dismissal of a challenged hearing board member shall be at the discretion of the hearing board chairperson. If the chairperson is challenged, he/she may be excused at the discretion of the majority of the hearing board.~~

~~(k) Have his/her case heard only on the misconduct specified in the written notice.~~

~~(l) Challenge the admissibility of evidence.~~

~~(m) Cross-examine all available adverse witnesses.~~

~~(n) Appeal the decision of a University disciplinary board in accordance with Chapter 1720-04-03-.12.~~

~~(2) In accordance with Title IX of the Education Amendments of 1972, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, and other applicable law, the University will investigate and resolve reports of sexual misconduct, relationship violence, and stalking in accordance with the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking, a copy of which is published at sexualassault.utk.edu. In a case involving an allegation of sexual misconduct, relationship violence, or stalking, the accused student/respondent and the alleged victim/complainant shall have the rights outlined in the University's Policy on Sexual Misconduct, Relationship Violence, and Stalking.~~

~~(3) As an alternative to the procedures described in this Chapter, any student or student organization whose legal rights, duties or privileges are required by any statute or constitutional provision to be determined after an opportunity for a hearing shall be afforded that opportunity for hearing in accordance with the Uniform Administrative Procedures Act, Tennessee Code Annotated, § 4-5-301, *et seq.* The University's procedures for conducting contested case hearings under the Uniform Administrative Procedures Act are contained in Chapter 1720-01-05, and the University's rules concerning waivers of contested case hearings are contained in Chapter 1720-01-03.~~

~~1720-04-03-.05 STANDARDS OF CONDUCT. A student or student organization may be disciplined for the following types of misconduct.~~

~~(1) Cheating, plagiarism, or any other act of academic dishonesty, including, but not limited to, an act in violation of the Honor Statement.~~

~~(2) Providing false information to a University official.~~

(3) Falsifying, distorting, misrepresenting, or withholding information in connection with a University investigation or hearing.

(4) Forging, altering, destroying, falsifying, or misusing records, identification, or documents.

(5) Causing physical harm to any person (including oneself), endangering the health or safety of any person (including oneself); engaging in conduct that causes a reasonable person to fear harm to his/her health or safety; or making an oral or written statement that an objectively reasonable person hearing or reading the statement would interpret as a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals.

(6) Harassment, which is defined as unwelcome conduct that is so severe or pervasive, and objectively offensive, that it substantially interferes with the ability of a person to work, learn, live, or participate in or benefit from the services, activities, or privileges provided by the University. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution (e.g., mere insulting or offensive speech).

(7) Engaging in sexual misconduct, relationship violence, or stalking.

(8) Invasion of another person's privacy when that person has a reasonable expectation of privacy, including, but not limited to, using electronic or other means to make a video or photographic record of any person in a location in which the person has a reasonable expectation of privacy, without the person's knowledge or consent. This includes, but is not limited to, making a video or photographic record of a person in shower/locker rooms or restrooms. The storing, sharing, and/or distributing of such unauthorized recordings by any means is also prohibited.

(9) Theft, misappropriation, unauthorized possession, or unauthorized sale of private or public property, including but not limited to University-controlled property.

(10) Vandalizing, destroying, damaging, engaging in conduct that reasonably could cause damage to, or misusing private or public property, including but not limited to University-controlled property.

(11) Participating in hazing. "Hazing" is defined as any intentional or reckless act, on or off University-controlled property, by one (1) student, acting alone or with others, which is directed against any other student, which endangers the mental or physical health or safety of that student, or which induces or coerces a student to endanger his or her mental or physical health or safety. "Hazing" does not include customary athletic events or similar contests or competitions and is limited to those actions taken and situations created in connection with initiation into or affiliation with any organization.

(12) Engaging in disorderly conduct, which means: fighting or other physically violent or physically threatening conduct; creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; making noise that could unreasonably disturb others who are carrying on lawful activities; or conduct that breaches the peace.

(13) Engaging in lewd, indecent, or obscene conduct. "Lewd, indecent, or obscene" conduct includes, but is not limited to, public exposure of one's sexual organs, public urinating, and public sexual acts.

(14) Engaging in speech, either orally or in writing, that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.

(15) Any act of arson, falsely reporting a fire, the presence of an explosive or incendiary device, or other emergency, setting off a false fire alarm, or tampering with, removing, or damaging fire alarms, fire extinguishers or any other safety or emergency equipment from its proper location except when removed in a situation in which there is a reasonable belief of the need for such equipment.

(16) Possessing, using, or duplicating University keys, access cards, or identification cards without authorization; possessing, using, or entering University-controlled property without authorization.

(17) Theft, misuse, or unauthorized use of information technology facilities, resources, or access codes, including, but not limited to: unauthorized entry into or transfer of a file; using another person's identification and/or password without that person's consent; using information technology facilities or resources to interfere with the work of another student, faculty member, staff member, or other member of the University community; using information technology facilities or resources to interfere with normal operation of a University information technology system or network; circumventing University information technology system or network security; using information technology facilities or resources in violation of copyright laws; falsifying an e-mail header; and conduct that violates the University's policy on the Acceptable Use of Information Technology Resources.

(18) Possessing, using, storing, or manufacturing any weapon or any facsimile of a weapon on University-controlled property or in connection with a University-affiliated activity, unless authorized in writing by the Chief of Police or his/her designee.

(19) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages on University-controlled property or in connection with a University-affiliated activity.

(20) Consuming, manufacturing, possessing, distributing, dispensing, selling, or being under the influence of alcoholic beverages, if prohibited by federal, state, or local law.

(21) Providing an alcoholic beverage to a person younger than twenty-one (21) years of age, unless permitted by law.

(22) Using, manufacturing, possessing, distributing, selling, dispensing, or being under the influence of drugs or drug paraphernalia, if prohibited by federal, state, or local law; using or possessing a prescription drug if the prescription was not issued to the student; or distributing or selling a prescription drug to a person to whom the prescription was not originally issued.

(23) Failing to pay a University bill, account, or other University financial obligation.

(24) Failing to respond to a request to report to a University administrative office; failing to comply with a lawful directive of a University employee or other public official acting within the scope of his/her duties; or failing to identify oneself to a University employee or other public official acting within the scope of his/her duties when requested to do so.

(25) Failing to appear at a University hearing, including, but not limited to, a hearing of a University judicial board, following a request to appear either as a party or as a witness.

(26) Violating the terms of an interim suspension, a no contact directive, or a disciplinary penalty imposed by the University.

(27) Obstructing or disrupting teaching, learning, studying, research, public service, administration, disciplinary proceedings, emergency services, or any other University affiliated activity, or the free flow of pedestrian or vehicular traffic. In no event shall this rule be construed to discipline a student for speech protected by the First Amendment to the United States Constitution.

(28) Violating a University policy or rule, including but not limited to University policies or rules relating to facilities use, smoking, the acceptable use of information technology resources, research or service misconduct, finder's fees relating to clinical investigations involving human subjects or access to University data or materials, University libraries, dining services, parking or transportation, University identification card use, sexual harassment, residence halls, and registered student organizations.

(29) Committing an act that is prohibited by local, state, or federal law.

(30) Attempting to commit a violation of a Standard of Conduct or being an accessory to the commission of an act or attempted act in violation of a Standard of Conduct.

(31) Engaging in retaliation.

1720-04-03-.06 HONOR STATEMENT.

(1) Honor Statement. An essential feature of the University of Tennessee, Knoxville is a commitment to maintaining an atmosphere of intellectual integrity and academic honesty. As a student of the University, I pledge that I will neither knowingly give nor receive any inappropriate assistance in academic work, thus affirming my own personal commitment to honor and integrity.

(2) A thorough understanding of the Honor Statement is essential to the success of the honor system. To facilitate implementation of the Honor Statement, the following avenues will be utilized:

(a) The Honor Statement, with its attendant pledge, will appear on applications for admission (undergraduate and graduate); and applicants to the University will be required to acknowledge their affirmation by signing the document in a designated location.

(b) Information regarding the Honor Statement will be included in the catalogs (undergraduate and graduate), *Hilltopics*, and in a brochure specifically addressing the Honor Statement at UT.

(c) The Honor Statement will be discussed during freshman, transfer, graduate student, and international student orientation programs.

(d) A thorough discussion of the Honor Statement in freshmen English is

~~encouraged.~~

~~(e) Implementation methods and alternatives will be discussed during faculty orientation programs.~~

~~(f) The Honor Statement is furthered by Standard of Conduct No. 1, Chapter 1720-04-03-.06.~~

~~(3) Prohibited Conduct.~~

~~(a) The Honor Statement prohibits cheating, plagiarism, and any other type of academic dishonesty.~~

~~(b) Plagiarism is using the intellectual property or product of someone else without giving proper credit. The undocumented use of someone else's words or ideas in any medium of communication (unless such information is recognized as common knowledge) is a serious offense, subject to disciplinary action that may include failure in a course and/or dismissal from the university. Specific examples of plagiarism include, but are not limited to:~~

~~1. Using without proper documentation (quotation marks and a citation) written or spoken words, phrases, or sentences from any source;~~

~~2. Summarizing without proper documentation (usually a citation) ideas from another source (unless such information is recognized as common knowledge);~~

~~3. Borrowing facts, statistics, graphs, pictorial representations, or phrases without acknowledging the source (unless such information is recognized as common knowledge);~~

~~4. Collaborating on a graded assignment without the instructor's approval; and~~

~~5. Submitting work, either in whole or in part, created by a professional service and used without attribution (e.g., paper, speech, bibliography, or photograph).~~

~~(c) Specific examples of other types of academic dishonesty include, but are not limited to:~~

~~1. Providing or receiving unauthorized information during an examination or academic assignment, or the possession and/or use of unauthorized materials during an examination or academic assignment;~~

~~2. Providing or receiving unauthorized assistance in connection with laboratory work, field work, scholarship, or another academic assignment;~~

~~3. Falsifying, fabricating, or misrepresenting data, laboratory results, research results, citations, or other information in connection with an academic assignment;~~

4. Serving as, or enlisting the assistance of, a substitute for a student in the taking of an examination or the performance of an academic assignment;

5. Altering grades, answers, or marks in an effort to change the earned grade or credit;

6. Submitting without authorization the same assignment for credit in more than one course;

7. Forging the signature of another or allowing forgery by another on any class or University-related document such as a class roll or drop/add sheet;

8. Failing to observe the expressed procedures or instructions relating to an exam or academic assignment; and

9. Engaging in an activity that unfairly places another student at a disadvantage, such as taking, hiding, or altering resource material, or manipulating a grading system.

(4) Responsibilities.

(a) All groups within the University community have responsibilities associated with the Honor Statement. These responsibilities are unique to each sector of the University community.

(b) Student Responsibilities. Each student is responsible for his/her own personal integrity in academic life. While there is no affirmative duty to report the academic dishonesty of another, each student, given the dictates of his/her own conscience, may choose to act on any violation of the Honor Statement. Each student is responsible for knowing and adhering to the terms and conditions of the Honor Statement and may acknowledge his/her adherence to the Honor Statement by writing "Pledged" and signing each graded class assignment and examination.

(c) Instructor Responsibilities. Regulation of academic dishonesty is the immediate responsibility of the instructor. However, students are not excused from complying with the Honor Statement because of an instructor's failure to prevent or discourage academic dishonesty.

(5) Process.

(a) When an act of alleged academic dishonesty is discovered by or brought to the attention of an instructor, the instructor shall inform the student orally or in writing about the alleged academic dishonesty, describe the evidence supporting the allegation, and give the student an informal opportunity to respond to the allegation(s) and evidence. The instructor may proceed with imposing an academic penalty for academic dishonesty if the student has not responded to the instructor's notice to the student concerning the alleged academic dishonesty.

(b) After giving the student notice and an informal opportunity to respond, if the instructor concludes that the student engaged in academic dishonesty, then the instructor may take any or all of the following actions:

1. Impose an academic penalty of a failing or reduced grade in an academic exercise, assignment, examination, and/or course; loss of credit for the work involved; an assignment to repeat the work, to be graded on its merits; or an oral or written reprimand.

a. If the instructor decides to impose an academic penalty, then the instructor shall notify the student of the charges, evidence, findings, penalties imposed, and the procedures to appeal the findings and/or penalties. The notice should be countersigned by the department head.

b. Copies of the notice to the student shall be submitted to the Office of Student Judicial Affairs, the administrative head of the instructor's academic unit, and, where different, the head of the academic unit in which the student is enrolled.

c. After receiving notice from the instructor, the Office of Student Judicial Affairs shall provide the student with notice and information relating to an appeal of the instructor's findings of academic dishonesty and/or academic penalties.

2. Request that the Office of Student Judicial Affairs charge the student with violating Standard of Conduct No. 1, Chapter 1720-04-03-.05, and impose one or more of the disciplinary penalties described in Chapter 1720-04-03-.07. The instructor is not required to notify a student that a request has been made to the Office of Student Judicial Affairs.

(c) The Office of Student Judicial Affairs is responsible for determining whether to charge a student with violating Standard of Conduct No. 1. The decision of the Office of Student Judicial Affairs not to charge a student with violating Standard of Conduct No. 1 may not be used by the student to support an appeal of an academic penalty imposed by the instructor. The Office of Student Judicial Affairs may charge a student with violating Standard of Conduct No. 1 regardless of the response of the instructor to the alleged academic dishonesty.

(d) If a student denies a charge of academic dishonesty made by an instructor and/or the Office of Student Judicial Affairs, and/or if the student does not accept the academic penalties imposed by the instructor and/or the penalties recommended by the Office of Student Judicial Affairs, then the student may appeal to the appropriate Academic Review Board within seven (7) days of the written notice of the academic penalty or disciplinary charge, whichever occurs later. If the student does not file a timely notice of appeal, then the determination of academic dishonesty and the recommended academic penalty and/or disciplinary penalty become final.

(6) The University of Tennessee College of Law has adopted and promulgated its own Code of Academic Conduct, Chapter 1720-04-09, which governs academic dishonesty by students enrolled in the College of Law and controls in the event of a conflict between

~~this Chapter and Chapter 1720-04-06.~~

~~1720-04-03-.07 PENALTIES.~~

~~(1) Disciplinary penalties are primarily intended to educate students and student organizations about appropriate behavior, encourage students and student organizations to take responsibility for misconduct, promote the personal and professional development of students, discourage other students and student organizations from violating the Standards of Conduct, and protect members of the University community. The penalties imposed should be appropriate for the particular case based on the gravity of the offense (including without limitation how the violation affected or reasonably could have affected other members of the University community). Consideration may also be given to the student's or student organization's conduct record; the student's or student organization's responsiveness to the conduct process; whether the student acted in self-defense, and, if so, whether the amount of force used was reasonable under the circumstances; student academic classification; and other aggravating or mitigating factors.~~

~~(2) The following penalties may be imposed on any student found to have violated the Standards of Conduct:~~

~~(a) Warning. A warning is a notice that the student is violating or has violated the Standards of Conduct.~~

~~(b) Loss of Privilege. A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Privileges that may be lost include, but are not limited to, scholarships, stipends, participation in extracurricular activities (e.g. intramurals), housing privileges, participation in social activities, and use of certain University controlled property (e.g., information technology resources).~~

~~(c) Education. Students may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Dean of Students or his/her designee.~~

~~(d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.~~

~~(e) Disciplinary Reprimand. A disciplinary reprimand is used for minor violations of the Standards of Conduct. A reprimand indicates that further violations will result in more severe disciplinary actions.~~

~~(f) Disciplinary Probation. Disciplinary probation permits a student to remain at the University on probationary status but with the understanding that a future violation of the Standards of Conduct may result in suspension. Probation may be for a defined or indefinite period. Other conditions of probation are specific to each individual case and may include a requirement of community service or other requirement or restriction.~~

(g) Suspension for a Specific Period of Time. Suspension for a specific period of time means that the student is withdrawn from the University and is not eligible to apply for readmission for a designated period of time. Usually, the period of designated suspension does not exceed one (1) calendar year. Upon return to the University following a suspension for a specific period of time, the student shall be placed on indefinite disciplinary probation.

(h) Indefinite Suspension. Indefinite suspension is imposed in cases of serious or repeated misconduct or in cases in which the prognosis for rehabilitation is uncertain. Indefinite suspension means that the student is withdrawn from the University for an unspecified period of time but typically for a minimum of one (1) calendar year from the effective date of the indefinite suspension. A student who receives the penalty of indefinite suspension is not eligible to apply for readmission until the student successfully petitions the Student Affairs Council to lift the suspension. The student will be expected to meet regularly with the Dean of Students, or his/her designee, throughout the period of indefinite suspension. At a minimum, the student is expected to contact and begin meeting regularly with the Dean of Students, or his/her designee, at least 15 weeks prior to the semester for which the student desires to be readmitted to the University. Upon return to the University following an indefinite suspension, the student shall be placed on indefinite disciplinary probation.

(i) Permanent Dismissal. Permanent dismissal means that a student is permanently barred from matriculating as a student at the University of Tennessee, Knoxville. This penalty is used when the violation of one or more of the Standards of Conduct is deemed so serious as to warrant total and permanent disassociation from the University community without the possibility of re-enrollment; or when, by his/her repeated violation of the Standards of Conduct, a student exhibits blatant disregard for the health and safety of other members of the University community or the University's right to establish rules of conduct. If a disciplinary hearing board desires to impose permanent dismissal, then the board shall communicate a recommendation of permanent dismissal to the Dean of Students. In the event a recommendation of permanent dismissal is not approved by the Dean of Students, he/she may substitute any less severe penalty; if probation is substituted, it may be for a greater period than the period specified for suspension. The Dean of Students shall notify the Director of Student Judicial Affairs when a recommendation for permanent dismissal is not approved.

(j) Revocation of Degree. Revocation of a degree means revoking a degree already awarded to a student by the University. If a disciplinary hearing board desires to revoke a degree, then the board shall communicate the recommendation to the Dean of Students, who shall either accept or reject the recommendation. Revocation of a degree shall be approved by the University of Tennessee Board of Trustees.

(3) The following penalties, by themselves, do not create a disciplinary record for a student in the Office of Student Judicial Affairs for purposes of reporting a student's conduct history: (a) warning; (b) loss of privilege; (c) education; and (d) restitution. However, these penalties may be considered as part of a student's conduct history for purposes of determining what penalty should be imposed for a future disciplinary offense.

(4) A disciplinary hold may be placed on a student's account until the completion of the

student disciplinary process or until the student satisfies the terms and conditions of any penalties imposed. A student who, at the time of commencement, is subject to a continuing disciplinary penalty or an unresolved disciplinary charge shall not be awarded a degree before the conclusion of all penalties and/or resolution of all disciplinary charges.

(5) The following penalties may be imposed on a student organization found to have violated the Standards of Conduct:

(a) Warning. A warning is a notice that the student organization is violating or has violated the Standards of Conduct.

(b) Education. Student organizations may be required to attend classes, at their own expense, dealing with issues such as the consequences of alcohol or drug use, civility, ethics, or other topics as deemed appropriate by the Dean of Students or his/her designee.

(c) Loss of Privilege. A loss of privilege is intended to serve as a reminder of the Standards of Conduct and is for a specific period of time. Examples of privileges that may be lost include participating in extracurricular activities (e.g., intramurals), housing privileges, participating in social activities, and using certain University controlled property.

(d) Restitution. Restitution may be required in situations that involve destruction, damage, or loss of property, or unreimbursed medical expenses resulting from physical injury. Restitution may take the form of a monetary payment or appropriate service to repair or otherwise compensate for the destruction, damage, or loss.

(e) Social Probation. Social probation prohibits a student organization from sponsoring or participating in specified social activities. While on social probation, a student organization may not host social events (e.g., mixers, date parties, formals, and band parties) or participate in University-affiliated activities (e.g., Homecoming, All Sing, Carnivals, Intramurals). Any exceptions to social probation must be approved, in advance, by the Dean of Students or his/her designee.

(f) Disciplinary Probation. Disciplinary probation means that a student organization is permitted to retain University registration on a probationary status. Violation of the Standards of Conduct during the period of disciplinary probation may result in more serious penalties, including revocation of University registration.

(g) Revocation of University Registration. In cases of serious or repeated misconduct, a student organization's University registration may be revoked.

(6) More than one of the penalties listed above may be imposed for any single violation of the Standards of Conduct.

(7) Except for an interim suspension, disciplinary penalties shall not become effective until after opportunities for appeal have been exhausted. Penalties may be applied retroactively to the date of the offense. Coursework performed while disciplinary charges are pending or disciplinary proceedings are underway shall be considered conditional.

~~Coursework may be affected or disregarded based on a final finding of misconduct or the penalty imposed, which may result in loss of course credit, a loss of tuition and/or fees, a delay in the awarding of a degree, or revocation of a degree that was awarded prior to a final decision in the disciplinary proceeding.~~

~~(8) Intoxication or impairment because of alcohol, drugs, chemicals, or other substances does not diminish or excuse a violation of the Standards of Conduct.~~

~~1720-04-03-.08 NO CONTACT DIRECTIVES. In cases involving allegations of assault, injury, sexual abuse, harassment, or in cases where there is reason to believe continued contact between a student and specific persons, including complainants and witnesses, may interfere with those persons' security, safety or ability to participate effectively in work or studies, the Vice Chancellor for Student Affairs, or his/her designee, may require that the student not have verbal, physical, or written contact with specific persons for a definite or indefinite period of time. The student will receive written notice of the no contact directive. Any student, faculty or staff member or other person with a reasonable justification may request that a no contact directive be issued to a student. In addition to an internal University no contact directive, complainants are advised that other similar options exist and can be obtained from law enforcement and civil and criminal courts.~~

~~1720-04-03-.09 INTERIM SUSPENSION.~~

~~(1) When the Vice Chancellor for Student Affairs or his/her designee has reasonable cause to believe that a student's continued presence on University controlled property or at University affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an ongoing threat to the disruption of, or interference with, the normal operations of the University, the Vice Chancellor for Student Affairs or his/her designee may impose an interim suspension prior to the conclusion of a full hearing on the alleged misconduct.~~

~~(2) An interim suspension shall be confirmed by a written statement that explains the basis for the interim suspension and shall remain in effect until the conclusion of a full hearing in accordance with the rules of the University of Tennessee, which shall be held without undue delay.~~

~~(3) Within three (3) business days of the imposition of the suspension, the student shall be offered an opportunity to appear personally before the Vice Chancellor for Student Affairs or his/her designee in order to discuss the following issues only: (i) the reliability of the information concerning the student's conduct, and (ii) whether the conduct and surrounding circumstances reasonably indicate that the student's continued presence on University controlled property or at University affiliated activities poses a significant risk of substantial harm to the health or safety of others or to property or poses an imminent threat of disruption of or interference with the normal operations of the University.~~

~~(4) During an interim suspension, the student shall be denied access to University controlled property, including residence halls, and all other University affiliated activities or privileges for which the student might otherwise be eligible, as the Vice Chancellor for Student Affairs or his/her designee determines in his/her sole discretion to be appropriate. A student who receives an interim suspension and violates the terms of the interim suspension shall be subject to further disciplinary action and may be treated as a trespasser. Permission to be on University controlled property or participate in University affiliated activities may be granted by the Vice Chancellor for Student Affairs or his/her designee.~~

(5) When a student is placed on interim suspension, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

1720-04-03-.10 INVOLUNTARY MEDICAL WITHDRAWAL OR SUSPENSION.

(1) When a student is unable to effectively pursue his/her academic work, or when his/her behavior is disruptive to the normal educational processes of the University, or constitutes a threat to members of the University community, due to alcoholism, drug addiction, mental instability or other physical or psychologically incapacitating illness or condition, he/she may be withdrawn or temporarily suspended from the University as hereinafter provided.

(2) Withdrawal. A student may be withdrawn from the University only after an evaluation of his/her mental and physical condition by a panel of at least three persons appointed by the Vice Chancellor for Student Affairs. The student shall be notified of the reasons for the evaluation and given an opportunity to present evidence to the committee. The committee's findings and recommendations shall be forwarded to the Vice Chancellor for Student Affairs, who will notify the student in writing of his/her decision. A student withdrawn under this procedure shall not be readmitted to the University without the approval of the Vice Chancellor for Student Affairs.

(3) Temporary Suspension. Whenever a student, because of his/her mental or physical condition constitutes a danger to persons or property, or when his/her behavior is disruptive to the normal educational processes of the University, he/she may be suspended from the University, for a reasonable period of time, by the Vice Chancellor for Student Affairs or the Dean of Students. If the University does not withdraw the student in accordance with procedures outlined above, he/she may return to the University at the end of the suspension period.

(4) Grades. When a student is withdrawn or temporarily suspended from the University, he/she may be assigned a grade of "W" or "I," whichever is deemed appropriate by the faculty member involved.

1720-04-03-.11 THE HEARING BOARDS.

(1) Greek Judicial Board.

(a) This board has original jurisdiction in cases in which a Greek student organization has allegedly violated the InterFraternity Council (IFC), Panhellenic, or National Pan Hellenic Council (NPHC) Rules, Constitution, or By-Laws, or University Standards of Conduct. Hearing procedures shall afford student organizations all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be similar to the procedures used by the Student Disciplinary Board. Following a hearing, the board shall determine guilt or innocence and decide upon an appropriate penalty. Appeals from these decisions are to the Student Tribunal in accordance with Chapter 1720-04-03-.12.

(b) An individual(s) member of a Greek student organization alleged to have violated a University Standard of Conduct will be referred to the Office of Student Judicial Affairs for appropriate action. The Director of Student Judicial Affairs, who will

~~decide all jurisdictional questions, may assign jurisdiction over cases of individual discipline to the Greek Judicial Board, except for cases involving allegations of sexual harassment, sexual assault, or sexual misconduct. In such cases the Greek Judicial Board will operate under the procedures established for the Student Disciplinary Board. Appeals from these decisions are to Student Disciplinary Board and must be filed with the Office of Student Judicial Affairs in accordance with Chapter 1720-04-03-.12.~~

~~(c) Students serving as members of the Greek Judicial Board must be active members of a Greek organization and in good standing during their terms of office. Guidelines for appointing, replacing and removing board members will be suggested by the Greek Council to the Office of Student Judicial Affairs for approval. Members of the Greek Judicial Board will be required to participate in training seminars scheduled by the Office of Student Judicial Affairs.~~

~~(2) Student Disciplinary Board.~~

~~(a) Jurisdiction. The Student Disciplinary Board has the following responsibilities.~~

~~1. To hear allegations of student misconduct involving violations of the Standards of Conduct;~~

~~2. To determine the innocence or guilt of the student charged and establish an appropriate penalty in cases where the student is found guilty; and~~

~~3. To hear individual discipline cases appealed from the Greek Judicial Board and to make decisions appropriate with appellate responsibility.~~

~~(b) Membership. Members of the Student Disciplinary Board must be sophomores or above. Undergraduate and law students must have at least a 2.0 overall grade point average. Graduate students must have at least a 3.0 grade point average in all graduate work attempted. Members shall be screened and selected by a committee that consists of Office of Student Judicial Affairs staff. A member may be removed from office, for cause, by the Student Affairs Council following notice and a hearing.~~

~~(c) Hearing Procedures.~~

~~1. For each hearing, three (3) to seven (7) student board members will be selected from a pool of members. A quorum of three (3) board members must be present in order to hear a case. A majority vote of the members present is required for all decisions of the board. The chairperson votes in all cases.~~

~~2. Any board member who cannot hear the evidence fairly and objectively for any reason shall dismiss himself/herself from the case.~~

~~3. The Director of Student Judicial Affairs shall appoint a chairperson prior to the start of each hearing. The chairperson shall conduct the hearing and rule on all motions, objections, and other procedural issues. The chairperson shall ascertain that the accused has been advised of his/her rights and shall then read the statement of charges. A student who fails~~

to appear before the Student Disciplinary Board in accordance with proper notification shall be deemed to have waived his/her rights to be present during the hearing, to know the evidence against him/her, to present evidence in his/her own behalf, and to exercise reasonable cross examination of witnesses appearing against him/her. This waiver shall become effective if the student fails to appear at the designated time and place of the hearing unless, at least twenty four (24) hours prior to the hearing, the student communicates in writing to the Office of Student Judicial Affairs good cause for granting a continuance of the hearing.

4. The accused shall enter a plea of guilty or not guilty. If a guilty plea is entered, he/she shall be advised of the maximum penalty.

5. The chairperson is responsible for maintaining an orderly discussion throughout the hearing. Proceedings should be conducted with fitting dignity and should reflect the importance and seriousness of the hearings. Any person who fails to follow the instructions of the chairperson, after a warning, shall be referred to the Director of Student Judicial Affairs for appropriate disciplinary action.

6. In the event that the accused pleads guilty, the board shall review the circumstances of the case and make appropriate decisions or recommendations regarding the penalty.

7. If accused's attorney is present, the accused's attorney shall not question any individual, introduce evidence, raise objections, present arguments, or otherwise participate in the hearing. The failure of an accused's attorney to attend the hearing shall not be grounds for delaying the proceeding or challenging the validity of the proceeding.

8. The Student Judicial Advisor, on behalf of the University, shall present such evidence as he/she has at the hearing, including any witnesses. He/she shall not present written statements as evidence, unless circumstances make such presentation necessary and unavoidable. Under similar restrictions the accused may present written statements in his/her defense. Unsigned statements shall not be admitted as evidence. However, a statement submitted via electronic mail may be admitted if party against whom the statement is offered does not object to its admission or the chairperson determines that the statement's authenticity and validity has been verified. Hearsay evidence is, however, admissible.

9. After the presentation of evidence by the Judicial Advisor, the accused shall be allowed to present all relevant evidence. If a not guilty plea has been entered, evidence in mitigation of the alleged offense shall be presented only after the board has determined the issue of innocence or guilt.

10. During board deliberations all persons except the board members shall be excused from the hearing room. The decision shall be based solely upon the evidence presented. No mention will be made during the

~~hearing on innocence or guilt of the student's previous disciplinary record, unless appropriate as rebuttal to character evidence introduced by the accused.~~

~~11. After a determination of guilt by the board, the Student Judicial Advisor, on behalf of the University, shall present the previous disciplinary record of the accused, if any, and evidence of any other aggravating circumstances, to the board together with the recommendation of the Director of Student Judicial Affairs as to an appropriate penalty.~~

~~12. After presentation of evidence by the Judicial Advisor, the accused shall be allowed to present character evidence, evidence of mitigating circumstances, and an alternative penalty recommendation.~~

~~13. After the board determines the penalty, the accused shall be advised in writing of its decision.~~

~~14. The results of the board's decision shall be kept on official University judicial forms. If a verbatim record of the hearing is prepared, it shall be retained in the custody of the Office of Student Judicial Affairs and considered a confidential disciplinary record. If necessary for adjudication of an appeal, the Director of Student Judicial Affairs may prepare a summary, certified by the chairperson of the Student Disciplinary Board, or provide that portion of the record that has been designated by the Student Tribunal or Student Affairs Council as material to the appeal.~~

~~15. A board member shall not discuss cases prior to or after the hearing. The information received by members of the board during a case is considered strictly confidential. Violations of this confidence by any board member could result in disciplinary action.~~

~~16. In cases involving an allegation of sexual assault or misconduct, the hearing procedures shall be modified to afford the alleged victim all of the rights described in Chapter 1720-04-03-.04(2). The board may consider evidence presented by the victim as part of the University's proof.~~

~~(d) Appeals. Appeals from decisions of the Student Disciplinary Board may be made to the Student Tribunal in accordance with Chapter 1720-04-03-.12.~~

~~(3) Academic Review Boards.~~

~~(a) Jurisdiction. Academic Review Boards have original jurisdiction over cases of alleged academic dishonesty (i.e., violations of Standard of Conduct No. 1, Chapter 1720-04-03-.06) that arise out of a course or program offered by the college or a student's appeal of an academic penalty imposed as a result of alleged academic dishonesty relating to a course or program offered by the college. Jurisdiction may include cases of academic dishonesty which involve violations of other Standards of Conduct, but such cases shall initially be referred to the Office of Student Judicial Affairs for determination of appropriate jurisdiction.~~

(b) Membership. The Academic Review Board of each college shall consist of an ad hoc group of three faculty members and three students selected from the college's membership by the administrative head of the college. Alternative methods of selection of the three faculty members and the three students may be adopted by an individual college with the approval of the administrative head of the college. Also, under extenuating circumstances, a college may recommend, for approval by the Student Affairs Council, a board composition which differs from that prescribed above.

(c) Hearing Procedures.

1. A quorum shall consist of four (4) members. The college shall make provision for alternates to insure the availability of a quorum.

2. In order to establish continuity among the various Academic Review Boards and to ensure the maintenance of procedural due process, a member of the Dean of Students staff shall serve as the non voting chairperson of each Academic Review Board. His/her responsibilities shall include the scheduling of meetings, notification of parties and witnesses, and other duties as needed to ensure due process is afforded.

3. Hearing procedures shall be established by the Office of Student Judicial Affairs. Hearing procedures shall afford students all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be similar to the procedures used by the Student Disciplinary Board. All decisions shall be by a majority vote.

(d) Appeals.

1. Appeal of Decision Concerning Academic Dishonesty.

(i) Student Appeal. A student may appeal a decision of the Academic Review Board that a student is guilty of academic dishonesty to the Student Affairs Council in accordance with Chapter 1720-04-03-.12.

(ii) University Appeal. The University may appeal a decision of the Academic Review Board that a student is not guilty of academic dishonesty to the Student Affairs Council in accordance with Chapter 1720-04-03-.12. The administrative head of the college involved makes the decision whether to appeal.

2. Appeal of Decision Concerning Academic Penalty.

(i) A student may appeal a decision of the Academic Review Board concerning an academic penalty to the Student Affairs Council in accordance with Chapter 1720-04-03-.12.

(ii) If the Academic Review Board recommends that the instructor change the academic penalty proposed by the instructor, the

~~Office of Student Judicial Affairs shall notify the instructor of the Academic Review Board's recommendation. The instructor may either accept or reject the Academic Review Board's recommendation to change an academic penalty, and the instructor or the administrative head of the college involved shall notify the Office of Student Judicial Affairs of the decision to accept or reject the Academic Review Board's recommendation within seven (7) days of the Academic Review Board's recommendation. If the instructor rejects the Academic Review Board's recommendation, then the Office of Student Judicial Affairs shall notify the student of the student's right to appeal the instructor's academic penalty in accordance with Chapter 1720-04-03-.12, in which case the student shall submit the request for appeal within seven (7) calendar days of the notice of the instructor's decision to reject the Academic Review Board's recommendation.~~

~~(iii) In the event the instructor rejects the recommendation of the Student Affairs Council following an appeal by the student of an academic penalty, then the student may appeal to the Chancellor, who, in consultation with the Provost, shall be the final decision maker concerning changes to student's grades on the student's official University academic record. The student must file a request for appeal within seven (7) calendar days of the notice to the student concerning the instructor's rejection of the recommendation of the Student Affairs Council.~~

~~(4) Student Tribunal.~~

~~(a) Original Jurisdiction. The Student Tribunal has original jurisdiction in cases of conflicts between (non-Greek) student organizations or conflicts between individuals and student organizations, cases which involve interpretation of the Student Government Constitution, cases of challenge to results of Student Government elections, and discipline cases involving charges of dishonesty in these elections.~~

~~(b) Appellate Jurisdiction. The Student Tribunal has appellate jurisdiction to review decisions of the Student Disciplinary Board and the Greek Judicial Board. Any other jurisdiction may be assigned by the Director of Student Judicial Affairs. The forms to be used on appeal and other procedural requirements shall be established by the Office of Student Judicial Affairs.~~

~~(c) Membership. The Student Tribunal consists of three (3) to seven (7) members, selected by the Director of Student Judicial Affairs or designee from the Student Disciplinary Board.~~

~~(d) Hearing Procedures. A quorum of three (3) members is required for a hearing before the Student Tribunal, and a majority vote of the members present is required for all decisions. Other hearing procedures shall be established by the Office of Student Judicial Affairs. In cases of original jurisdiction, the hearing procedures shall afford students all of the rights set forth in Chapter 1720-04-03-.04 ("Fundamental Rights of the Accused") and be consistent with the procedures~~

~~used by the Student Disciplinary Board.~~

~~(e) Appeals. Appeals from decisions of the Student Tribunal may be made to the Student Affairs Council in accordance with Chapter 1720-04-03-.13.~~

~~(5) Student Affairs Council.~~

~~(a) Jurisdiction. The Student Affairs Council is the hearing board for appeals from decisions of the Student Tribunal, Academic Review Boards, and for appeals filed by the Dean of Students or his/her designee. It is the final decision making board in the judicial system. The Council also hears petitions to lift the disciplinary penalty of indefinite suspension. The Council may periodically review the status of student conduct and the judicial system and make appropriate recommendations.~~

~~(b) Membership. The Student Affairs Council is composed of the following members:~~

~~1. The Vice Chancellor for Student Affairs, who serves as the chairperson;~~

~~2. All the Deans of the University of Tennessee, Knoxville;~~

~~3. Three (3) faculty members, associate professor or above, appointed by the Faculty Senate (the initial appointments shall be staggered in terms so that one new faculty member is appointed each year after the initial appointment); and~~

~~4. Eight (8) student members (one of whom shall be a graduate student), appointed by the Student Government Association, for a period of one year.~~

~~(c) Except for appeals from the Student Tribunal, a majority of the Student Affairs Council shall constitute a quorum for the conducting of all business, and a majority vote of the members present is required for all decisions.~~

~~(d) Appeals from the Student Tribunal. A subgroup of eleven (11) members of the Student Affairs Council, four (4) of whom shall be students, shall hear appeals from the Student Tribunal or an Academic Review Board. The Vice Chancellor for Student Affairs or his/her designee shall serve as the chairperson of the subgroup and shall select the ten (10) other members of the subgroup from the general membership of the Student Affairs Council.~~

~~The Student Affairs Council will hear appeals on the record, unless it elects by a majority vote of members present to hear the case de novo.~~

~~1720-04-03-.12 APPEAL AND SCOPE OF REVIEW.~~

~~(1) Appeal. The disciplinary action of any board may be appealed to the next higher board.~~

~~(a) In all cases the request for appeal must be submitted in writing to the Office of Student Judicial Affairs within seven (7) calendar days of written notice of the board decision. If the seventh day falls on a weekend or holiday, the time is~~

~~extended to the next regular workday.~~

~~(b) If written briefs are submitted or if required by the appellate board's bylaws, they must be submitted within fourteen (14) calendar days of submission of the request for appeal. Under normal circumstances appeals will be heard within seven (7) days after written briefs have been submitted.~~

~~(c) All appeals (except those to the Student Affairs Council, which may elect to hear the case de novo) must be taken upon the record made before the original board.~~

~~(d) Pending the outcome of an appeal, the penalty specified in the original decision shall not be imposed.~~

~~(2) Scope of Review. The appellate board will review the request for appeal together with any written briefs or other supporting documents to determine if the appeal presents a substantial question within the scope of review. The scope of review shall be limited to the following:~~

~~(a) Appropriateness of the Penalty. In cases appealing the appropriateness of the penalty, the appeal board shall uphold the penalty unless the penalty is shown to be clearly unreasonable (i.e., that which has been clearly and fully proven to have no sound basis or justification in reason).~~

~~(b) New Evidence. In cases appealed on grounds of new evidence, the moving party must show that such evidence is material to the decision of the board on the issue of innocence or guilt, and that said evidence could not have been discovered by due diligence prior to the original hearing.~~

~~(c) Due Process. In cases appealed on the grounds of denial of due process, the moving party must show that the adjudicatory process of the initial hearing was not conducted in conformity with properly prescribed procedures. The moving party must also show that the alleged discrepancy was materially adverse to the moving party's interest. Nothing contained in the foregoing shall be construed as limiting the right of the Dean of Students to request the Student Affairs Council to review the decision of any judicial board.~~

~~(3) In cases of involving a finding that a student is guilty of sexual assault or misconduct, the alleged victim shall have the right to appeal the decision of a University disciplinary board to the next higher board. The appellate board will review the request for appeal together with any written briefs or other supporting documents to determine if the appeal presents a substantial question within the scope of review. The scope of review shall be limited to the following.~~

~~(a) Appropriateness of the Penalty. In cases appealing the appropriateness of the penalty, the appeal board shall uphold the penalty unless the penalty is shown to be clearly unreasonable (i.e., that which has been clearly and fully proven to have no sound basis or justification in reason).~~

~~(b) New Evidence. An alleged victim may appeal a decision by showing that there is new evidence material to the decision of the board on the issue of innocence or guilt, and that the evidence could not have been discovered by the exercise of due diligence prior to the original disciplinary hearing.~~

(4) The decision of any board or administrative officer of the University of Tennessee, Knoxville is subject to review by the Chancellor and the President pursuant to the University of Tennessee Bylaws, Article V, Section 7.

1720-04-03-.13 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 by University authorities in order to ascertain the health and safety conditions in the room, to check the physical condition of the room, 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. An emergency situation exists when the delay necessary to obtain a search authorization constitutes a danger to person, property, or the building itself.

(a) Inspection: Scheduled inspections by on-campus authorities with the exception of daily janitorial operations shall be preceded, if possible, by twenty-four hours' notice to the residents. During the inspection there will be no search of drawers, closets, or personal belongings. This policy is applicable for residence halls and fraternity houses.

(b) Search: On-campus authorities will not enter a room for purposes of search without permission from the resident(s) or prior permission from the Dean of Students, the Vice Chancellor for Student Affairs, or a designee of Dean of Students or Vice Chancellor for Student Affairs, unless in compliance with federal or state law.

(c) Procedure for Search in Residence Hall Rooms: A request for permission to search, may be made by the Hall Director, Assistant Hall Director, or their superiors when reasonable cause exists to suspect that a violation is occurring or has occurred. If permission to search is verbally authorized, it must be verified in writing to the occupant(s) of the facility searched by the hall staff members requesting the search. A copy of the authorization form is presented to the occupant(s) or left in the room if the occupant(s) is absent. The authorization form shall contain the following:

1. Description of the place to be searched;

2. Name of the person authorizing the search;

3. Description of the item(s) sought, and

4. Name of the person requesting the search authorization.

(d) Procedure for Search in Fraternity Houses: For purposes of search, the fraternity house will be divided into open and closed areas. The closed areas will be the dorm section and chapter room. University authorities may enter the open areas for purpose of inspection or search without permission, but there will be no search of personal belongings or closed areas of the house. University authorities will not enter the closed areas without the written permission of the

Dean of Students, the Vice Chancellor for Student Affairs, or their designees, or in compliance with federal or state laws.

(e) Resident Complaint. Should a resident believe that a University staff member has misused or abused his/her authority to inspect his/her room, the resident should file a complaint. He/she may prepare a written statement for review by the Office of Student Judicial Affairs. Or, if he/she prefers, the resident may state his/her complaint to an Area Coordinator or to a staff member of the Office of Student Judicial Affairs. The complaint will then be investigated, appropriate action will be taken, and the student will be informed in writing of the results of the investigation.

1720-04-03-.14 ADMINISTRATIVE PROCEDURES.

(1) Residence Hall Regulations. Initially, violations of residence hall regulations will be handled by the Hall Director of the appropriate residence hall. Based upon the nature of the alleged violations and the past conduct of the accused, the Hall Director shall determine if the Hall Director Option is appropriate or refer the case to the Office of Student Judicial Affairs. If the Hall Director Option is deemed appropriate, it will be administered as follows.

(a) The accused student will be notified:

1. That he/she is suspected of an alleged violation;

2. Of circumstances of the violation;

3. Of his/her rights under the judicial system;

4. Of his/her rights to have his/her case heard by a student disciplinary board;

5. That the Hall Director Option does not include imposition of a penalty; and

6. That acceptance of the Hall Director Option constitutes an admission of guilt which may be introduced at any subsequent disciplinary hearing.

(b) If the student accepts the Hall Director Option he/she shall reply, in writing:

1. Acknowledging his/her participation in the alleged violation;

2. Waiving his/her right to a hearing before the Student Disciplinary Board; and

3. Waiving a right to appeal the administrative decision.

(c) If the student rejects the Hall Director Option, his/her case will be forwarded to the Office of Student Judicial Affairs for action in accordance with violations of Standards of Conduct.

(2) Standards of Conduct. When allegations of individual misconduct are referred to the

Office of Student Judicial Affairs, the case will be adjudicated in accordance with procedures governing alleged violations of Standards of Conduct.

1720-04-03-.15 EMERGENCY POWERS. When, in the judgment of the Student Affairs Council of the University of Tennessee, conditions are such that it is impractical for the Student Disciplinary Boards to function, the Vice Chancellor for Student Affairs may suspend these procedural regulations and appoint an ad hoc committee to hear disciplinary matters. Any such ad hoc committee shall follow procedures that will insure the protection of the rights of the students involved, as stated herein. Any decisions by the ad hoc committee may be appealed to the Student Affairs Council.

1720-04-03-.16 TERMINATION OF STUDENT EMPLOYEES.

(1) General:

(a) The provisions of this policy statement apply to all student employees except those on college work study (see policy statement on termination of financial assistance.)

(b) The purpose of this statement is to provide procedures for the termination of student employees.

(2) Definitions:

(a) Student Employee. An employee who is classified as a "student employee" by the payroll section of the Office of the Treasurer, University of Tennessee.

(b) Contract Employee. A student employee who has a written contract with the University providing employment for a specified period of time.

(c) Non-Contract Employees. All students not employed for a specified period of time, their employment being terminable at the will of either party irrespective of the quality of the performance of the other party.

(d) Gross Misconduct. Theft or dishonesty, gross insubordination, destruction of University property, falsification of records, acts of moral turpitude, reporting to duty under the influence of intoxicants, using or selling illicit drugs on University premises, disorderly conduct, provoking a fight, and such other similar acts involving intolerable behavior by the employee.

(e) Grounds for Termination of Contract Employees. Contract employees may be terminated during the term of their employment for gross misconduct or inadequate job performance.

(3) Notice:

(a) Non-Contract Employees. Whenever, in the opinion of the supervisor, a non-contract employee should be terminated, he/she shall be notified in writing setting forth the date of termination. If the reason for termination involves gross misconduct, the supervisor will, prior to termination, consult with the Vice Chancellor having administrative responsibility for the employee.

(b) Contract Employees. Whenever a supervisor is of the opinion that a contract

~~employee should be terminated, he/she shall notify the appropriate Vice Chancellor. The Vice Chancellor shall notify the employee in writing of the reasons for his/her immediate termination or suspension, as appropriate, and of his/her right to request a hearing in accordance with the Administrative Procedures Act (T.C.A. § 4-507, *et seq.*) or as hereinafter provided.~~

~~(4) Request for a Hearing.~~

~~(a) Contract Employee. The request of the employee together with his/her election of an Administrative Procedures Act hearing or one under this policy statement shall be forwarded in writing within five working days to the Vice Chancellor having administrative responsibility for the employee.~~

~~1. If the employee elects a hearing under the provisions of the Administrative Procedures Act, the Vice Chancellor shall forward the file to the Chancellor for the appointment of a hearing officer.~~

~~2. If the employee elects a hearing under this policy statement, the Vice Chancellor shall immediately thereafter establish a three-member hearing committee.~~

~~(b) Non-Contract Employees. Non-contract employees may appeal their termination through the appropriate Dean/Director and Vice Chancellor to the Chancellor. No right to a hearing accompanies this right of appeal.~~

~~(5) *Responsibility of the Hearing Committee.* It shall be the responsibility of the hearing committee to:~~

~~(a) Conduct a hearing within ten working days of the employee's request for said hearing;~~

~~(b) Make findings of fact and recommendations to the appropriate Vice Chancellor;~~

~~(c) Notify the employee within five working days after the hearing of the committee's findings and recommendations;~~

~~(d) Prepare and forward as soon as it is practicable a written report of the hearing to the appropriate Vice Chancellor.~~

~~(6) Hearing Procedures. Employees who are entitled to a hearing as provided above are entitled to the following procedural rights:~~

~~(a) A written account of the alleged misconduct or grounds for inadequate work performance;~~

~~(b) Reasonable notice of the time and place of the requested hearing;~~

~~(c) The assistance of a representative of his/her choice; if the employee requesting a hearing desires to be represented by an attorney, the appropriate Vice Chancellor must be notified by the employee at least three days prior to the scheduled hearing;~~

(d) To present all pertinent evidence including witnesses.

(e) To confront and cross-examine all adverse witnesses.

(7) Decision and Appeal:

(a) Hearing Committee. The appropriate Vice Chancellor shall within five working days after receipt of findings and recommendations of the hearing committee notify the employee in writing of his/her decision and of the employee's right to appeal as provided by Article 5, Section 7 of the University By-Laws. An employee's appeal must be submitted in writing to the Chancellor within ten business days after receipt of the decision.

(b) Administrative Procedures Act. The decision of the Chancellor is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that act.

1720-04-03-.17 TERMINATION OF FINANCIAL ASSISTANCE.

(1) General.

(a) Coverage. The provisions of this policy apply to student financial assistance except graduate assistantships and fellowships.

(b) Purpose. The purpose this policy is to provide procedures for the termination of financial assistance.

(2) Definitions.

(a) Athletic Grant-in-aid. A contract for financial assistance which has been approved by the Advisory Committee on Student Financial Aid and awarded in accordance with the provisions of the Constitution and By-Laws of the Southeastern Conference and the National Collegiate Athletic Association.

(b) Financial Aid. Assistance awarded to a student in one of the following categories: college work-study, scholarships (including graduate), loans, and grants.

(3) Notice.

(a) Athletic Grant-in-Aid.

1. Whenever the Athletic Department proposes that the financial assistance be terminated within the contract period, the student shall be notified in writing by the Director of Financial Aid of the proposed termination. The notice shall contain the reasons for termination, the student's right to a hearing in accordance with the contested case provision of the Administrative Procedures Act or in accordance with the provisions hereinafter provided.

2. Whenever athletic financial aid is not to be renewed at the end of the contract period, the student shall be notified of his/her right to a hearing, in accordance with the requirements of the Constitution of the National

~~Collegiate Athletic Association, before the Financial Aid Hearing Committee.~~

~~(b) Financial Aid. Whenever financial aid is to be modified or terminated, the student shall be notified of the reasons for the proposed modification or termination and of the right to appeal by contacting the Director of Financial Aid. If the Director of Financial Aid is unable to amiably resolve the student's appeal, it shall proceed as follows.~~

~~1. If the appeal concerns interpretation of policy, the student shall be afforded the right of further appeal through the Dean of Admissions and Records and the Vice Chancellor for Academic Affairs to the Chancellor.~~

~~2. If the appeal concerns a disputed question of fact, the student shall be advised of the right to a hearing before the Financial Aid Hearing Committee or in accordance with the Administrative Procedures Act.~~

~~(4) Request for a Hearing: The request for a hearing together with his/her election of an Administrative Procedures hearing or one under this policy shall be made in writing to the Director of Financial Aid within five (5) calendar days of receipt of the notice of proposed termination.~~

~~(a) If the student elects a hearing under the provision of the Administrative Procedures Act, the Director of Financial Aid shall forward the file to the Provost for the appointment of a hearing officer.~~

~~(b) If the student elects a hearing under this policy statement, the Director of Financial Aid shall immediately forward the request for a hearing together with a copy of the complete file to the Chairperson of the Advisory Committee on Student Financial Aid.~~

~~(5) Hearing Committee. At the beginning of each semester, the Chairperson of the advisory committee on Student Financial Aid shall appoint a hearing subcommittee of not less than three (3) persons who shall be charged with the responsibility of hearing all appeals during that semester.~~

~~(6) Responsibility of the Hearing Committee. It shall be the responsibility of the hearing committee to:~~

~~(a) Conduct a hearing within ten working days of the student's request for said hearing. When the University is not in session, the hearing shall be held as soon as reasonably possible.~~

~~(b) Make findings of fact and a determination as to the termination of financial aid.~~

~~(c) Notify the student as soon as possible of the committee's decision.~~

~~(d) Notify the student of his/her right to appeal, as indicated below.~~

~~(7) Hearing Procedures: Students who are entitled to a hearing as above provided are entitled to the following procedural rights:~~

(a) A written notice of the alleged grounds for termination of financial assistance.

(b) To reasonable notice of the time and place of the requested hearing.

(c) The assistance of a representative of his/her choice. If the student requesting a hearing desires to be represented by an attorney, the University must be notified by the student at least three days prior to the scheduled hearing.

(d) To confront and cross examine all adverse witnesses.

(8) Appeal.

(a) Hearing Committee Decision. The student may appeal the decision of the hearing committee in accordance with Article V, Section 7 of the University By-Laws. An appeal must be submitted in writing to the Chancellor within five (5) business days.

(b) Administrative Procedures Act. The decision of the Chancellor is final in all cases heard under the contested case provision of the Administrative Procedures Act. Further appeal shall be in accordance with the provisions of that act.

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 Candice McQueen				x	
Commissioner Jai Templeton	x				
Dr. Joe DiPietro	x				
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				
D. Crawford Gallimore	x				
Vicky B. Gregg	x				
Raja J. Jubran	x				
Mike Krause (non-voting)					
Brad A. Lampley				x	
Sharon J. Pryse	x				
Dr. Jefferson S. Rogers	x				

Rhedona Rose	x				
Miranda N. Rutan	x				
David Shepard				x	
John D. Tickle	x				
Rachel M. Smith (non-voting)					
Julia T. Wells	x				
Charles E. Wharton	x				
Tommy G. Whittaker	x				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by The University of Tennessee Board of Trustees on 03/29/2017, 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: *(08/23/16)*

Rulemaking Hearing(s) Conducted on: (add more dates). *(10/13/16)*

Date: 5/~~22~~18/2017

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

Subscribed and sworn to before me on: 5-18-17

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

LYNETTE RUSSELL STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

Agency/Board/Commission: University of Tennessee

Rule Chapter Number(s): Chapter 1720-04-03 Student Code of Conduct

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

5/23/2017
Date

Department of State Use Only

Filed with the Department of State on: 5/24/17

Effective on: 8/22/17

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State
DIVISION:	
SUBJECT:	Access to Public Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-503(g)
EFFECTIVE DATES:	September 4 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	These proposed rules are being repealed in accordance with Tennessee Code Annotated, Section 10-7-503(g), which requires each agency to adopt a public records policy. The Department of State intends to adopt the public records policy designed by the Office of Open Records Counsel, in large part.

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.

This rule will not have any impact on small businesses.

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)

This rule will not have any impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

(A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are being repealed in accordance with Tenn. Code Ann. § 10-7-503(g), which requires each agency to adopt a public records *policy*. The Department of State intends to adopt the public records policy designed by the Office of Open Records Counsel, in large part. http://www.comptroller.tn.gov/openrecords/

(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;

Tenn. Code Ann. § 10-7-503(g).

(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;

Citizens of Tennessee are afforded access to the public records of state government pursuant to the Public Records Act. Tenn. Code Ann. § 10-7-503(g) requires that each agency adopt a policy with regard to access for public records, and the Comptroller's Office of Open Records Counsel has prepared a model policy for adoption. This repeal will allow the Department of State to ensure that its public records rules are in line with the model policy adopted (and perhaps, amended from time to time) by the Comptroller's office. This should provide consistency for Tennessee citizens. We are unaware of any opposition to repealing these rules.

(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;

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;

None.

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

Mary Beth Thomas
General Counsel
Tennessee Department of State
State Capitol, 1st Floor
600 Charlotte Avenue
Nashville, Tennessee 37243
(615) 741-2819
Mary.beth.thomas@tn.gov

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

Mary Beth Thomas
General Counsel
Tennessee Department of State
State Capitol, 1st Floor

600 Charlotte Avenue
Nashville, Tennessee 37243
(615) 741-2819
Mary.beth.thomas@tn.gov

(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

Mary Beth Thomas
General Counsel
Tennessee Department of State
State Capitol, 1st Floor
600 Charlotte Avenue
Nashville, Tennessee 37243
(615) 741-2819
Mary.beth.thomas@tn.gov

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

None.

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For Department of State Use Only

Sequence Number: 06-04-17
Rule ID(s): 6547
File Date: 6/6/17
Effective Date: 9/4/17

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:	Department of State
Division:	
Contact Person:	Mary Beth Thomas, General Counsel
Address:	State Capitol, 1st Floor, 600 Charlotte Avenue, Nashville, TN
Zip:	37243
Phone:	615-741-2819
Email:	Mary.beth.thomas@tn.gov

Revision Type (check all that apply):
___ Amendment
___ 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**
1360-10-01	Access to Public Records Maintained by the Department of State
Rule Number	**Rule Title**
1360-10-01-.01	Purpose and Scope
1360-10-01-.02	Definitions
1360-10-01-.03	Request for Inspection of Records
1360-10-01-.04	Request for Reproduction of Records
1360-10-01-.05	Fees and Costs for Reproduction of Public Records
1360-10-01-.06	Payment for Reproduction of Public Records
1360-10-01-.07	Waiver of Fees

(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)

These rules are being repealed in accordance with Tenn. Code Ann. § 10-7-503(g), which requires each agency to adopt a public records *policy*. The Department of State intends to adopt the public records policy designed by the Office of Open Records Counsel, in large part. http://www.comptroller.tn.gov/openrecords/

* 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)

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 4/26/17 (*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: April 25, 2017

Signature: Tre Hargett

Name of Officer: Tre Hargett

Title of Officer: Secretary of State

MARY ELIZABETH THOMAS STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TN My Commission Expires September 10, 2020

Subscribed and sworn to before me on: April 25, 2017

Notary Public Signature: Mary Elizabeth Thomas

My commission expires on: April 25, 2017

Agency/Board/Commission: Department of State

Rule Chapter Number(s): 1360-10-01-.01 through .07

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

6/1/2017
Date

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Filed with the Department of State on: 6/6/17

Effective on: 9/4/17

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
DIVISION:	
SUBJECT:	Special Education Program and Services
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-10-101
EFFECTIVE DATES:	June 29, 2017 through December 26, 2017
FISCAL IMPACT:	This rule will not impact state and local government revenues or expenditures.
STAFF RULE ABSTRACT:	The last overall review of disability category definitions, guidelines, and standards was conducted in 2008. A current review was requested by the TN Department of Education Special Populations Division to address updates related to disability disorders and assessment practices that have occurred in the past eight years. Pursuant to Tennessee Rules & Regulations, Chapter 0520-01-09-.11, Rules for Special Education Programs and Services, a task force was developed to address disability categories.

The multidisciplinary state-wide task force consisted of special education supervisors, school psychologists, and speech and language pathologists as well as representatives of parents/advocates, vision specialists, hearing specialists, preschool specialists, gifted specialists, and the Tennessee Department of Education. The task force met and reviewed comments, identified themes from the comments, discussed concerns, and made additional revisions. Proposed changes were reviewed with the Students with Disability Advisory Council, and they approved moving forward with revisions.

The following list is a summary of the changes made:

- **Autism:** Evaluation procedural changes related to communication assessments, sensory, and adaptive behaviors for clarity of needed components. Evaluation participant changes were

made to adjust who is required and who are additional participants as needed. Speech Language Teachers were removed as they are not licensed to evaluate.

- **Developmental Delay:** Evaluation participant changes to generalize needed educational professionals rather than separate out early childhood specialists based on age bands.
- **Emotional Disturbance:** Rewording of language to mirror federal regulations (Change from January 2017 final read item).
- **Intellectually Gifted:** Evaluation procedure changes related to the cognitive assessment including additional considerations when assessing underrepresented youth and consideration of the standard error of measurement at the 90th percent confidence interval. Revisions to the assessment matrix (referenced in the standards) to include standard changes and updated testing materials.
- **Orthopedic Impairment:** Evaluation procedure revisions made to the example lists of adaptive behaviors measured.
- **Other Health Impairment:** Evaluation procedure revisions move an assessment area (social emotional development) into the list of informal/formal assessments for clarity.
- **Specific Learning Disability:** Evaluation procedure reworded for clarity only in regards to observational data to reduce chances of misinterpretation.
- **Speech or Language Impairment:** Evaluation procedure revisions to include clarification of language evaluation components and articulation evaluation components. Evaluation participants revised to remove Speech Language Teacher as they are not licensed to evaluate.

TENNESSEE
STATE BOARD OF EDUCATION

RESPONSES TO COMMENTS AT RULEMAKING HEARING

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-01-09 of the Tennessee State Board of Education, Special Education Programs and Services. The hearing was held on September 23, 2016, at 10 a.m. CDT at the Andrew Johnson Tower – 1st Floor Multipurpose Room, 710 James Robertson Parkway, Nashville, Tennessee 37243. The changes to the rule were proposed by the staff of the Special Populations division of the Tennessee Department of Education (TDOE).

Public comment on the materials approved through first reading were obtained through the public hearing in addition to received written comments. The comments regarding the rule centered on the definition of emotionally disturbed.[1] This concern primarily centered on the effect the changes would have on disadvantaged, minority, and/or underserved students. There were also written comments received, which are included with this summary.

In response to the comments, which urged the State Board to replicate the definition of emotionally disturbed contained in the federal regulations under the Individual with Disabilities in Education, representatives from the TDOE responded that the comments and suggestions would be presented to the task force for consideration.

The task force considered the recommendations, met and reviewed comments, identified themes from the comments, discussed concerns, and made additional revisions. In addition, staff of the TDOE and State Board met to discuss further changes and clarifications. Proposed changes were reviewed with the Students with Disability Advisory Council and they approved moving forward with revisions .The final version of the rule incorporates the mirrors that definition of emotionally disturbed from the federal regulations.

[1] There was also a lot of concern expressed regarding raising the eligibility of gifted students to receive s services under an Individualized Education Plan (IEP) due to the effect the changes would have on disadvantaged, minority, and/or underserved students. However, this is covered in the standards and is not a part of this rule filling.

Casey O. Griffin

From: Katrina Bryson <katrina.bryson@wcs.edu>
Sent: Tuesday, September 20, 2016 8:34 AM
To: Elizabeth Taylor
Subject: comments regarding proposed eligibility standards

Autism

- I think the definition defines the criteria more specifically.?

- I think removing the medical rule-out and including health evaluation as needed clears up the confusion that a "medical" diagnosis is required for eligibility.

- I do think pointing out that a diagnosis by an outside private psychologist or agency is NOT required would help if there is any lingering confusion regarding this. School personnel should know that could use this category based on school evaluations, observations, and performance.

Functional Delay

- On the definition made, the term Mental Retardation is used instead of ID.

Use of the term Cognitive Skills (use Ability instead of Skills??)

Intellectual Disability

- Is it possible to use Cognitive Disability if we are referring to 'Cognitive' in all areas of assessment, rather than using the word 'intellectual?'

Traumatic Brain Injury

- Under II. A. 7, Visual Impairment appears in the sentence

- Further clarification regarding what constitutes 'external trauma'; ex: would an injury sustained during a brain surgery count? There has been confusion around this.

Katrina Bryson, Ed.S.
Early Childhood School Psychologist
Phone: 615-472-4137
Fax: 615-472-5670

katrina.bryson@wcs.edu

Casey O. Griffin

From: Joanna Bivins
Sent: Tuesday, September 20, 2016 2:44 PM
To: Elizabeth Taylor
Subject: FW: Disability category review

Someone emailed me instead of you. Just wanted to make sure you get it....

Education

Joanna Bivins, Ed.S., NCSP | Evaluation Services Coordinator
Office of Special Populations
Andrew Johnson Tower, 11th Floor
710 James Robertson Parkway, Nashville, TN, 37243
615-741-9231 Office phone
Joanna.Bivins@tn.gov
tn.gov/education

The response provided in this email is intended as guidance for the provision of an educational program that should result in an improved outcome for the child or children involved. The response is not intended as legal guidance and should not be construed as such. Local education agencies and parents should remember that the ultimate determination regarding the specially designed instruction and related services necessary to ensure a free appropriate public education for an individual child with a disability is made by the child's IEP team.

This email and any files transmitted with it contain PRIVILEGED and CONFIDENTIAL information and are to be read and used only by the intended recipient. If you are not the intended recipient of the email or any of its attachments, please be advised that you have received this email in error and that any use, alteration, dissemination, distribution, forwarding, printing, or copying of this email or any attached files is strictly prohibited. If you have received this email in error, please immediately destroy it and all attachments and notify the sender by reply email or contact the sender at the telephone number listed.

From: Michael Neal [mailto:michael.neal@cityschools.net]
Sent: Tuesday, September 20, 2016 2:39 PM
To: Joanna Bivins <Joanna.Bivins@tn.gov>
Subject: Disability category review

Good afternoon,

This is Michael Neal, school psychologist in Murfreesboro. I have some feedback for the proposed changes to the disability criteria. I understand that it is not possible at this time to change the names of any categories, but I have included some of those changes in my feedback, just so it is noted. I started working on this response in June, I know some of the changes that was going to suggest have already been made, so I apologize in advance if anything is on this list that has already been changed.

Here goes:

DD- I do NOT agree that physical development can be either gross or fine. I do not think it is appropriate for babies to be in CDC because they need OT (which is what would happen would a child qualify as DD in fine motor skills prior to Kindergarten)

- evaluation participants should be #2 or #3 (or #3 should be licensed early childhood or licensed SPED teacher), not both, as DD can start at age 5-7 without a SPED preschool teacher in the building

ED- I strongly recommend ED be Emotional Disability or Emotional Impairment, to align with learning disability/intellectual disability or speech/hearing/language/ortho impairment

- I would like it clear that ED is not caused by ID, or ID must be r/o

FD- strongly recommend eliminating FD as a disability category. It is not federally recognized, and causes problems locally and when kids move out of state.

HI- recommend adding IQ/achievement as required assessment components, because not all children with hearing impairments need the same level of service. This would prevent a lot of trial-and-error/wait-and-see approaches.

ID- both school and home adaptive behavior should be evaluated, if inconsistent, a third measure should be utilized (the observation currently suggested is fine), but only one score is required (if parents don't return rating scales we can still consider them ID)

IG- strongly recommend eliminating IG as a disability category. Twice-exceptional students would still be exceptional. Very bright children who are doing very well are not SPED.

MD- should specify that ID/LI, LI/SI, or AUT/LI cannot be two of the disabilities in MD…overlapping disabilities are not multiple disabilities. Also recommend that MD be three or more disabilities, because the current primary/secondary format seems to be appropriate for two disabilities.

OHI- recommend removing cognitive ability as a required assessment component. Rule out ID if you need to. I understand that "meds that affect cognitive functioning" is one of the criteria for eligibility, but it is very difficult to use a single IQ test to prove that meds affect cognitive functioning. Observation and parent/teacher input can be used to determine if a child is too medicated to function properly.

Let me know if you need clarification on any of this.

Thank you,

Michael

Black Fox Elementary (M-T)
(615) 893-6395

Erma Siegel Elementary (W-F)
(615) 904-1002

"Education is making the best someone can do, better."
-Dr. Jane Williams, MTSU

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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)

Not Applicable

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 last overall review of disability category definitions, guidelines, and standards was conducted in 2008. A current review was requested by the TN Department of Education Special Populations Division to address updates related to disability disorders and assessment practices that have occurred in the past eight years. Pursuant to Tennessee Rules & Regulations, Chapter 0520-01-09-.11, Rules for Special Education Programs and Services, a task force was developed to address disability categories.

The multidisciplinary state-wide task force consisted of special education supervisors, school psychologists, and speech and language pathologists as well as representatives of parents/advocates, vision specialists, hearing specialists, preschool specialists, gifted specialists, and the Tennessee Department of Education. The task force met and reviewed comments, identified themes from the comments, discussed concerns, and made additional revisions. Proposed changes were reviewed with the Students with Disability Advisory Council, and they approved moving forward with revisions.

The following list is a summary of the changes made :

- **Autism:** Evaluation procedural changes related to communication assessments, sensory, and adaptive behaviors for clarity of needed components. Evaluation participant changes were made to adjust who is required and who are additional participants as needed. Speech Language Teachers were removed as they are not licensed to evaluate.
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- **Speech or Language Impairment:** Evaluation procedure revisions to include clarification of language evaluation components and articulation evaluation components. Evaluation participants revised to remove Speech Language Teacher as they are not licensed to evaluate.

(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. § 49-10-101 provides that the state board shall adopt rules and regulations to implement the state's special education 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;

Disabled students, their parents, and their educators are most directly affected by this rule. They were able to voice their concerns via oral and written comments urging adoption of the rule according to their comments. (See response to comments document attached hereto)
Students with Disability Advisory Council reviewed the changes and urges adoption.
The Tennessee Department of Education urges adoption of this rule.
The Tennessee State Board of Education urges adoption of this rule

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

This rule will not impact state and local government revenues or expenditures.

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

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

Elizabeth Taylor
Elizabeth.Taylor@tn.gov

Nathan James
Nathan.James@tn.gov

Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov

(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

Elizabeth Taylor
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Elizabeth Fiveash
Elizabeth.Fiveash@tn.gov
Assistant Commissioner Policy & Legislative Affairs, Tennessee Department of Education
9th Floor, Andrew Johnson Tower

710 James Robertson Parkway
Nashville, TN 37243
(615) 253-1960

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

N/A

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For Department of State Use Only

Sequence Number: 06-24-17
Rule ID(s): 6556
File Date (effective date): 6/29/17
End Effective Date: 12/26/17

Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee State Board of Education
Division:	
Contact Person:	Elizabeth Taylor
Address:	710 James Robertson Pkwy
Zip:	1st floor
Phone:	37243
Email:	615-253-5707

Rule Type:
X Emergency Rule

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Statement of Necessity:

The Special Education Program and Services Rule governs the State's special education program. The last overall review of disability category definitions (aligned to Rule 0520-01-09-.02), guidelines, and standards was conducted in 2008. A current review was requested by the Department of Education Special Populations Division to address federal, state, and best practices updates related to disability disorders and assessment practices that have occurred in the past eight years. A task force implemented changes to disability definitions and made amendments to bring the rule in line with Federal standards. A public hearing was also held regarding the changes, and the task force took public comments into consideration when revising the rule and standards.

The new rule and standards need to be implemented by July 1, 2017, to allow for preparation and training of educators for the 2017-18 school year. The rule was on the agenda for final reading at the State Board of Education's January meeting; however, due to concerns surrounding the definition of the emotionally disturbed disability category and the criteria for gifted education, the Board removed the item from the agenda for further research and amendment. The rule was further amended to align with the disability definitions contained in the Individuals with Disabilities Education Act and the State Board approved those changes at a March 16, 2016 special called meeting.

General Counsel for the State Board prepared a rulemaking hearing rule form and supporting documentation and drafted an email to the Attorney General's Office seeking their approval. However, on April 19, 2017, it was discovered that the email was not sent due to technical difficulties. Thus,

utilization of the standard rulemaking process would delay the implementation date and affect special education students across the State.

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**
0520-01-09	Special Education Program and Services
Rule Number	**Rule Title**
0520-01-09-.01	General Regulation. Adoption by Reference
0520-01-09-.02	Definitions
0520-01-09-.03	Consent
0520-01-09-.05	Free appropriate public education
0520-01-09-.06	Child find.
0520-01-09-.09	Local Education Agency Eligibility
0520-01-09-.12	Definition of IEP
0520-01-09-.15	Parent participation
0520-01-09-.16	Prior notice by local education agency
0520-01-09-.18	Impartial due process hearing
0520-01-09-.20	Surrogate parents
0520-01-09-.22	Amendment of records at parent's request
0520-01-09-.23	Isolation and Restraint for Students Receiving Special Education Services

RULES OF
STATE BOARD OF EDUCATION

CHAPTER 0520-01-09
SPECIAL EDUCATION PROGRAMS AND SERVICES

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0520-01-09-.23	Isolation and Restraint for Students Receiving Special Education Services

0520-01-09-.01 GENERAL REGULATIONS. ADOPTION BY REFERENCE.

The State Board of Education adopts by reference the Compilation of Federal Regulations at 34 C.F.R. Parts 300 and 301 in their entirety unless otherwise provided herein as the policies and procedures for administration of special education programs and services in the ~~state~~State. The regulations, evaluation procedures, and eligibility criteria are available from the Division of Special Education, Tennessee Department of Education, 710 James Robertson Parkway, Nashville, TN 37243, or on the internet by accessing the ~~state~~ State ~~department~~ Department of ~~education's~~ Education's website at http://www.tn.gov/education/topic/special-education ~~www.state.tn.us/education/speced/.~~

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 10, 1974. Amendment filed October 3, 1974; effective November 2, 1974. Amendment filed June 30, 1975; effective July 30, 1975. Amendment filed January 15, 1976; effective April 15, 1976. Amendment filed July 15, 1976; effective August 16, 1976. Amendment filed February 28, 1978; effective March 30, 1978. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed April 14, 1980; effective May 28, 1980. Amendment filed June 27, 1984; effective July 27, 1984. Amendment filed May 12, 1985; effective August 13, 1985. Amendment filed October 1, 1985; effective January 14, 1986. Amendment filed May 28, 1986; effective June 27, 1986. Amendment filed July 10, 1986; effective October 29, 1986. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Repealed and new rule filed August 18, 1993; effective December 29, 1993. Amendment filed June 21, 1995; effective October 27, 1995. Amendment filed August 7, 1995; effective December 29, 1995. Rule 0520-01-03-.09 removed and new Chapter 0520-01-09 filed per Tennessee State Board of Education letter dated and effective April 29, 1999. Amendment filed June 19, 2001; effective September 2, 2001. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.02 DEFINITIONS.

(1) "Charter school" means a public charter school as defined at ~~Tenn. Code Ann~~T.C.A. § 49-13- 104~~(6)~~.

(2) "Child with a Disability" means~~.~~

(a) ~~children~~Children with disabilities and youth between three (3) and twenty-one (21) years of age, inclusive who have been evaluated in accordance with 34 C.F.R §§300.304 through 300.311, TCA § 49-10-102 and regulations of the ~~s~~State ~~b~~Board of ~~e~~Education. ~~and found to have intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, multiple disabilities, deaf blindness, developmental delay, functional delay or intellectually gifted and who, by reason thereof, needs special education and related services.~~ Any child with a disability who attains twenty-two (22) years of age subsequent to the commencement of a school year continues to be a child with a disability for the remainder of that school year.

(b) A child with intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, multiple disabilities, deaf blindness, developmental delay, functional delay, and intellectually gifted and who, by reason thereof, needs special education and related services.

~~(2) Child with a disability" means, children with disabilities and youth between three (3) and twenty-one (21) years of age, inclusive who have been evaluated in accordance with~~
~~(3) 34 C.F.R §§300.304 through 300.311, TCA § 49-10-102 and regulations of the state board of education. Any child with a disability who attains twenty-two (22) years of age subsequent to~~

~~(Rule 0520-01-09-.02, continued)~~

~~the commencement of a school year continues to be a child with a disability for the remainder of that school year.~~

~~(4) "Child with a disability" means a child with intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), emotional disturbance, orthopedic impairment, autism, traumatic brain injury, other health impairment, specific learning disability, multiple disabilities, deaf blindness, developmental delay, functional delay and intellectually gifted and who, by reason thereof, needs special education and related services.~~

~~(5)~~(3) "Autism" means a developmental disability, which significantly affects verbal and nonverbal communication and social interaction, generally evident before age three (3) that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experience. The term does not apply if a child's educational performance is adversely affected primarily because the child has an Emotional Disturbance, as defined in this section.

The term of Autism also includes students who have been diagnosed with an Autism Spectrum Disorder such as Autism, a Pervasive Developmental Disorder~~—Not Otherwise Specified (PDD-NOS)~~, or Asperger's Syndrome when the child's educational performance is adversely affected. ~~Additionally, it may also include a diagnosis of a Pervasive Developmental Disorder~~

~~such as Rett's or Childhood Disintegrative Disorder.~~ Autism may exist concurrently with other areas of disability.

~~After age three (3), a~~A child could be ~~diagnosed~~ found eligible ~~as having Autism~~ found to be Autistic ~~c~~if the child manifests ~~these above the following~~these characteristics in early childhood (as social demands increase). Children with Autism demonstrate both of the following characteristics (i.e., (a) and (b) below):~~. Children with Autism demonstrate the following characteristics prior to age 3:~~

(a) ~~Difficulty relating to others or interacting in a socially appropriate manner~~ Persistent deficits in social communication and social interaction across multiple contexts, as manifested by all of the following~~;~~:

1. Deficits in social-emotional reciprocity (e.g., abnormal social approach, failure of normal back and forth conversation, reduced sharing of interests, reduced sharing of emotions/affect, lack of initiation of social interaction, and poor social imitation)~~.~~;

2. Deficits in nonverbal communicative behaviors used for social interaction (e.g. impairments in social use of eye contact, use and understanding of body postures, use and understanding of gestures; abnormal volume, pitch, intonation, rate, rhythm, stress, prosody, and/or volume of speech; abnormal use and understanding affect, lack of coordinated verbal and nonverbal communication, and lack of coordination nonverbal communication)~~.~~; and

~~1.~~3. Deficits in developing and maintaining relationships appropriate to developmental level; ranging from difficulties adjusting behavior to social contexts, through difficulties in sharing imaginative play, to an apparent absence of interest in people.

And

(b) ~~Absence, disorder, or delay in verbal and/or nonverbal communication; and~~ Restricted, repetitive patterns of behavior, interests, or activities as manifested by at least two of the following:

1. Stereotyped or repetitive speech, motor movements, or use of objects (e.g., echolalia, repetitive use of objects, idiosyncratic language, simple motor stereotypiies);

2. Excessive adherence to routines, ritualized patterns of verbal or nonverbal behavior, or excessive resistance to change (e.g., motor rituals, insistence on same route or food, repetitive questioning, or extreme distress at small changes);

3. Highly restricted, fixated interests that are abnormal in intensity or focus (e.g., strong attachment to or preoccupation with unusual objects, excessively circumscribed or perseverative interests); or

4. Hyper-or hypo-reactivity to sensory input or unusual interest in sensory aspects of environment (e.g., apparent indifference to pain/heat/cold, adverse response to sounds or textures, excessive smelling or touching of objects, fascination with lights or spinning objects).

~~(b) One or more of the following:~~

~~1. Insistence on sameness as evidenced by restricted play patterns, repetitive body movements, persistent or unusual preoccupations, and/or resistance to change;~~

~~2. Unusual or inconsistent responses to sensory stimuli.~~

~~(6)~~(4) "Deaf-Blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs by addressing any one of the impairments. A child with deaf-blindness shall be:

(a) A child who meets criteria for Deafness/ or Hearing Impairment and Visual Impairment; and

(b) A child who is diagnosed with a degenerative condition or syndrome which will lead to Deaf-Blindness, and whose present level of functioning is adversely affected by both hearing and vision deficits; or

(c) A child with severe multiple disabilities due to generalized central nervous system dysfunction, and who exhibits auditory and visual impairments or deficits which are not perceptual in nature.

~~(7)~~(5) "Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification that adversely affects a child's educational performance. The child has:

(a) An inability to communicate effectively due to Deafness; and/or

(b) An inability to perform academically on a level commensurate with the expected level because of Deafness; and/or

(c) Delayed speech and/or language development due to Deafness.

~~(8)~~(6) "Developmental Delay" refers to children aged three ~~(3)~~ years, zero months (3:0) through nine years, eleven months (9:11) who are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one (1) or more of the following areas: physical (gross motor and/or fine motor), cognitive, communication, social or emotional, or adaptive development that adversely affects a child's educational performance. Other disability categories shall be used if they are more descriptive of a young child's strengths and needs. ~~Local school systems have the option of using Developmental Delay as a disability category~~. Initial eligibility as Developmental Delay shall be determined before the ~~child's~~ child's seventh birthday. The use of Developmental Delay as a disability category is option for local school systems.

(7) "Emotional Disturbance" Emotional disturbance means a condition exhibiting one (1) or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

(a) Inability to learn which cannot be explained by intellectual, sensory, or health factors;

(b) Inability to build or maintain satisfactory interpersonal relationships with peers and school personnel;

(c) Inappropriate types of behavior or feelings under normal circumstances;

(d) General pervasive mood of unhappiness or depression;

(e) Tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional Disturbance includes schizophrenia. The term does not apply to children who are

socially maladjusted, unless it is determined that they have an emotional disturbance.

~~(9) "Emotional Disturbance" means a condition exhibiting one or more of the following characteristics to a marked degree that adversely affects a child's educational performance over an extended period of time (during which time documentation of informal assessments and interventions are occurring):~~

~~(a) Inability to learn which cannot be explained by limited school experience, cultural differences, or intellectual, sensory, or health factors;~~

~~(b) Inability to build or maintain satisfactory interpersonal relationships with peers and school personnel;~~

~~(c) Inappropriate types of behavior or feelings when no major or unusual stressors are evident;~~

~~(d) General pervasive mood of unhappiness or depression;~~

~~(e) Tendency to develop physical symptoms or fears associated with personal or school problems.~~

~~The term may include other mental health diagnoses. The term does not apply to children who are socially maladjusted, unless it is determined that they have an Emotional Disturbance when social maladjustment is the primary cause of the atypical behaviors associated with an emotional disturbance. Social maladjustment includes, but is not limited to, substance abuse related behaviors, gang-related behaviors, oppositional defiant behaviors, and/or conduct behavior problems.~~

~~(10)~~(8) "Functional Delay" means a continuing significant disability in intellectual functioning and achievement ~~which~~ that adversely affects the student's ability to progress in the general ~~school~~ education program, but the student's adaptive behavior in the home or community is not significantly impaired and is at or near a level appropriate to the student's chronological age~~,~~. Such disabilities include one or more of the following: ~~including:~~

(a) Significantly impaired intellectual functioning which is two (2) or more standard deviations below the mean, and difficulties in ~~these~~ the following areas cannot be the primary reason for significantly impaired scores on measures of intellectual functioning~~;~~:

~~(b)~~i. Limited English proficiency;

~~(c)~~ii. Cultural factors;

~~(d)~~iii. Medical conditions that impact school performance;

~~(e)~~iv. Environmental factors;

~~(f)~~v. Communication, sensory or motor disabilities;

~~(g)~~(b) Deficient academic achievement which is at or below the fourth percentile in two (2) or more total or composite scores in the following areas:

1. Basic reading skills;

2. Reading fluency skills;

3. Reading comprehension;

4. Mathematics calculation;

~~5.~~ Mathematics problem solving;
5.

Written expression; or
6.
~~8.~~

(c) Home or school adaptive behavior scores that fall above the level required for meeting Intellectual disability eligibility standards.

~~9.~~ Other disability categories shall be used if they are more descriptive of student strengths and needs. The team must determine that underachievement is not primarily the result of Visual, Motor, or hearing Disability, Intellectual Disability, Speech or Language Impairment, or a Specific Learning Disability.

~~(11)~~(9) "Hearing Impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but does not include Deafness.

A hearing impaired child shall have one (1) or more of the following characteristics:

~~(h)~~(a) Inability to communicate effectively due to a Hearing Impairment;

~~(i)~~(b) Inability to perform academically on a level commensurate with the expected level because of a Hearing Impairment; or

~~(j)~~(c) Delayed speech and/or language development due to a Hearing Impairment.

~~(12)~~(10) "Intellectually Gifted" means a child whose intellectual abilities, creativity, and potential for achievement are so outstanding that the child's ~~educational performance is adversely affected. "Adverse affect" means the general curriculum alone is inadequate to appropriately meet the student's educational needs~~ needs exceed differentiated general education programing, adversely affect educational performance and requires ~~thus requiring~~ specifically designed instruction or support services. Children from all populations (e.g., all cultural, racial, and ethnic groups, English Learners, all economic strata, twice-exceptional, etc.) can be found to possess these abilities. Children identified as intellectually gifted are exempted from the discipline procedures at 34 C.F.R. §300.530-537. Children with a dual diagnosis that includes intellectually gifted must be considered as children with a disability and may not be exempted from the discipline procedures at 34 C.F.R. §300.530-537.

~~(13)~~(11) "Intellectual disability" is characterized by significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.

~~(14)~~(12) "Multiple Disabilities" means concomitant impairments (such as Intellectual disability- Deafness, Intellectual disability-Orthopedic Impairment), the combination of which causes such severe educational needs that they cannot be accommodated by addressing only one (1) of the impairments. The term does not include Deaf-Blindness.

~~(15)~~(13) "Orthopedic Impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes, but is not limited to, impairments caused by congenital anomaly (e.g. club foot, absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments

from other causes (e.g. cerebral palsy, amputations, and fractures or burns that cause contractures).

~~(16)~~(14) "Other Health Impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, Attention Deficit Hyperactivity Disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette's Syndrome that adversely affects a child's educational performance.

A child is "Other Health Impaired" who has chronic or acute health problems that require specially designed instruction due to:

~~(k)~~(d) Impaired organizational or work skills;

~~(l)~~(e) Inability to manage or complete tasks;

~~(m)~~(f) Excessive health related absenteeism; or

~~(n)~~(g) Medications that affect cognitive functioning.

~~(17)~~(15) "Specific Learning Disability" means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and that adversely affect a child's educational performance. Such term includes conditions such as visual processing (perceptual) disabilities, brain injury ~~that is~~that is not caused by an external physical force~~,~~, dyslexia, and developmental aphasia. Specific Learning Disability does not include a learning problem that is primarily the result of Visual Impairment, Hearing Impairment, Orthopedic Impairment, Intellectual disability, Emotional Disturbance, limited English proficiency, or environmental or cultural disadvantage.

"Speech or Language Impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or voice impairment that adversely affects a child's educational performance.

(16)

Speech or Language Impairment includes demonstration of impairments in one (1) or more of the following areas of language, articulation, voice, or fluency~~:~~.

(a) Language Impairment – A significant deficiency ~~not consistent with the student's chronological age in one or more of the following areas:~~ in comprehension and/or use of spoken language that may also impair written and/or other symbol systems and is negatively impacting the child's ability to participate in the classroom environment. The impairment may involve any or a combination of the following: the form of language (phonology, morphology, and syntax), the content of language (semantics) and/or the use of language in communication (pragmatics) that is adversely affecting the child's educational performance;

~~1. A deficiency in receptive language skills to gain information;~~

~~2. A deficiency in expressive language skills to communicate information;~~

~~3. A deficiency in processing (auditory perception) skills to organize information.~~

(b) Articulation (Speech Sound Production) Impairment – A significant deficiency in ability to produce sounds in conversational speech not consistent with chronological age. This includes a significant atypical production of speech sounds characterized by substitutions, omissions, additions, or distortions that interfere with intelligibility in conversational speech and obstructs learning and successful verbal communication in the educational setting. Speech sound errors may be a result of impaired phonology, motor or other issues;~~.~~

(c) Voice Impairment – An excess or significant deficiency in pitch, intensity, resonance, or quality resulting from pathological conditions or inappropriate use of the vocal mechanism; or~~.~~

(d) Fluency Impairment – Abnormal interruption in the flow of speech characterized by an atypical rate or rhythm, and/or repetitions ~~or prolongations of a~~ in sounds, syllables, words, and phrases that significantly reduces the speaker's ability to participate within the learning environment.~~or by avoidance and struggle behaviors.~~

Speech or Language deficiencies identified cannot be attributed to characteristics of second language acquisition, cognitive referencing, and/or dialectic differences.

~~(18)~~(17) "Traumatic Brain Injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

Traumatic Brain ~~Disorder~~ Injury may include all of the following:

~~(o)~~(a) An insult to the brain caused by an external force that may produce a diminished or altered state of consciousness; and

~~(p)~~(b) The insult to the brain induces a partial or total functional disability and results in one (1) or more of the following:

1. Physical impairments such as, but not limited to:

   (i) Speech, vision, hearing, and other sensory impairments,

   (ii) Headaches,

   (iii) Fatigue,

   (iv) Lack of coordination,

   (v) Spasticity of muscles,

   (vi) Paralysis of one or both sides,

   (vii) Seizure disorder.

2. Cognitive impairments such as, but not limited to:

   (i) Attention or concentration,

(ii) Ability to initiate, organize, or complete tasks,

(iii) Ability to sequence, generalize, or plan,

(iv) Flexibility in thinking, reasoning or problem solving,

(v) Abstract thinking,

(vi) Judgment or perception,

(vii) Long-term or short term memory, including confabulation,

(viii) Ability to acquire or retain new information,

(ix) Ability to process information/processing speed.

3. Psychosocial impairments such as, but not limited to:

(i) Impaired ability to perceive, evaluate, or use social cues or context appropriately that affect peer or adult relationships,

(ii) Impaired ability to cope with over-stimulation environments and low frustration tolerance,

(iii) Mood swings or emotional lability,

(iv) Impaired ability to establish or maintain self-esteem,

(v) Lack of awareness of deficits affecting performance,

(vi) Difficulties with emotional adjustment to injury (anxiety, depression, anger, withdrawal, egocentricity, or dependence),

(vii) Impaired ability to demonstrate age-appropriate behavior,

(viii) Difficulty in relating to others,

(ix) Impaired self-control (verbal or physical aggression, impulsivity),

(x) Inappropriate sexual behavior or disinhibition,

(xi) Restlessness, limited motivation and initiation,

(xii) Intensification of pre-existing maladaptive behaviors or disabilities.

~~The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.~~

~~(19)~~(18) "Visual Impairment," including blindness, means impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

Visual Impairment includes at least one (1) of the following:

~~(a)~~(c) Visual acuity in the better eye or both eyes with best possible correction:

1. Legal blindness – 20/200 or less at distance and/or near;

2. Low vision – 20/~~50~~ 70 or less at distance and/or near.

~~(r)~~(d) Visual field restriction with both eyes:

1. Legal blindness – remaining visual field of 20 degrees or less;

2. Low vision – remaining visual field of 60 degrees or less;

3. Medical and educational documentation of progressive loss of vision, which may in the future affect the student's ability to learn visually.

~~(s)~~(e) Other Visual Impairment, not perceptual in nature, resulting from a medically documented condition (i.e., cortical visual impairment).

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed April 30, 2009; effective August 28, 2009. Amendment filed August 13, 2010; effective January 29, 2011.*

0520-01-09-.03 CONSENT.

If a parent revokes consent, the revocation must be in writing and the revocation is not effective until it is received by the ~~local education agency~~LEA to which consent was granted.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.04 PARENT.

(1) A foster parent may act as a parent if the biological or adoptive parent's authority to make educational decisions on the child's behalf has been terminated under Tennessee law; and

(2) The foster parent:

(a) Has an ongoing relationship with the child for more than one (1) year in duration;

(b) Is willing to make the educational decisions required of parents under the law; and

(c) Has no interest that would conflict with the interest of the child.

Authority: *T.C.A. §§ 49-10-101, 49-10-701, and 49-10-102 ~~49-10-701~~.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13,*
2008.

0520-01-09-.05 FREE APPROPRIATE PUBLIC EDUCATION.

(1) A free appropriate public education (FAPE) shall be available to all children with disabilities, ages three (3) through the school year the student turns twenty-two (22), including those children who have been suspended or expelled from school for more than ten (10) school days in a school year. To meet this obligation each ~~local education agency~~LEA shall:

(a) Identify, locate, and evaluate all children with disabilities;

(b) Develop and implement child find activities to ensure that all children – including highly mobile children (migrant and homeless children) and those children who are suspected of being a child with a disability, even though they are advancing from grade to grade – are identified, located and evaluated; and

(c) Provide services that address all of a child's identified special education and related services needs, based on the child's unique needs and not on the child's disability.

(2) Facilities.

(a) Facilities that serve children with disabilities must be comparable to facilities that serve children without disabilities.

(b) Educational programs and facilities must be accessible where children with physical disabilities and children without disabilities are both in attendance.

(c) Entrance to and from the facility must be accessible. If access is not visible at the front of the facility, signs must be present to indicate where parking and access to the facility for children and other individuals with disabilities are available.

(3) Transportation. Local education agencies shall provide children with disabilities with special transportation, where necessary.

(a) Children with disabilities shall, whenever appropriate, be provided transportation along with children who are not disabled. Adaptations shall be made to meet the needs of children with disabilities rather than separate transportation whenever appropriate.

(b) Travel time for children with disabilities shall not exceed the travel time for other children, provided that exceptions may be made on the recommendation of an IEP team.

(c) Vehicles used to provide special transportation must meet the requirements established by the state board of education.

(d) Operators and attendants of vehicles providing special transportation requirements established by the state board of education shall be given special training regarding the needs and special requirements of children with disabilities, except when parents are transporting children with disabilities. Special attendants shall be provided when an IEP team determines that such services are necessary.

(e) It is permissible to contract for special transportation provided that the operators, attendants, and vehicles used by a contractor meet the requirements established by the state board of education, except when parents are transporting children with disabilities.

(4) FAPE requirements for children with disabilities in adult prisons.

(a) The following requirements do not apply to children with disabilities who are convicted as adults under state law and incarcerated in adult prisons:

1. The requirements relating to participation of children with disabilities in general assessments, and

2. The requirements relating to transition planning and transition services with respect to the students whose eligibility under IDEA Part B will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.

(b) Modifications of IEP or placement.

1. If a child with disabilities is convicted as an adult under Tennessee law and incarcerated in an adult prison, the IEP team may modify the child's IEP or placement if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

2. The requirements of 34 C.F.R. § 300.320 relating to the definition of an IEP and the general requirements of 34 C.F.R. § 300.114 relating to least restrictive environment do not apply with respect to these modifications.

(5) Charter schools. Charter schools must ensure compliance with the IDEA.

Authority: *T.C.A. §§ 49-10-101, 49-10-701, 49-13-105, and 49-13-126.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.06 CHILD FIND.

(1) Each ~~local~~ Local ~~education~~ Education ~~agency~~ Agency shall develop and implement procedures for creating public awareness of special education programs and services. This includes a comprehensive system of child find activities for all children suspected of having a disability in public and private schools and facilities and who are homeless. Any child find activities shall be comparable for children in private schools and facilities.

(2) A notice must be published or announced in newspapers, other media, or both, with circulation adequate to notify parents of the activities conducted by the ~~local education agency~~LEA.

(3) Any child suspected of having a disability may be referred to the ~~local education agency~~LEA. All referrals shall be in writing to the school principal or director of special education. The ~~local education agency~~LEA shall establish written procedures for accepting, processing and documenting receipt of each referral. The procedures shall be approved by the state department of education.

Authority: *T.C.A. §§ 49-10-101, and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.07 PLACEMENTS.

(1) A homebound placement is instruction provided at home, hospital or related site to children with disabilities who are eligible pursuant to IDEA and state regulations. Instruction provided to children with disabilities in homebound placements shall be provided by qualified personnel, pursuant to IDEA and state regulations.

(2) Eligibility for Homebound Placements.

(a) Eligibility for instruction as a child with a disability pursuant to IDEA and state regulations shall be established prior to implementation of homebound services. Children with medical conditions of a short duration or temporary nature, and not previously certified as eligible pursuant to IDEA and state regulations, shall not be eligible for homebound placements pursuant to this regulation, and special education funds shall not be used to fund homebound placements for such children.

(b) The IEP team shall consider a medical homebound placement only upon certification by a licensed doctor of medicine or osteopathy that a child with a disability needs a homebound placement, is expected to be absent from school due to a physical or

mental condition for at least (10) consecutive school days and that the child can receive instruction in a homebound placement without endangering the health of personnel providing it.

(3) Use of Homebound Placement.

(a) All homebound placements shall be temporary. Homebound placements shall not exceed thirty (30) school days duration. The IEP shall contain a goal of returning the child to a less restrictive environment within the school year, unless there is a medical necessity that requires extended homebound instruction, in which case additional homebound placements of thirty (30) school days or less may be instituted.

(b) An IEP containing a homebound placement shall be reviewed at intervals of thirty (30) school days by the child's IEP team to ensure appropriateness of the provision of instruction and appropriateness of continuing the homebound placement.

(c) Where behavioral and/or disciplinary issues cannot be safely addressed in any other educational setting, the IEP team may consider a homebound placement. Such changes in placement may be instituted strictly on an emergency basis and for a temporary period of time not to exceed thirty (30) school days to determine how to best address the child's needs. The IEP team must document that a homebound placement is necessary, temporary and consistent with requirements for the provision of a free appropriate public education.

(d) The frequency and duration of instruction necessary to provide a free appropriate public education (FAPE) during a homebound placement will be determined by the IEP team.

(e) IDEA Part B funds may be expended only for instruction in homebound placements of children with disabilities who are eligible for special education pursuant to IDEA and state regulations.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.08- STATE ADVISORY PANEL.

The state has established an advisory council on the education of children with disabilities for special education as provided by Tenn. Code Ann. § 49-10-105. The Governor appoints advisory council members.

Authority: *T.C.A. §§ 49-10-105.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Amendment- filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed November 30, 2007;- effective February 13, 2008.*

0520-01-09-.09- ~~LOCAL EDUCATION AGENCY~~LEA ELIGIBILITY.

(1) Each ~~local~~ Local Eeducation ~~agency~~ Agency (LEA) shall demonstrate to the satisfaction of the ~~state~~ State ~~department~~ Department of ~~education~~ Education that it does the following:

(a) Identifies, locates, and evaluates all children who are suspected of having disabilities, including children attending non-public schools, regardless of the severity of their disabilities, and who may be in need of special education and related services. These services may be provided to children with disabilities under early transition agreements who are not yet three (3) years of age. If the child's birthday falls during the summer months, the IEP team will determine when special education services begin but no later than the beginning of the next school year.

(b) Makes available a free appropriate public education to all children with disabilities, ages three (3) through the school year in which they reach age twenty-two (22), including children with disabilities who have been suspended or expelled for more than ten (10) school days in a school year.

(c) Includes children with disabilities in state and district-wide assessments, with appropriate accommodations and modifications where necessary, or in alternate assessments. The type of assessment must be determined by the IEP team consistent with the state guidelines for participation of students with disabilities in state/district wide assessments.

(d) Ensures that children with disabilities participating in early intervention programs shall experience a smooth and effective transition to preschool programs and, that by the third (3rd) birthday, an IEP has been developed and implemented for the child. The ~~local education agency~~LEA shall participate in the transition planning meeting not less than ninety (90) days prior to the third (3rd) birthday of a child who may be a child with a disability.

(e) Ensures that children with disabilities who are enrolled in private schools or facilities by the ~~local education agency~~LEA are provided special education and related services, in accordance with the IEP, at no cost to them or to their parents.

(f) Ensures that children with disabilities who are enrolled in private schools by their parents have an opportunity for special education services and that the amount spent to provide those services is a proportionate amount of the federal funds made available to the district. No unilaterally placed private school child with a disability has an individual entitlement to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

(g) Establishes and has in effect policies, procedures, and programs that are consistent with 0520-01-09 for implementing the provision of special education and related services. Ensures compliance with applicable state and federal regulations including, but not limited to:

1. Free appropriate public education;

2. Child Find procedures;

3. Evaluation/reevaluation and determination of eligibility procedures;

4. IEP/IFSP procedures;

5. Confidentiality procedures;

6. Private school services procedures;

7. Goals for performance of children with disabilities through school improvement planning;

8. Inclusion of children with disabilities in state and district-wide assessment programs with appropriate accommodations and modifications and the reporting of assessment data;

9. Interagency agreements to ensure FAPE for all children;

10. Maintenance of effort.

(h) Supplements the provision of special education funds but does not commingle or supplant the provision of special education funding.

(i) ~~Annually publicizes~~Publicizes annual information regarding its special education programs and services and child find activities.

(j) Ensures that special education professionals and paraprofessionals are provided professional development collaboratively with general education personnel.

(k) Ensures that school administrators have professional development, training and the resources to establish challenging expectations and provide access to the general education curriculum in the regular classroom to the maximum extent possible for all children including those eligible for special education.

(l) Submits to the State Department of Education ~~state department of education~~ a comprehensive application annually on or before July 1 with program narratives and assurances for the provision of special education and related services including, but not limited to, the following:

1. A census of children with disabilities showing the total number and distribution of children within its jurisdiction who are provided special transportation;

2. An inventory of the personnel who provide instruction and other services to children with disabilities and a listing of facilities;

3. A description of the extent to which state department of education standards governing special education services will be met including a goal of providing full educational opportunity to all children with disabilities;

4. An assurance that IDEA funds will be used to supplement and not to supplant state and local funds and will be expended only for the excess cost of providing special education and related services to children with disabilities;

5. An assurance that to the maximum extent appropriate, children with disabilities, including children in public and private facilities, are educated with children without disabilities. Special classes, separate schooling or other removal of children with disabilities from the general educational environment occurs only if the nature or severity of the disability is such that education in the general education classes with the use of supplementary aids and services cannot be achieved satisfactorily;

6. An assurance that a continuum of alternative placements and related services are available to meet the needs of children with disabilities;

7. A detailed budget and end of the year report of expenditures of all funds available to provide special education and related services is provided; and

8. An assurance that a free appropriate public education is available to all children with disabilities from age three (3) through the school year in which the student reaches twenty-two (22) years of age, including children who have been suspended or expelled for more than ten (10) school days in a school year.

(2) Specific funding requirements:

(a) For the purpose of entitlement to academic program funds from the Basic Education Program (BEP), children with disabilities shall be counted in the same manner as children without disabilities. To supplement the academic program funds earned and

paid from the BEP, special education funds from the BEP shall be paid to local education agencies for the purpose of providing special education and related services to children with disabilities.

(b) Special education funds from the BEP shall be allocated to each ~~local education agency~~LEA in an amount to be determined by applying the prescribed formula to the number of children with disabilities identified and served during the preceding school year.

(c) The ~~local education agency~~LEA complies with maintenance of effort if it budgets at least the same total or per-capita amount from the combination of state and local funds as the ~~local education agency~~LEA spent for that purpose from the prior year. The ~~local education agency~~LEA may reduce the level of expenditures below the level for the ~~proceeding~~preceding year if the reduction is attributable to the following:

1. The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel, who are replaced by qualified, lower salaried staff;

2. A decrease in the enrollment of children with disabilities;

3. The termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the state department of education, because the child:

   (i) Has left the jurisdiction of the ~~agency~~Agency;

   (ii) Has reached the age at which the obligation of the ~~agency~~ Agency to provide FAPE to the child has terminated; or

   (iii) No longer needs the program of special education.

4. The termination of costly expenditures for long-term high cost purchases.

(d) Each ~~local education agency~~LEA shall establish appropriate policies and procedures for the administration of IDEA and preschool funds and shall maintain appropriate records and reports to be used in planning and evaluating special education programs and services. The State Department of Education ~~division~~ shall notify each ~~local education agency~~LEA of its allocation of federal funds annually.

(e) Two (2) or more local education agencies may submit a consolidated annual comprehensive plan, with the approval of the State Department of Education~~division~~, under the conditions of federal law:

1. Those participating in a consolidated plan will be jointly responsible for implementing a free appropriate public education program in the participating ~~local education agency~~LEA; and

2. The consolidated plan must designate one (1) of the local education agencies as the fiscal agent for the plan.

(f) Local education agencies shall use IDEA funds for the excess costs of providing special education and related services to children with disabilities. IDEA funds received by the ~~local education agency~~LEA must not be commingled with state funds.

(g) Local education agencies must maintain records that demonstrate compliance with the

excess cost, non-supplanting, and comparability requirements for at least three (3) years after completion of the project described in the application.

(h) For children with disabilities unilaterally placed in private schools, the same proportionate amount that is spent on public school children with disabilities from IDEA and preschool grants is allocated for the number of private school children with disabilities within the ~~local education agency~~LEA's jurisdiction. The preceding December 1 census count is used in calculating private and public school ratios to determine the proportionate amount.

(3) The curriculum adopted by the ~~state~~ State ~~board~~ Board of ~~education~~ Education shall serve as the basis for developing educational programs. Each ~~local education agency~~LEA must provide a variety of services, interventions and programs to meet the educational needs of all students including the needs of children with disabilities.

(a) Alternative programs must be provided when appropriate educational goals cannot be met in the general education program.

(b) School improvement plans must include a continuum of educational services, programs and interventions to address the educational needs of all students, including the needs of children with disabilities.

(c) As a component of child find activities, general education programs within each ~~local education agency~~LEA have specific responsibilities that include the following:

1. Systematic screening of all children in specific grade levels residing within its jurisdiction;

2. Reviewing the educational performance of children who are high risk;

3. Providing interventions and documentation prior to referral for special education evaluation. These intervention strategies should be implemented in the general education program.

(d) The State Department of Education ~~state department of education~~ shall make available to the public reports on assessments of all children with the same frequency and in the same detail as it reports on the assessment of children without disabilities to include:

1. The number of children with disabilities participating in:

(i) Regular assessments; and

(ii) Alternate assessments.

2. Reports to the public must include:

(i) The performance results of children with disabilities if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children;

(ii) Aggregated data that include the performance of children with disabilities together with all other children; and

(iii) Disaggregated data on the performance of children with disabilities.

(4) Each ~~local education agency~~LEA shall maintain an accurate record of all children with disabilities ages three (3) through the school year a student turns twenty-two (22) years of age

who are residing within its jurisdiction. The census shall be taken on December 1 of each year and at other times as required.

(5) Local education agencies shall evaluate their special education programs and related services according to evaluative criteria issued by federal and state authorities.

(6) Monitoring:

(a) Local education agencies, state agencies and private schools shall be monitored on a periodic basis by the State Department of Education ~~division~~ to determine the extent to which special education and related services are being implemented in the least restrictive environment and to assure compliance with applicable laws and regulations.

(b) The state department of education shall provide technical assistance in self-evaluation, program planning and implementation of any necessary corrective action plans.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.10 REPEALED.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed August 13, 2010 to be effective January 29, 2011; rule was withdrawn by the State Board of Education on October 15, 2010. Repeal filed August 29, 2013; effective January 29, 2014.*

0520-01-09-.11 EVALUATION PROCEDURES.

Guidelines and standards will be established for determining program eligibility criteria, evaluation procedures, and evaluation participants. Revisions to the eligibility criteria must be recommended by a task force within the disability category. Upon recommendations from the Advisory Council for the Education of Students with Disabilities, the assistant commissioner for special education will submit the standards to the State Board of Education for final review and approval.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.12 DEFINITION OF INDIVIDUALIZED EDUCATION PROGRAM (IEP).

Prior to the ninth (9th) grade or age fourteen (14) (or younger, if determined appropriate by the IEP team), all eligible students with a disability will develop an initial four (4)-year plan of focused and purposeful high school study. The plan will be reviewed annually and amended as necessary and will connect the student's goals for high school including, the courses and/or training and/or skills necessary to meet their potential after high school. This required plan will include identifying possible transition service needs of the student under the applicable components of the student's IEP. This plan may be developed through a process in general education but a copy must be in the ~~students~~student's' IEP after approval by the IEP team.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed August 30, 2004; effective December 29, 2004. Repeal and new rule filed November 30, 2007; effective February 13, 2008. Amendment filed October 23, 2013; effective March 31, 2014.*

0520-01-09-.13 WHEN IEPS MUST BE IN EFFECT.

The IEP must be implemented as soon as possible after completion. If agreement was not reached, no change in the child's IEP or eligibility status will be made for fourteen (14) days, in order to afford a parent time to request a due process hearing.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.14 REVIEW AND REVISION OF THE IEP.

Upon written request of any member, the IEP team shall be convened within ten (10) school days to review or revise the IEP or consider the child's placement.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.15 PARENT PARTICIPATION.

The ~~local education agency~~LEA must notify the parents of a child with a disability at least ten (10) days before an IEP meeting to ensure that a parent will have an opportunity to attend. A meeting conducted pursuant to 34 C.F.R. §300.530(e) may be conducted on at least twenty-four (24) ~~hours notice~~hours' notice to the parents.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendments filed March 1, 2005; effective July 29, 2005. —Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.16 PRIOR NOTICE BY ~~LOCAL EDUCATION AGENCY~~LEA.

Written notice must be given to the parents of a child suspected to have a disability or a child with a disability at least ten (10) school days prior to a ~~local education agency~~LEA either proposing or refusing to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed June 19, 2001; effective September 2, 2001. Amendment filed March 1, 2005; effective July 29, 2005. Repeal and new rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.17 MEDIATION.

All special education mediations shall be conducted by mediators listed by the Alternative Dispute Resolution Commission as general civil or family mediators pursuant to Tennessee Supreme Court Rule 31 and employed by or contracted by the secretary of state. The administrative office of the courts shall provide legal training in special education law to the mediators who conduct special education mediations. All parties shall participate in mediation in good faith.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.18 IMPARTIAL DUE PROCESS HEARING.

(1) Special education due process cases shall be heard by administrative law judges employed

by the secretary of state. Administrative law judges shall have jurisdiction to hear complaints arising under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400, et seq., as from time to time amended, and Rules of the State Board of Education. The administrative office of the courts shall provide legal training in special education law to the administrative law judges assigned to hear special education due process cases sufficient to comport with the requirements of 20 U.S.C. § 1415, as from time to time amended.

(2) When a hearing is requested, the director of schools shall immediately contact the Division of Special Education.

(3) The ~~local education agency~~LEA shall be responsible for providing an appropriate meeting place, a stenographic record of the hearing and a typed transcript of the hearing proceedings, and shall bear the administrative costs of the hearing, with the exception of the services of the hearing officer.

(4) Expenses for the services of a court reporter, the original copy of the transcript for the hearing officer and one copy for the parents will be reimbursed upon submission of appropriate documentation to the Division of Special Education.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.19 CIVIL ACTION.

Any party aggrieved by the findings and decision of an impartial due process hearing has the right to bring a civil action with respect to the complaint presented. The action may be brought in any state court of competent jurisdiction in accordance with Tenn. Code Ann. § 4-5-322 and Tenn. Code Ann. § 49-10-601 or in a district court of the United States without regard to the amount in controversy.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.20 SURROGATE PARENTS.

(1) Each ~~local education agency~~LEA shall have written policies and procedures for the recruitment, training and appointment of surrogate parents.

(2) Each ~~local education agency~~LEA shall appoint a surrogate parent to represent the child in all matters relating to the identification, assessment, educational placement, and the provision of a free appropriate public education, including meetings concerning the individualized education program, and any mediation and due process hearings pertaining to the child when it determines that:

(a) No parent can be identified;

(b) It is unable to locate a biological parent or legal guardian by calls, visits and by sending a letter by certified mail (return receipt requested) to the last known address of the biological parent or the guardian and allowing thirty (30) days for a response of the intention to appoint a surrogate parent;

(c) If the child is a ward of the State (including a ward of the court or a state agency); or

(d) The educational rights of the parents or guardians regarding participation in the student's education have been terminated or transferred.

(3) If the health or safety of the child or other persons would be endangered by delaying the change in placement, due to the unavailability of a surrogate, the change in the

educational placement may be made sooner, but without prejudice to any rights that the child and parent may have.

(4) The surrogate parent shall continue to represent the child until one (1) of the following occurs:

(a) The child is determined by the IEP team no longer ~~to~~ be eligible for, or in need of special education or related services, except when termination from such programs is being contested;

(b) The ~~parent~~parent or guardiant, who was previously unknown, or whose whereabouts were previously unknown, becomes known;

(c) The legal guardianship of the child is transferred to a person who is able to fulfill the role of the parent;

(d) The ~~local education agency~~LEA determines that the appointed surrogate parent no longer adequately represents the child;

(e) The child attains eighteen (18) years of age.

(5) Criteria for selection of surrogate parents.

(a) A person selected as a surrogate parent may not be an employee of the state education agency, the ~~local education agency~~LEA, or any other agency that is involved in the education or care of the child.

1. A person is not considered to be an employee of the ~~local education agency~~LEA solely because he or she is paid by the ~~local education agency~~LEA to serve as a surrogate parent.

2. A person is not considered to be an employee of the State solely because he or she is paid by the State to serve as a foster parent.

(b) A public agency may select a surrogate parent to represent the child for educational purposes. The selected person may be an employee of a nonpublic agency that only provides non-educational care for the child provided they are able to ~~meet the~~meet the standards and perform the responsibilities of a surrogate parent.

(c) Foster parents, selected by a state agency as the custodian for a child, who have had a foster child or children with disabilities for less than one (1) calendar year, may be appointed by a ~~local education agency~~LEA to serve as surrogate parents for their foster child or children and may represent the child for educational purposes, provided that they perform the responsibilities of a surrogate parent. Foster parents selected by a state agency as the custodian for a child, who have had a foster child or children with disabilities for one (1) calendar year or more may act as a parent for their foster child if they meet the definition of a parent.

(6) Responsibilities of a surrogate parent.

(a) A surrogate parent must have no interest that would conflict with the interests of the child to be represented;

(b) A surrogate parent must have knowledge and skills that ensure adequate representation of the child, including a functional understanding of the educational rights of children with disabilities;

(c) A surrogate parent must participate in whatever training program might be offered to

ensure that they will have knowledge and skills to provide adequate representation of the child;

(d) A surrogate parent must represent the child throughout the special education decision making process of identification, evaluation, program development, initial placement, review of placement, and reevaluation, as appropriate;

(e) A surrogate parent must be acquainted with the child and his or her educational needs;

(f) A surrogate parent must attempt to ascertain the child's educational needs and concerns;

(g) A surrogate parent must respect the confidentiality of all records and information;

(h) A surrogate parent must become familiar with the assistance provided by other human service agencies in the community that affects the child or that might be helpful resources; and

(i) A surrogate parent must monitor the child's educational program and placement.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.21 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.

The procedure for determining whether a child with a disability who has attained eighteen (18) years of age is competent to make educational decisions is provided at Tenn. Code Ann. §34-1-101 et seq. and §34-3-101 et seq. Unless the child has been adjudicated incompetent, all rights vest in the child when the child attains eighteen (18) years of age.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.22 AMENDMENT OF RECORDS AT PARENT'S REQUEST.

The ~~local education agency~~LEA, upon receiving a request from a parent pursuant to 34 C.F.R. §300.618, shall decide, within ten (10) school days of its receipt of the request, whether to amend the information as requested.

Authority: *T.C.A. §§ 49-10-101 and 49-10-701.* ***Administrative History:*** *Original rule filed November 30, 2007; effective February 13, 2008.*

0520-01-09-.23 ISOLATION AND RESTRAINT FOR STUDENTS RECEIVING SPECIAL EDUCATION SERVICES.

(1) Definitions:

(a) "Extended isolation" means isolation which lasts longer than one (1) minute per year of the student's age or isolation which lasts longer than the time provided in the child's individualized education program (IEP).

(b) "Extended restraint" means a physical holding restraint lasting longer than five (5) minutes or a physical holding restraint which lasts longer than the time provided in the child's IEP.

(c) "Noxious substance" means a substance released in proximity to the student's face or sensitive area of the body for the purpose of limiting a student's freedom of movement or action, including but not limited to Mace and other defense sprays.

(2) Local education agencies are authorized to develop and implement training programs that include:

(a) Use of positive behavioral interventions and supports;

(b) Nonviolent crisis prevention and de-escalation;

(c) Safe administration of isolation and restraint; and

(d) Documentation and reporting requirements.

(3) Local education agencies are authorized to determine an appropriate level of training commensurate with the job descriptions and responsibilities of school personnel.

(4) Local education agencies shall develop policies and procedures governing:

(a) Personnel authorized to use isolation and restraint;

(b) Training requirements; and

(c) Incident reporting procedures.

(5) Only the principal, or the principal's designee, may authorize the use of isolation or restraint.

(6) When the use of restraint or isolation is proposed at an IEP meeting, parents/guardians shall be advised of the provisions of T.C.A. § 49-10-1301, et seq., this rule and the IDEA procedural safeguards.

(7) An IEP meeting convened pursuant to T.C.A. § 49-10-1304 may be conducted on at least twenty-four (24) ~~hours notice~~hours' notice to the parents/guardian/surrogate parent.

(8) State agencies providing educational services within a residential therapeutic setting to children in their legal and physical custody shall develop and adhere to isolation and restraint policies in such educational settings which conform to the TDMHDD (Tennessee Department of Mental Health and Developmental Disabilities) state standards as applicable and at least one (1) of the following national standards: ACA (American Correctional Association), COA (Council on Accreditation), CMS (Centers for Medicare & Medicaid Services), JCAHO (Joint Commission for Accreditation of Healthcare Organizations), CARF (Commission on Accreditation of Rehabilitation Facilities), as they apply in the educational environment. Development of, and adherence to, such policies shall be overseen by a licensed qualified physician or licensed doctoral level psychologist.

(9) Reports.

School personnel who must isolate or restrain a student shall report the incident to the school principal or the principal's designee. The Department of Education shall develop a report form, which shall be used by school personnel when reporting isolation or restraint to the school principal or the principal's designee.

(a) The report form must include the following information:

1. Student's name, age and disability;

2. Student's school and grade level;

2.

3. Date, time and location of the isolation or restraint;

4. Length of time student was isolated or restrained;

5. Names, job titles and signatures of the personnel who administered the isolation or restraint;

6. Whether the personnel who administered the isolation or restraint were certified for completing a behavior intervention training program;

7. Names and job titles of other personnel who observed or witnessed the isolation or restraint;

8. Name of the principal or designee who was notified following the isolation or restraint and time of notification;

9. Description of the antecedents that immediately preceded the use of isolation or restraint and the specific behavior being addressed;

10. A certification that any space used for isolation is at least forty (40) square feet;

11. A certification that school personnel are in continuous direct visual contact at all times with a student who is isolated;

12. How the isolation or restraint ended, including the student's demeanor at the cessation of the isolation or restraint;

13. Physical injury or death to the student, school personnel or both during the isolation or restraint;

14. Medical care provided to the student, school personnel or both during the isolation or restraint;

15. Description of property damage, if relevant; and

16. Date, time and method of parent notification.

(b) A copy of the report form must be provided to the ~~local education agency~~LEA's director of special education who shall determine whether an Individualized Education Program (IEP) Team meeting must be convened pursuant to T.C.A. § 49-10-1304.

Authority: *T.C.A. §§ 49-10-1306.* ***Administrative History:*** *Original rule filed October 20, 2009; effective January 18, 2010. Amendments filed March 21, 2012; effective August 29, 2012.*

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chancey	X				
Cook	X				
Edwards	X				
Ferguson				X	
Hartgrove	X				
Kim	X				
Rolston	X				
Tucker	X				

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: June 14, 2017

Signature: [signature]

Name of Officer: Elizabeth Taylor

Title of Officer: General Counsel

CASEY ONEAL GRIFFIN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires 03-08-2021

Subscribed and sworn to before me on: June 14, 2017

Notary Public Signature: [signature]

My commission expires on: 3-8-21

All emergency 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

6/27/2017
Date

Department of State Use Only

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SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 6/29/17

Effective for: 180 *days

Effective through: 12/26/17

** Emergency rule(s) may be effective for up to 180 days from the date of filing.*

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Board of Medical Examiners / Advisory Committee for Acupuncture
SUBJECT:	General Rules and Regulations Governing the Practice of Acupuncturists - ADS Certification Process
STATUTORY AUTHORITY:	The promulgation of this rule is not mandated by any federal or state law or regulation.
EFFECTIVE DATES:	September 5, 2017 through June 30, 2018
FISCAL IMPACT:	These rules should not result in any increase or decrease in state or local government revenues or expenditures.
STAFF RULE ABSTRACT:	This rule amendment deletes subparagraph (1)(f) and instead creates a new paragraph to clarify Auricular Detoxification Specialist (ADS) practice limitations and requirements. The new rule also contains the same information as provided in subparagraph (1)(f) with the addition of the definition of "medical director."

Public Hearing Comments

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

There were no comments received, either written or oral.

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 rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

This rule amendment does not overlap, duplicate, or conflict with other federal, state, and local government rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.

This rule amendment is established with clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

This rule amendment does 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.

This rule amendment does not establish friendly schedules or deadlines for compliance reporting requirements for small businesses.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

This rule amendment does 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.

This rule amendment does not establish performance standards for small businesses as opposed to design or operational standards required for the proposed rule.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

This rule amendment does not create unnecessary 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: The Tennessee Board of Medical Examiners Advisory Committee for Acupuncture

Rulemaking hearing date: February 6, 2017

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:**

   These rules will affect all applicants and licensees of The Tennessee Board of Medical Examiners Advisory Committee for Acupuncture who wish to practice as Auricular Detoxification Specialists (ADS). These rules will benefit licensees by clarifying ADS practice limitations and requirements.

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:**

   These rules will not create additional reporting requirements.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   These rules will not create additional reporting requirements.

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 are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule amendment.

5. **Comparison of the proposed rule with any federal or state counterparts:**

   Federal: None.

   State: None.

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.**

   These rules do not provide for any exemptions of small businesses.

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;

This rule amendment deletes subparagraph (1)(f) and instead creates a new paragraph to clarify Auricular Detoxification Specialist (ADS) practice limitations and requirements. The new rule also contains the same information as provided in subparagraph (1)(f) with the addition of the definition of "medical director."

(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;

These rules will affect all applicants and licensees of The Tennessee Board of Medical Examiners Advisory Committee for Acupuncture who wish to practice as Auricular Detoxification Specialists.

(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;

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;

Jamie Formont, 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;

Jamie Formont, 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, Jamie.L.Formont @tn.gov.

(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
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-05-17
Rule ID(s): 6548
File Date: 6/7/17
Effective Date: 9/5/17

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:	The Tennessee Board of Medical Examiners Advisory Committee for Acupuncture
Division:	
Contact Person:	Jamie Formont, Assistant General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Jamie.L.Formont@tn.gov

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**
0880-12	General Rules and Regulations Governing the Practice of Acupuncturists
Rule Number	**Rule Title**
0880-12-.05	ADS Certification Process

(Rule 0880-12-.04, continued)

2. Notation of successful completion or graduation from the acupuncture training program or college acupuncture program and carry the official seal of the institution.

(j) Have proof of successful completion of a NCCAOM-approved clean needle technique course sent directly from the course provider to the Administrative Office.

(k) Submit the fees required in Rule 0880-12-.06.

(3) Certification by Reciprocity - To become certified in Tennessee based on licensure or certification in another state, an applicant must

(a) Comply with all the requirements of paragraph (2) of this rule except subparagraph (e); and

(b) Have proof of licensure or certification in a state that has licensure or certification requirements substantially equivalent, as determined by the Committee, to the requirements of T.C.A. §§ 63-6-1001, et seq., and this chapter of rules sent directly from the state licensing/certifying agency to the Administrative Office.

(4) Application review and certification decisions shall be governed by Rule 0880-12-.07.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-6-1004, 63-6-1005, and 63-6-1007.* ***Administrative History:*** *Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed March 17, 2006; effective May 31, 2006.*

0880-12-.05 ADS CERTIFICATION PROCESS.

(1) To be issued a limited acupuncture certification as an ADS in Tennessee a person must comply with the following sets of procedures and requirements:

(a) Request an application packet from the Administrative Office.

(b) Respond truthfully and completely to every question or request for information contained in the application form and submit it, along with all documentation and fees required by the form and rules, to the Administrative Office. It is the intent of this rule that activities necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all documentation be filed simultaneously.

(c) Submit a clear, recognizable, recently taken bust photograph which shows the full head, face forward from at least the top of the shoulder up.

(d) Submit evidence of good moral character. Such evidence shall be two (2) recent (within the preceding 12 months) original letters from medical professionals, attesting to the applicant's personal character and professional ethics on the signator's letterhead.

(e) Have submitted directly from the training program to the Administrative Office documentation of successful completion of a board-approved training program in auricular detoxification acupuncture. To become board-approved, the training program must meet or exceeds standards of training set by NADA.

~~(f) Have submitted directly from an employing institution, facility, or entity to the Administrative Office satisfactory proof of the practice of auricular detoxification treatment in a hospital, clinic, or treatment facility which provides comprehensive~~

(Rule 0880-12-.05, continued)

~~alcohol and substance abuse or chemical dependency services including counseling. Accompanying this proof must also be a certification from the supervising certified acupuncturist or medical director of the institution, facility, or entity attesting to employment and acceptance of supervisory responsibility.~~

(f)~~(g)~~ Disclose the circumstances surrounding any of the following:

1. Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.

2. The denial of professional licensure/certification application by any other state or the discipline of licensure/certification in any state.

3. Loss or restriction of licensure/certification.

4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity or any other civil action remedy recognized under the country's or state's statutory, common or case law.

5. Failure of any professional licensure or certification examination.

(g)~~(h)~~ An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's certification application materials, the result of a criminal background check.

(h)~~(i)~~ Cause to be submitted the equivalent of a Tennessee Certificate of Endorsement (verification of licensure/certification) from each licensing/certifying board of each state or country in which the applicant holds or has ever held a license/certificate to practice any profession that indicates the applicant holds or held an active license/certificate and whether it is in good standing presently or was at the time it became inactive. It is the applicant's responsibility to request this information be sent directly from each such licensing/certifying board to the Administrative Office.

(i)~~(j)~~ Submit the fees required in Rule 0880-12-.06.

(2) Application review and limited certification decisions shall be governed by Rule 0880-12-.07.

(3) Prior to the commencement of practice as an ADS, an ADS certificate holder must provide the following documentation to the Committee's Administrative Office:

(a) Satisfactory written acknowledgement that the practice of auricular detoxification treatment will be in a hospital, clinic, or treatment facility which provides comprehensive alcohol and substance abuse or chemical dependency services including counseling, and

(b) Certification from the supervising licensed acupuncturist or medical director (a physician licensed under Chapter 6 or 9 of Title 63 of the Tennessee Code Annotated) of the institution, facility, or entity attesting to employment and acceptance of supervisory responsibility.

(Rule 0880-12-.05, continued)
Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-6-214, 63-6-1002, 63-6-1004, 63-6-1005, and 63-6-1007.* ***Administrative History:*** *Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed March 17, 2006; effective May 31, 2006.*

0880-12-.06 FEES. All fees provided for in this rule are non-refundable.

		Acupuncturist	Acupuncture Dextoxification Specialist
(1)	Application fee to be submitted at the time of application.	$500.00	$ 75.00
(2)	Initial certification fee to be submitted at the time of application.	$250.00	$ 25.00
(3)	Biennial renewal fee to be submitted every two (2) years when certification renewal is due.	$400.00	$ 50.00
(4)	Late renewal fee.	$100.00	$ 50.00
(5)	Certification reinstatement and / or restoration fee.	$100.00	$ 50.00
(6)	Duplication of Certificate fee.	$ 25.00	$ 10.00
(7)	Biennial state regulatory fee to be submitted at the time of application.	$ 10.00	$ 10.00

(8) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division of Health Related Boards. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Advisory Committee for Acupuncture.

Authority: *T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-1-106, 63-1-107, 63-6-101, 63-6-1004, 63-6-1005, and 63-6-1009.* ***Administrative History:*** *Original rule filed October 18, 2002; effective January 1, 2003. Amendment filed January 5, 2004; effective March 20, 2004. Amendment filed January 22, 2013; effective April 22, 2013.*

0880-12-.07 APPLICATION REVIEW, APPROVAL, AND DENIAL.

(1) Review of all applications to determine whether or not the application file is complete may be delegated to the Committee's administrator.

(2) A temporary authorization to practice, as described in T.C.A. § 63-1-142 may be issued to an applicant pursuant to an initial determination made by a Committee and Board designee who have both reviewed the completed application and determined that the applicant has met all the requirements for certification, renewal or reinstatement. The temporary authorization to practice is valid for a period of six (6) months from the date of issuance of the temporary authorization to practice and may not be extended or renewed. If the Committee or Board subsequently makes a good faith determination that the applicant has not met all the requirements for certification, renewal or reinstatement and therefore denies, limits, conditions or restricts certification, renewal or reinstatement, the applicant may not invoke the doctrine of estoppel in a legal action brought against the state based upon the issuance of the

* 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)
Jill L. Kelly	X				
Serina Moore Scott	X				
Charmaine Jamieson	X				
Shelia Ann Berry-Sanders				X	
Jian Yan	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Advisory Committee for Acupuncture (board/commission/ other authority) on 02/06/2017 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.	X				
Dennis Higdon, MD				X	
Charles Handorf, M.D.	X				
Neal Beckford, M.D.	X				
Deborah Christiansen, M.D.				X	
Clinton A. Musil, Jr., M.D.				X	
Jennifer Claxton	X				
Barbara Outhier	X				
Julianne Cole	X				
Melanie Blake, M.D.				X	
W. Reeves Johnson, Jr. MD				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Medical Examiners (board/commission/ other authority) on 03/07/2017 (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: *08/12/16 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *02/06/17 (mm/dd/yy)*

Date: 3/8/17

Signature: Jamie L. Formont

Name of Officer: Jamie Formont

Title of Officer: Assistant General Counsel
Department of Health

Tennessee Advisory Committee for Acupuncture
Rule 0880-12-.05
General Rules and Regulations Governing the Practice of Acupuncturists
ADS Certification Process

Subscribed and sworn to before me on: 3-8-17

Notary Public Signature: Suzanne Mechkowski

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC

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

5/31/2017
Date

Department of State Use Only

Filed with the Department of State on: 6/7/17

Effective on: 9/5/17

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Radiological Health
SUBJECT:	Standards for Protection Against Radiation / Licensing and Registration / Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material
STATUTORY AUTHORITY:	Section 274 of the Atomic Energy Act of 1954 as amended (42 U.S.C. § 2021) sets forth the requirement that states maintain compatibility with NRC regulations to maintain Agreement State status. Agreement State status is preferable because Agreement States have input into NRC regulatory actions. Title 10 of the Code of Federal Regulations contains the compilation of NRC rules. Parts 20, 30, 32, 70, and 37 of Title 10 contain the regulations pertinent to this rulemaking.
EFFECTIVE DATES:	September 12, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rules and rule amendments incorporate into state rules changes to federal regulations promulgated by the Nuclear Regulatory Commission (NRC) that are intended by the NRC to: improve the efficiency and effectiveness of rules governing the licensing of byproduct [radioactive] material possession and use by creating a new class exemption and broadening the scope of an existing class exemption; make rules governing the distribution of byproduct material more flexible and performance based; establish more secure protection of specified quantities of radioactive material including incorporating into rules requirements previously implemented through federal orders and license conditions; and improve the accuracy and dependability of decommissioning financial assurance. In addition, the rule

amendments reorganize the rules for clarity and correct previous incorporation errors.

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: Does TDRH consider the material received from our customers for processing by our Tennessee licensees to be "radioactive waste" as stated in 10 CFR 37.11?

Response: Yes, the Division considers this material to be radioactive waste as stated in 10 CFR 37.11.

Comment: If yes, does TDRH authorize the exemption from 10 CFR 37 subparts B, C, and D of the material considered to be radioactive waste except that it will required to meet the requirements, as applicable, of 10 CFR 37.11(c)(1) through (4)?

Response: TDRH would authorize the exemption from the requirements of subparts B, C, and D [proposed rules 0400-20-13-.02, 0400-20-13-.03 and 0400-20-13-.04] in 10 CFR Part 37.11(c) [proposed rule 0400-20-13-.01(6)(b)] of category 1 or category 2 quantities of radioactive waste except that the licensee must meet the requirements of rule 0400-20-13-.01(6)(b)1 through 4. The Division considers these and other Chapter 0400-20-13 requirements to supersede its acceptance of the Increased Controls implementation measures that may have been submitted by the licensee prior to these rules or license conditions being implemented.

Comment: If the radioactive waste is activated material and weighs more than 2,000 kg (4,409 lbs.) does TDRH consider this radioactive waste to be exempt from all 10 CFR 37 controls as stated in 10 CFR 37.11(c) – i.e., exempt from the requirements of subparts B (Background & Access Control), C (Physical Protection), and D (Physical Protection in Transit)?

Response: TDRH would consider activated radioactive waste material that weighs more than 2,000 kg (4,409 lbs.) to be exempt as stated in 10 CFR 37.11(c) [rule 0400-20-13-.01(6)(b)]., i.e. rules 0400-20-13-.02 (Background and Access Control), 0400-20-13-.03 (Physical Protection) and 0400-20-13-.04 (Physical Protection in Transit).

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 proposed rules and rule amendments in this rulemaking are either mandated by the Nuclear Regulatory Commission ("NRC") or substantially codify existing federal law. Therefore, these amendments are exempt from the provisions of the Regulatory Flexibility Act of 2007.

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;

The proposed rules and rule amendments incorporate into state rules changes to federal regulations promulgated by the Nuclear Regulatory Commission (NRC) that are intended by the NRC to: improve the efficiency and effectiveness of rules governing the licensing of byproduct [radioactive] material possession and use by creating a new class exemption and broadening the scope of an existing class exemption; make rules governing the distribution of byproduct material more flexible and performance based; establish more secure protection of specified quantities of radioactive material including incorporating into rules requirements previously implemented through federal orders and license conditions; and improve the accuracy and dependability of decommissioning financial assurance. In addition, the rule amendments reorganize the rules for clarity and correct previous incorporation errors.

(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;

Section 274 of the Atomic Energy Act of 1954 as amended (42 U.S.C. § 2021) sets forth the requirement that states maintain compatibility with NRC regulations to maintain Agreement State status. Agreement State status is preferable because Agreement States have input into NRC regulatory actions. Title 10 of the Code of Federal Regulations contains the compilation of NRC rules. Parts 20, 30, 32, 70, and 37 of Title 10 contain the regulations pertinent to this rulemaking.

(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 new rules most directly affect those entities that are licensed to hold Category 1 or Category 2 radioactive material such as, IveyCooper Services, LLC; Eastman Chemical Company; Vanderbilt University; and World Testing, Inc. None of these affected entities urged adoption or rejection of these rules or amendments.

Other entities affected by the rule amendments are currently required to comply with the compatible federal regulations. None of these entities urged adoption or rejection of the rule amendments.

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

The Department is not aware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule.

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

There should be no increase in revenues or expenditures resulting from promulgation of these rules.

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

Andrew Holcomb
Division of Radiological Health
Department of Environment and Conservation
(615) 532-3038
Andrew.holcomb@tn.gov

(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 William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee 37243 (615) 532-0108 Lucian.Geise@tn.gov

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

The Department is not aware of any additional relevant information.

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For Department of State Use Only

Sequence Number: 06-16-17
Rule ID(s): 6551-6554
File Date: 6/14/17
Effective Date: 9/12/17

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:	Environment and Conservation
Division:	Radiological Health
Contact Person:	Andrew Holcomb
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-3038
Email:	Andrew.holcomb@tn.gov

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**
0400-20-04	General Provisions
Rule Number	**Rule Title**
0400-20-04-.04	Definitions

Chapter Number	**Chapter Title**
0400-20-05	Standards for Protection Against Radiation
Rule Number	**Rule Title**
0400-20-05-.70	General Survey and Monitoring Requirements

Chapter Number	**Chapter Title**
0400-20-10	Licensing and Registration
Rule Number	**Rule Title**
0400-20-10-.04	Exemptions: Radioactive Materials other Than Source Material
0400-20-10-.10	General Licenses – Radioactive Material Other Than Source Material
0400-20-10-.11	Filing of Application For Specific Licenses
0400-20-10-.12	General Requirements for the Issuance of Specific Licenses

0400-20-10-.13	Special Requirements for Issuance of Specific Licenses
0400-20-10-.21	Inalienability of Licenses
0400-20-10-.33	Reserved
0400-20-10-.36	Radiological Criteria for License Termination
0400-20-10-.38	Appendix—Schedules

Chapter Number	**Chapter Title**
0400-20-13	Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material
Rule Number	**Rule Title**
0400-20-13-.01	General Provisions
0400-20-13-.02	Background Investigations and Access Authorization Program
0400-20-13-.03	Physical Protection Requirements During Use
0400-20-13-.04	Physical Protection in Transit
0400-20-13-.05	Reserved
0400-20-13-.06	Records
0400-20-13-.07	Enforcement
0400-20-13-.08	Appendix to Chapter 0400-20-13

(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 0400-20-04
General Provisions

Amendments

Subparagraph (ooo) of paragraph (1) of Rule 0400-20-04-.04 Definitions is amended by deleting it in its entirety and substituting instead the following:

(ooo) "Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, subsurface materials and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Chapter 0400-20-05.

Authority: T.C.A. §§ 68-202-101 et seq. and 4-5-201 et seq.

Chapter 0400-20-05
Standards for Protection Against Radiation

Amendments

The Table of Contents to Chapter 0400-20-05 Standards for Protection Against Radiation is amended by deleting the title of Rule 0400-20-05-.80 in its entirety and substituting instead the following:

0400-20-05-.80 Control of Access to ~~Very~~ High Radiation Area Requirements

Authority: T.C.A. §§ 68-202-201 et seq., and 4-5-201 et seq.

Rule 0400-20-05-.70 General Survey and Monitoring Requirements is amended by deleting it in its entirety and substituting instead the following:

0400-20-05-.70 General Survey and Monitoring Requirements.

(1) Each licensee and registrant shall make or cause to be made, surveys of areas, including the subsurface that:

(a) May be necessary for the licensee or registrant to comply with the standards in this chapter; and

(b) Are reasonable under the circumstances to evaluate:

1. The magnitude and extent of radiation levels;

2. Concentrations or quantities of ~~radioactive material~~ residual radioactivity; and

3. The potential radiological hazards of the radiation levels and residual radioactivity detected.

(2) Notwithstanding the requirements in Rule 0400-20-05-.132, records from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, and such records must be retained in accordance with Rule 0400-20-10-.26 as applicable.

~~(2)~~(3) The licensee or registrant shall ensure that instruments and equipment used for quantitative radiation measurements (e.g., dose rate and effluent monitoring) are calibrated periodically for the radiation measured.

~~(3)~~(4) Except for direct and indirect reading pocket ionization chambers and those dosimeters used to measure the dose to the extremities, all personnel dosimeters for determining the dose and used to comply with these standards or with conditions specified in a license or registration shall be processed and evaluated by a dosimetry processor:

(a) Holding current personnel dosimetry accreditation from the National Voluntary Laboratory Accreditation Program (NVLAP) of the National Institute of Standards and Technology; and

(b) Approved for processing and evaluating dosimeters exposed to the type of radiation(s) included in the NVLAP program that most closely approximates the type of radiation(s) being monitored by the dosimeter.

Authority: T.C.A. §§ 68-202-201 et seq., and 4-5-201 et seq.

Chapter 0400-20-10
Licensing and Registration

Amendments

Rule 0400-20-10-.04 Exemptions: Radioactive Materials Other Than Source Material is amended by deleting it in its entirety and substituting instead the following:

0400-20-10-.04 Exemptions: Radioactive Materials Other Than Source Material.

(1) Exempt concentrations.

(a) Except as provided in subparagraphs (b) and (d) of this paragraph, any person is exempt from these ~~regulations~~ rules to the extent that such person receives, possesses, uses, transfers, owns, or acquires products containing radioactive material introduced in concentrations not in excess of those listed in Schedule RHS 8-4.

(b) No person may introduce radioactive material into a product or material knowing or having reason to believe that it will be transferred to persons exempt under subparagraph (a) of this paragraph or equivalent regulations of the U.S. Nuclear Regulatory Commission, any Agreement State or Licensing State except in accordance with a license issued pursuant 10 CFR 32.11.

(c) This paragraph shall not be deemed to authorize the import of radioactive material or products containing radioactive material.

(d) A manufacturer, processor, or producer of a product or material is exempt from the requirements for a license set forth in these ~~regulations~~ rules to the extent that this person transfers radioactive material contained in a product or material in concentrations not in excess of those specified in Schedule RHS 8–4 in the Appendix to this ~~Chapter~~ chapter and introduced into the product or material by a licensee holding a specific license issued by the NRC expressly authorizing such introduction. This exemption does not apply to the transfer of radioactive material contained in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being.

(2) ~~Exempt products~~ Certain items containing radioactive material other than source material.

(a) Except for persons who apply radioactive materials to or persons who incorporate radioactive material into the products listed in this paragraph, any person is exempt from these ~~regulations~~ rules to the extent that he receives, possesses, uses, transfers, owns or acquires the following products[1]~~:~~

1. ~~Time pieces~~ Timepieces or hands or dials containing not more than the following quantities of radioactive material and not exceeding the following specified levels of radiation:

(i) 25 millicuries of tritium per timepiece;

(ii) 5 millicuries of tritium per hand;

(iii) 15 millicuries of tritium per dial (bezels when used shall be considered as part of the dial);

(iv) 100 microcuries of promethium-147 per watch or 200 microcuries of promethium-147 per any other timepiece;

(v) 20 microcuries of promethium-147 per watch hand or 40 microcuries of promethium-147 per other timepiece hand;

(vi) 60 microcuries of promethium-147 per watch dial or 120 microcuries of promethium-147 per other timepiece dial (bezels when used shall be considered part of the dial);

(vii) The levels of radiation from hands and dials containing radioactive materials will not exceed when measured through 50 milligrams per square centimeter of absorber:

(I) For wrist watches, 0.1 millirad per hour at 10 centimeters from any surface;

(II) For pocket watches, 0.1 millirad per hour at 1 centimeter from any surface;

(III) For any other timepiece, 0.2 millirad per hour at 10 centimeters from any surface.

(viii) 1 ~~microcuries~~ microcurie of radium-226 per timepiece in timepieces acquired prior to May 31, 1986.

2. ~~Reserved.~~ Certain named devices and equipment

(i) Static elimination device. Devices designed for use as static eliminators that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 microcuries) of polonium-210 per device.

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[1] *Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity, or other product containing radioactive material, whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, DC 20555.*

(ii) Ion generating tube. Devices designed for ionization of air that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 18.5 MBq (500 microcuries) of polonium-210 per device or a total of not more than 1.85 GBq (50 millicuries) of hydrogen 3 (tritium) per device.

(iii) Such devices authorized before October 23, 2012 for use under the general license then provided in 10 CFR 31.3 and equivalent regulations of Agreement States and manufactured, tested, and labeled by the manufacturer in accordance with specifications contained in a specific license issued by the Nuclear Regulatory Commission.

3. Balances of precision containing not more than 1 millicurie of tritium per balance or not more than 0.5 millicurie of tritium per balance part.

4. Reserved.

5. Marine compasses containing not more than 750 millicuries of tritium gas and other marine navigational instruments containing not more than 250 millicuries of tritium gas manufactured before December 17, 2007.

6. Reserved.

7. Electron tubes[2] containing not more than one of the following specified quantities of radioactive material per tube:

(i) 150 millicuries of tritium per microwave receiver protector tube or 10 millicuries of tritium per any other electron tube;

(ii) 1 microcurie of cobalt-60;

(iii) 5 microcuries of nickel-63;

(iv) 30 microcuries of krypton-85;

(v) 5 microcuries of cesium-137;

(vi) 30 microcuries of promethium-147;

provided, the levels of radiation from each electron tube containing radioactive material do not exceed 1 millirad per hour at 1 centimeter from any surface when measured through 7 milligrams per square centimeter of absorber.

8. Reserved.

9. Reserved. ~~Gas and aerosol detectors containing radioactive material~~.

~~(i) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards provided that detectors containing radioactive material shall have been~~

[2] *"Electron tubes", as used in this subparagraph, include spark gap tubes, power tubes, gas tubes, including glow lamps, receiving tubes, microwave tubes, indicator tubes, pickup tubes, radiation detection tubes and any other completely sealed tube that is designed to conduct or control electrical currents.*

~~manufactured, processed, produced, or initially transferred[3] in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to section 32.26 of 10 CFR Part 32 or a licensing state pursuant to regulations equivalent to paragraph (15) of Rule 0400-20-10-.13 that authorizes the initial transfer of the detectors to persons who are exempt from regulatory requirements. This exemption also covers gas and aerosol detectors manufactured or distributed before December 8, 2011 in accordance with a specific license issued by an Agreement State under comparable provisions to paragraph (15) of Rule 0400-20-10-.13 authorizing distribution to persons exempt from regulatory requirements~~.

~~(ii) Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an Agreement State shall be considered exempt under subpart (i) of this part, provided that the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device, and provided further that they meet the requirements of paragraph (15) of Rule 0400-20-10-.13.~~

~~(iii) Gas and aerosol detectors containing NARM previously manufactured and distributed in accordance with a specific license issued by a Licensing State shall be considered exempt under subpart (i) of this part, provided that the device is labeled in accordance with the specific license authorizing distribution, and provided further that they meet the requirements of paragraph (15) of Rule 0400-20-10-.13.~~

10. Reserved. ~~Self luminous products containing radioactive material.~~

~~(i) Except for persons who manufacture, process, or produce self-luminous products containing tritium, krypton-85, or promethium-147, any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, owns or acquires tritium, krypton-85, promethium-147 in self-luminous products manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.22 of 10 CFR Part 32, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements.~~

~~(ii) The exemption in subpart (i) of this part does not apply to tritium, krypton-85, or promethium-147 used in products for frivolous purposes or in toys or adornments.~~

~~(iii) Any person is exempt from these regulations to the extent that such person receives, possesses, uses, transfers, or owns self-luminous products containing less than 0.1 microcurie of radium-226 which were acquired prior to September 28, 1991.~~

11. Ionizing radiation measuring instruments containing, for purposes of internal calibration or standardization, one or more sources of radioactive material; provided that:

(i) Each source contains no more than one exempt quantity set forth in Schedule RHS 8-3;

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[3] *Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity, or other product containing radioactive material, whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, DC 20555.*

(ii) Each instrument contains no more than 10 exempt quantities. For purposes of this part, an instrument's source(s) may contain either one type or different types of radionuclides and an individual exempt quantity may be composed of fractional parts of one or more of the exempt quantities in Schedule RHS 8-3, provided that the sum of such fractions shall not exceed unity; and

(iii) For purposes of this part, 0.05 microcuries of americium-241 is considered an exempt quantity under Schedule RHS 8-3.

12. Reserved.

13. Ionization chamber smoke detectors containing not more than 1 microcurie (μCi) of americium-241 per detector in the form of a foil and designed to protect life and property from fires.

(b) Any person who desires to apply radioactive material to, or to incorporate radioactive material into, the products exempted in subparagraph (a) of this paragraph or who desires to initially transfer for sale or distribution such products containing radioactive material, should apply for a specific license pursuant to 10 CFR 32.14, which license states that the product may be distributed by the licensee to persons exempt from subparagraph (a) of this paragraph.

(3) Exempt quantities.

(a) Except as provided in subparagraphs (c) through (e) of this paragraph, any person is exempt from these ~~regulations~~ rules to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in individual quantities each of which does not exceed the applicable quantity set forth in Schedule RHS 8-3.

(b) Any person who possesses radioactive material received or acquired before September 25, 1971, under the general license formerly provided in this ~~Chapter~~ chapter is exempt from the requirements for a license set forth in this ~~Chapter~~ chapter to the extent that such person possesses, uses, transfers, or owns such radioactive material.

(c) This paragraph does not authorize the production, packaging or repackaging of radioactive material for purposes of commercial distribution~~,~~ or the incorporation of radioactive material into products intended for commercial distribution.

(d) No person may, for purposes of commercial distribution, transfer radioactive material in the individual quantities set forth in Schedule RHS 8-3, knowing or having reason to believe that such quantities of radioactive material will be transferred to persons exempt under this paragraph or equivalent regulations of the U.S. Nuclear Regulatory Commission, any Agreement State, or any Licensing State, except in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.18 of 10 CFR Part 32 or by the Department pursuant to paragraph (14) of Rule 0400-20-10-.13 which license states that the radioactive material may be transferred by the licensee to persons exempt under this paragraph or the equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or Licensing State.[4]

(e) No person may, for purposes of producing an increased radiation level, combine quantities of radioactive material covered by this exemption so that the aggregate quantity exceeds the limits

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[4] *Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity, or other product containing radioactive material, whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, DC 20555.*

set forth in Schedule RHS 8–3 in the Appendix to this ~~Chapter~~ chapter, except for radioactive material combined within a device placed in use before May 3, 1999, or as otherwise permitted by the ~~regulations~~ rules in this ~~Chapter~~ chapter.

(4) Capsules containing carbon-14 urea for 'in vivo' diagnostic use for humans.

(a) Except as provided in subparagraphs (b) and (c) of this paragraph, any person is exempt from these ~~regulations~~ rules to the extent that such person receives, possesses, uses, transfers, owns or acquires capsules containing 1 microcurie (37 kilobecquerels) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for 'in vivo' diagnostic use for humans.

(b) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license under this ~~Chapter~~ chapter.

(c) Any person who desires to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution such capsules shall apply for and receive a specific license pursuant to 10 CFR 32.21.

(d) Nothing in this paragraph relieves persons from complying with applicable FDA, other ~~Federal~~ federal and ~~State~~ state requirements governing receipt, administration and use of drugs.

~~9.~~(5) Gas and aerosol detectors containing radioactive material.

~~(i)~~(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from these ~~regulations~~ rules to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect ~~life~~ health, safety, or property ~~from fires and airborne hazards~~ provided that detectors containing radioactive material shall have been manufactured, processed, produced, or initially transferred[5] in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to section 32.26 of 10 CFR Part 32 ~~or a licensing state pursuant to regulations equivalent to paragraph (15) of Rule 0400-20-10-.13 that authorizes the initial transfer of the detectors to persons who are exempt from regulatory requirements~~. This exemption also covers gas and aerosol detectors manufactured or distributed before December 8, 2011 in accordance with a specific license issued by an Agreement State under comparable provisions to ~~paragraph (15) of Rule 0400-20-10-.13~~ 10 CFR 32.26 authorizing distribution to persons exempt from regulatory requirements.

~~(ii)~~(b) ~~Gas and aerosol detectors previously manufactured and distributed to general licensees in accordance with a specific license issued by an Agreement State shall be considered exempt under subpart (i) of this part, provided that the device is labeled in accordance with the specific license authorizing distribution of the generally licensed device, and provided further that they meet the requirements of paragraph (15) of Rule 0400-20-10-.13.~~ Any person who desires to manufacture, process, or produce gas and aerosol detectors containing radioactive material, or to initially transfer such products for use under subparagraph (a) of this paragraph, should apply for a license under 10 CFR 32.26 and for a certificate of registration in accordance with 10 CFR 32.210.

~~(iii) Gas and aerosol detectors containing NARM previously manufactured and distributed in~~

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[5] *Authority to transfer possession or control by the manufacturer, processor or producer of any equipment, device, commodity, or other product containing radioactive material, whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, DC 20555.*

~~accordance with a specific license issued by a Licensing State shall be considered exempt under subpart (i) of this part, provided that the device is labeled in accordance with the specific license authorizing distribution, and provided further that they meet the requirements of paragraph (15) of Rule 0400-20-10-.13.~~

~~10.~~(6) Self luminous products containing radioactive material.

~~(i)~~(a) Except for persons who manufacture, process, or produce self-luminous, or initially transfer for sale or distribution products containing tritium, krypton-85, or promethium-147, any person is exempt from these rules ~~regulations~~ to the extent that such person receives, possesses, uses, transfers, owns or acquires tritium, krypton-85, promethium-147 in self luminous products manufactured, processed, produced, imported, or transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section 32.22 of 10 CFR Part 32, which license authorizes the transfer of the product to persons who are exempt from regulatory requirements.

(b) Any person who desires to manufacture, process, or produce, or initially transfer for sale or distribution self-luminous products containing tritium, krypton-85, or promethium-147 for use under subparagraph (a) of this paragraph, should apply for a license under 10 CFR 32.22 and for a certificate of registration in accordance with 10 CFR 32.210.

~~(ii)~~(c) The exemption in ~~subpart (i) of this part~~ subparagraph (a) of this paragraph does not apply to tritium, krypton-85, or promethium-147 used in products for frivolous purposes or in toys or adornments.

~~(iii)~~(d) Any person is exempt from these rules ~~regulations~~ to the extent that such person receives, possesses, uses, transfers, or owns self luminous products containing less than 0.1 microcurie of radium-226 which were acquired prior to September 28, 1991.

(7) Certain Industrial Devices.

(a) Except for persons who manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness, density, level, interface location, radiation, leakage, or qualitative or quantitative chemical composition, or for producing an ionized atmosphere, any person is exempt from the requirements for a license set forth in Chapters 0400-20-05, 0400-20-07, 0400-20-08, 0400-20-10, and 0400-20-12 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material, in these certain detecting, measuring, gauging, or controlling devices and certain devices for producing an ionized atmosphere, and manufactured, processed, produced in accordance with a specific license issued under 10 CFR 32.30, which license authorizes the initial transfer of the device for use under this paragraph. This exemption does not cover sources not incorporated into a device, such as calibration and reference sources.

(b) Any person who desires to manufacture, process, produce, or initially transfer for sale or distribution industrial devices containing radioactive material for use under subparagraph (a) of this paragraph, should apply for a license under 10 CFR 32.30 and for a certificate of registration in accordance with 10 CFR 32.210.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Paragraph (1) of Rule 0400-20-10-.10 General Licenses – Radioactive Material Other Than Source Material is amended by deleting it in its entirety and substituting instead the following:

(1) Reserved. ~~A general license is hereby issued to receive, acquire, own, possess, use and transfer radioactive material incorporated in a device or equipment which is listed in Schedule RHS 8-5 and has~~

~~been manufactured pursuant to a specific license or equivalent licensing document, issued by the Division, the U.S. Nuclear Regulatory Commission, or any Agreement State and authorizing distribution under the general license of this paragraph or its equivalent.~~

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Paragraph (7) of Rule 0400-20-10-.11 Filing of Application for Specific Licenses is amended by deleting it in its entirety and substituting instead the following:

(7) (a) An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source shall either:

~~(a)~~1. Identify the source or device by manufacturer and model number as registered with the NRC under 10 CFR 32.210 or with an Agreement State or for a source or a device containing radium-226 or accelerator-produced radioactive material with an Agreement State under provisions comparable to 10 CFR 32.210; or

~~(b)~~2. Contain the information identified in 10 CFR 32.210(c).

~~(c)~~(b) For sources or devices ~~containing naturally occurring or accelerator produced radioactive material~~ manufactured prior to ~~November 30, 2007~~ the effective date of these rules that are not registered with the NRC under 10 CFR 32.210 or with an Agreement State, and for which the applicant is unable to provide all categories of information specified in 10 CFR 32.210(c), the applicant must provide:

1. All available information identified in 10 CFR 32.210(c) concerning the source, and, if applicable, the device; and

2. Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a recent leak test.

(c) For sealed sources and devices allowed to be distributed without registration of safety information in accordance with part (18)(g)1 of Rule 0400-20-10-.13, the applicant may supply only the manufacturer, model number, and radionuclide and quantity.

(d) If it is not feasible to identify each sealed source and device individually, the applicant may propose constraints on the number and type of sealed sources and devices to be used and the conditions under which they will be used, in lieu of identifying each sealed source and device.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Part 1 of subparagraph (b) of paragraph (4) of Rule 0400-20-10-.12 General Requirements for the Issuance of Specific Licenses is amended by deleting it in its entirety and substituting instead the following:

1. The probable extent of contamination, including contamination caused by residual radioactivity, as defined at subparagraph (1)(ooo) of Rule 0400-20-04-.04, through the use or possession of radioactive material at the facility or site and the probable cost of removal of such contamination to a level in conformance with prevailing national standards or guidelines. This consideration shall encompass all probable contaminating event associated with the licensee's methods or modes of operation;

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Rule 0400-20-10-.13 Special Requirements for Issuance of Specific Licenses is amended by deleting it in its entirety and substituting instead the following:

0400-20-10-.13 Special Requirements for Issuance of Specific Licenses.

(1) Reserved.

(2) Reserved.

(3) Reserved.

(4) Multiple quantities of types of radioactive material for use in research and development. In addition to the requirements set forth in Rule 0400-20-10-.12, a specific license for multiple quantities or types of radioactive material for use in research and development will be issued only if:

(a) The applicant has established an isotope committee (composed of such persons as a radiological safety officer, a representative of the business office, and one or more persons trained or experienced in the safe use of radioactive materials) which will review and approve, in advance of purchase of radioisotopes, proposals for use; and

(b) The applicant has appointed a radiological safety officer who will advise and assist on radiological safety problems.

(5) Manufacture, distribution or initial distribution of devices to persons generally licensed under paragraph (2) of Rule 0400-20-10-.10.

(a) In addition to the requirements set forth in Rule 0400-20-10-.12, a specific license to distribute certain devices of the types enumerated in paragraph (2) of Rule 0400-20-10-.10 to persons generally licensed under paragraph (2) of Rule 0400-20-10-.10 or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State will be issued only if:

~~(a)~~1. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control, labels, proposed uses, installation, servicing, leak testing, operating and safety instructions, and potential hazards of the device to provide assurance that:

~~1.~~(i) The device can be safely operated by persons not having training in radiological protection;

~~2.~~(ii) Under ordinary conditions of handling, storage and use of the device, the radioactive material contained in the device will not be released or inadvertently removed from the device, and no person will receive in 1 year a dose in excess of 10 percent of the limits specified in Rule 0400-20-05-.50; and

~~3.~~(iii) Under accident conditions (such as fire and explosion) associated with handling, storage and use of the device, it is unlikely that any person would receive an external radiation dose or dose commitment in excess of the dose to the appropriate organ as specified in Table RHS 7-1:

TABLE RHS 7-1
TABLE OF ORGAN DOSES

Part of Body	rem	mSv/ Sv

Whole body; head and trunk; active blood forming organs; gonads; or lens of eye	15	150 mSv
Hands and forearms; feet and ankles; localized areas of skin averaged over areas no larger than 1 square centimeter	200	2 Sv
Other organs	50	500 mSv

~~(b)~~2. Each device bears a durable, legible clearly visible label or labels approved by the Division that contain(s) in a clearly identified and separate statement:

~~1.~~(i) Instructions and precautions for safe installation, operation and servicing of the device (documents such as operating and service manuals may be identified in the label and used to provide this information);

~~2.~~(ii) The requirements, or lack of requirement, for leak testing, or for testing any on-off mechanism and indicator, including the maximum time interval for such testing, and the identification of the radioactive material by isotope, quantity of radioactivity and date of determination of the quantity; and

~~3.~~(iii) The information called for in one of the following statements in the same or similar form:

~~(i)~~(I) The receipt, possession, use, and transfer of this device, Model _____,[6] Serial No. _____,[9] are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or of a State with which the NRC has entered into an agreement for the exercise of regulatory authority. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION – RADIOACTIVE MATERIAL

_____
(Name of manufacturer or distributor)

~~(ii)~~(II) The receipt, possession, use and transfer of this device Model _____,[9] Serial No. _____,[9] are subject to a general license or the equivalent and the regulations of a Licensing State. This label shall be maintained on the device in a legible condition. Removal of this label is prohibited.

CAUTION – RADIOACTIVE MATERIAL

_____
(Name of manufacturer or distributor)

~~(c)~~3. Each device having a separable source housing that provides the primary shielding for the source also bears, on the source housing, a durable label containing the device model number and serial number, the isotope and quantity, the words "CAUTION -

[6] *If specified elsewhere in labeling affixed to the device, the model, serial number and manufacturer or distributor may be omitted from this label.*

RADIOACTIVE MATERIAL," and, if practicable, the radiation symbol described in Rule 0400-20-05-.110 and the name of the manufacturer or initial distributor.

~~(d)~~4. Each device meeting the criteria of Rule 0400-20-10-.10 bears a permanent (e.g., embossed, etched, stamped, or engraved) label affixed to the source housing if separable, or the device if the source housing is not separable, that includes the words, "CAUTION – RADIOACTIVE MATERIAL," and, if practicable, the radiation symbol described in Rule 0400-20-05-.110.

5. The device has been registered in the Sealed Source and Device Registry.

~~(e)~~(b) In the event the applicant desires that the device be tested at intervals longer than 6 months, either for proper operation of the on-off mechanism and indicator, if any, or for leakage of radioactive material, or for both, he shall include in his application information to demonstrate that such longer interval is justified by performance characteristics of the device or similar devices, and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material or failure of the on-off mechanism indicator. In determining the acceptable interval for the test for leakage of radioactive material, the Division will consider information that includes, but is not limited to:

1. Primary containment (source capsule);

2. Protection of primary containment;

3. Method of sealing containment;

4. Containment construction materials;

5. Form of contained radioactive material;

6. Maximum temperature withstood during prototype tests;

7. Maximum pressure withstood during prototype tests;

8. Maximum quantity of contained radioactive material;

9. Radiotoxicity of contained radioactive material; and

10. Operating experience with identical devices or similarly designed and constructed devices;

~~(f)~~(c) In the event the applicant desires that the general licensee under paragraph (2) of Rule 0400-20-10-.10 or under equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State, be authorized to install the device, collect the sample to be analyzed by a specific licensee for leakage of radioactive material, service the device, test the on-off mechanism and indicator, or remove the device from installation, he shall include in his application written instructions to be followed by the general licensee, estimated calendar quarter doses associated with such activity or activities and the basis for such estimates. The submitted information shall demonstrate that performance of such activity or activities by an individual untrained in radiological protection, in addition to other handling, storage and use of devices under the general license, will not cause that individual to receive in one year a dose in excess of 10 percent of the limits specified in Rule 0400-20-05-.50;

~~(g)~~(d) Before radioactive material may be transferred in a device for use under a general license, each person licensed under this paragraph shall furnish the following information to each person to whom he directly or through an intermediate person transfers radioactive material in a device. In

the case of a transfer through an intermediate person, the information shall be provided to the intended user and to the intermediate person prior to initial transfer to the intermediate person.

For use under the general license contained in paragraph (2) of Rule 0400-20-10-.10	For use under equivalent regulations of the U.S. Nuclear Regulatory Commission or an Agreement State or a Licensing State
1. A Copy of the general license contained in paragraph (2) of Rule 0400-20-10-.10.	A copy of the general license contained in the U.S. Nuclear Regulatory Commission's, Agreement State's, or Licensing State's regulations equivalent to paragraph (2) Rule 0400-20-10-.10. Alternatively, he may furnish a copy of the general license contained in paragraph (2) of Rule 0400-20-10-.10. If a copy of the general license in paragraph (2) of Rule 0400-20-10-.10 is furnished to such a person, it shall be accompanied by a note explaining that the use of the device is regulated by the U.S. Nuclear Regulatory Commission, Agreement State or Licensing State under requirements substantially the same as those in paragraph (2) of Rule 0400-20-10-.10;
If parts (2)(c)2 through 4 or 13 of Rule 0400-20-10-.10 do not apply to the particular device, those parts may be omitted;	If parts (2)(c)2 through 4 or 13 of Rule 0400-20-10-.10, or sections of the Agreement State or Licensing State regulations equivalent to ~~these~~ those parts, do not apply to the particular device, ~~these~~ those parts may be omitted.
2. A copy of Rules 0400-20-10-.26, 0400-20-05-.140 and 0400-20-05-.141.	A copy of 10 CFR §§31.2, 30.51, 20.2201, and 20.2202 or the Agreement State or Licensing State regulations equivalent to these NRC regulations.

3. A list of services that may only be performed by a specific licensee;

4. Information on acceptable disposal options including estimated costs of disposal;

5. A statement that regulatory agencies may issue citations and civil penalties for improper disposal; and

6. The name or title, address, and phone number of the person at the appropriate regulatory agency from whom additional information may be obtained.

~~(h)~~(e) An alternative approach to informing customers may be proposed by the licensee for approval by the Division.

~~(i)~~(f) Each device that is transferred on May 26, 2008 or later shall meet the labeling requirements in ~~subparagraphs (b), (c) and (d)~~ parts (a)2, 3, and 4 of this paragraph.

~~(j)~~(g) 1. Each person licensed under this paragraph to distribute devices to generally licensed persons shall:

~~1.~~(i) Report to the Division, at its offices located at the address in Rule 0400-20-04-.07, all transfers of such devices to persons for use under the general license in paragraph (2) of Rule 0400-20-10-.10.

~~2.~~(ii) Report to the U.S. Nuclear Regulatory Commission all transfers of such devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 31.5 of 10 CFR Part 31.

~~3.~~(iii) Report to the responsible Agreement or Licensing State agency all transfers of devices manufactured and distributed pursuant to this paragraph for use under a general license in that state's regulations equivalent to paragraph (2) of Rule 0400-20-10-.10.

~~4.~~2. Reports required by ~~parts 1, 2, and 3~~ subparts 1(i), (ii) and (iii) of this subparagraph shall identify:

(i) Each general licensee by name and mailing address for the location of use; if there is no mailing address for the location of use, an alternate address for the general licensee shall be submitted along with information on the actual location of use;

(ii) The name, title and phone number of the person identified by the general licensee as having knowledge of and authority to take required actions to ensure compliance with the appropriate regulations and requirements;

(iii) The date of transfer;

(iv) The type, model number and serial number of the device transferred; and

(v) The quantity and type of radioactive material contained in the device.

~~5.~~3. If one or more intermediate persons will temporarily possess the device at the intended place of use prior to its possession by the user, the report shall include the same information for both the intended user and each intermediate person, and clearly designate the intermediate person(s).

~~6.~~4. For devices received from a general licensee, the report shall include the identity of the general licensee by name and address, the type, model number and serial number of the device received, the date of receipt, and, in the case of devices not initially transferred by the reporting licensee, the name of the manufacturer or initial transferor.

~~7.~~5. If the licensee makes changes to a device possessed by a general licensee, such that the label must be changed to update required information, the report shall identify the general licensee, the device, and the changes to information on the device label.

~~8.~~6. (i) The report shall cover each calendar quarter, shall be filed within 30 days of the end of the calendar quarter, and shall clearly indicate the period covered by the report.

~~9.~~(ii) The report shall clearly identify the specific licensee submitting the report and include the license number of the specific licensee.

~~10.~~(iii) If no transfers have been made to or from persons generally licensed under paragraph (2) of Rule 0400-20-10-.10 during the reporting period, the report shall so indicate.

~~11.~~(h) ~~Keep~~ Each person licensed under this paragraph to distribute devices to generally licensed persons shall keep records showing the name, address of use, and responsible individual for each general licensee to whom he directly or through an intermediate person transfers radioactive material in devices for use pursuant to the general license provided in paragraph (2) of Rule 0400-20-10-.10 or equivalent regulations of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State. The records shall show the date of each transfer, the model number, serial number and the isotope and quantity of radioactivity in each device transferred, the identity of any intermediate person(s), and compliance with the report requirements of ~~this~~ subparagraph (g) of this paragraph. The records required by this ~~part~~ subparagraph shall be maintained for a period of 3 years from the date of the recorded event.

(6) The use of sealed sources in industrial radiography.

In addition to the requirements set forth in Rule 0400-20-10-.12, a specific license for use of sealed sources in industrial radiography will be issued only if:

(a) The applicant will have a program for training radiographers and radiographer's assistants and submits to the Division for approval a schedule or description of such program which specifies the:

1. Initial training:

(i) This initial training will consist of a complete training program as outlined in Rule 0400-20-08-.07; or

(ii) Résumés of prior training and experience of individuals that show fulfillment of the requirements of subparagraphs (7)(a) and (b) of Rule 0400-20-08-.07 and the program for the initial training of such individuals in the licensee's or registrant's specific industrial radiography program as outlined in subparagraphs (7)(c), (d) and (e) of Rule 0400-20-08-.07;

2. Periodic training;

3. On-the-job training;

4. Means to be used by the applicant to determine the radiographer's knowledge and understanding of and ability to comply with Rule Division ~~regulations~~ 0400-20 and licensing requirements and the operating and emergency procedures of the applicant; and

5. Means to be used by the applicant to determine the radiographer's assistant's knowledge and understanding of and ability to comply with the operating and emergency procedures of the applicant;

(b) The applicant has established and submits to the Division for approval written operating and emergency procedures as described in paragraph (2) of Rule 0400-20-08-.05;

(c) The applicant will have an internal inspection system to assure that Rule Division ~~regulations~~ 0400-20, license provisions, and the applicant's operating and emergency procedures are followed by radiographers and radiographer's assistants; the inspection system shall include the performance of internal inspections at intervals not to exceed 3 months and the retention of records of such inspections for inspection by the Division.

(d) The applicant submits to the Division a description of his overall organizational structure pertaining to the radiography program, including specified delegations of authority and responsibility for operation of the program; and

(e) The applicant who desires to conduct his own leak tests must establish procedures to be followed in testing sealed sources for possible leakage and contamination and submit to the Division for approval a description of such procedures including:

1. Instrumentation to be used;

2. Method of performing tests, e.g., points on equipment to be smeared and method of taking smear; and

3. Pertinent experience of the person who will perform the test.

(7) Multiple quantities or types of radioactive material for use in processing.

In addition to the requirements set forth in Rule 0400-20-10-.12, a specific license for multiple quantities or types of radioactive material for use in processing for distribution to other authorized persons will be issued only if[7]:

(a) The applicant's staff has experience in the use of radioisotopes for processing and distribution; and

(b) The applicant has appointed a radiological safety officer who will advise and assist on radiological safety problems.

(8) Introduction of radioactive material into products in exempt concentrations.

In addition to the requirements set forth in Rule 0400-20-10-.12, a specific license authorizing the introduction of radioactive material into a product or material owned by or in the possession of the licensee or another to be transferred to persons exempt under subparagraph (1)(a) of Rule 0400-20-10-.04 will be issued only if:

(a) The applicant submits a description of the product or material into which the radioactive material will be introduced, intended use of the radioactive material and the product or material into which it is introduced, method of introduction, initial concentration of the radioactive material in the product or material, control methods to assure that no more than the specified concentration is introduced into the product or material, estimated time interval between introduction and transfer of the product or material and estimated concentration of the radioactive material in the product or material at the time of transfer; and

(b) The applicant provides assurance that the concentrations of radioactive material at the time of transfer will not exceed the concentrations in Schedule RHS 8-4, that reconcentration of the radioactive material in concentrations exceeding those in Schedule RHS 8-4 is not likely, that lower concentrations cannot be used, and that the product or material is not likely to be incorporated in any food, beverage, cosmetic, drug, or other commodity or product designed for ingestion or inhalation by, or application to, a human being. Each person licensed under this paragraph, shall file an annual report with the Division which shall identify the type and quantity of each product or material into which radioactive material has been introduced during the reporting period, name and address of the person who owns or possesses the product or material into which radioactive material has been introduced at the time of introduction, the type and quantity of radioactive material introduced into each product or material, and the initial concentrations of radioactive material in the product or material at the tie of transfer of the radioactive material by

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[7] *Authority to transfer possession or control by the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing by product material whose subsequent possession, use, transfer, and disposal by all other persons are exempted from regulatory requirements may be obtained only from the U.S. Nuclear Regulatory Commission, Washington, DC 20555.*

the licensee. If no transfers of radioactive material have been made pursuant to this paragraph during the reporting period, the report shall so indicate. The report shall be submitted within 30 days after the end of each calendar year.

(9) Radioactive material in luminous safety devices for use in aircraft.

In addition to the requirements set forth in Rule 0400-20-10-.12, a specific license to manufacture, assemble, repair, or distribute to persons generally licensed under paragraph (3) of Rule 0400-20-10-.10 luminous safety devices containing radioactive materials for use in aircraft will be issued only if the requirements of Sections 32.53, 32.54, 32.55, and 32.56 ~~and 32.101~~ of 10 CFR Part 32 or their equivalent are met.

(10) Manufacture, preparation or transfer for commercial distribution of radiopharmaceuticals containing radioactive material for medical use.

(a) An application for a specific license to manufacture, prepare, or transfer for commercial distribution radiopharmaceuticals containing radioactive material for use by persons authorized pursuant to Chapter 0400-20-07 will be approved if:

1. The applicant satisfies the general requirements specified in Rule 0400-20-10-.12;

2. The applicant submits evidence that the applicant is at least one of the following:

(i) Registered or licensed with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);

(ii) Registered or licensed with a state agency as a drug manufacturer;

(iii) Licensed as a pharmacy by the Tennessee Board of Pharmacy;

(iv) Operating as a nuclear pharmacy within a Federal medical institution; or

(v) A Positron Emission Tomography (PET) drug production facility registered with a state agency.

3. The applicant submits information on the radionuclide; chemical and physical form; packaging including maximum activity per vial, syringe, generator or other container of the radioactive drug; and shielding provided by the packaging of the radioactive material for safe handling and storage of radiopharmaceuticals by medical use licensees; and

4. The applicant satisfies the following labeling requirements:

(i) A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic or other material, of a radioactive drug to be transferred for commercial distribution. The label shall include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half–life greater than 100 days, the time may be omitted.

(ii) A label is affixed to each syringe, vial or other container used to hold a radioactive drug to be transferred for commercial distribution. The label shall include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that

ensures that the syringe, vial or other container can be correlated with the information on the transport radiation shield label.

(b) A licensee described by subpart (a)2(iii) of this paragraph:

1. May prepare radiopharmaceuticals for medical use, as defined in Rule 0400-20-07-.05, provided that the radiopharmaceuticals are prepared by either an authorized nuclear pharmacist, as specified in parts 2 and 4 of this subparagraph, or an individual under the supervision of an authorized nuclear pharmacist as specified in Rule 0400-20-07-.19.

2. May allow a pharmacist to work as an authorized nuclear pharmacist if:

   (i) This individual qualifies as an authorized nuclear pharmacist as defined in Rule 0400-20-07-.05,

   (ii) This individual meets the requirements specified in paragraph (2) of Rule 0400-20-07-.25 and Rule 0400-20-07-.27, and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist; or

   (iii) This individual is designated as an authorized nuclear pharmacist in accordance with part 4 of this subparagraph.

3. The actions authorized in parts 1 and 2 of this subparagraph are permitted in spite of more restrictive language in license conditions.

4. May designate a pharmacist (as defined in Rule 0400-20-07-.05) as an authorized nuclear pharmacist if:

   (i) The individual was a nuclear pharmacist at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

5. Shall provide to the Division a copy of each individual's:

   (i) Certification by a specialty board whose certification process has been recognized by the Division, U.S. Nuclear Regulatory Commission or an Agreement State as specified in paragraph (1) of Rule 0400-20-07-.25 with the written attestation signed by a preceptor as required by subparagraph (2)(b) of Rule 0400-20-07-.25; or

   (ii) The Division, U.S. Nuclear Regulatory Commission or other Agreement State license; or

   (iii) NRC master materials licensee permit; or

   (iv) The permit issued by a licensee or NRC master materials permittee of broad scope or the authorization from a commercial nuclear pharmacy authorized to list its own authorization nuclear pharmacist; or

   (v) Documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a Government agency or Federally recognized Indian Tribe before November 30, 2007 or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and

(vi) A copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, the individual to work as an authorized nuclear pharmacist under subparts 2(i) and (ii) of this subparagraph.

(c) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation. The licensee shall measure by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha–, beta–, or photon–emitting radioactive drugs before transfer for commercial distribution. In addition, the licensee shall:

1. Perform tests before initial use, periodically and following repair, on each instrument for accuracy, linearity and geometry dependence, as appropriate for the use of the instrument; and make adjustments when necessary; and

2. Check each instrument for constancy and proper operation at the beginning of each day of use.

(d) Nothing in this rule relieves the licensee from complying with applicable FDA, other ~~Federal~~ federal and ~~State~~ state requirements governing radioactive drugs.

(11) Manufacture and distribution of generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material. In addition to the requirements set forth in Rule 0400-20-10-.12, a specific license to manufacture and distribute generators or reagent kits containing radioactive material for preparation of radiopharmaceuticals by persons licensed pursuant to Chapter 0400-20-07 will be issued only if[8]:

(a) The requested site for manufacture and/or distribution of generators or reagent kits is located within this State;

(b) The applicant submits evidence that:

1. The generator or reagent kit is to be manufactured, labeled and packaged in accordance with the Federal Food, Drug and Cosmetic Act or the Public Health Service Act, such as a new drug application (NDA) approved by the United States Food and Drug Administration (FDA), a biologic product license issued by FDA or a "Notice of Claimed Investigational Exemption for a New Drug" (IND) accepted by FDA; or

2. The manufacture and distribution of the generator or reagent kit are not subject to the Federal Food, Drug and Cosmetic Act and the Public Health Service Act;

(c) The applicant submits information on the radionuclide, chemical and physical form, packaging including maximum activity per package, and shielding provided by the packaging of the radioactive material contained in the generator or reagent kit;

(d) The label affixed to the generator or reagent kit contains information on the radionuclide, quantity and date of assay;

(e) The label affixed to the generator or reagent kit, or the leaflet or brochure which accompanies the generator or reagent kit, contains:

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[8] *Although the Department does not regulate the manufacture and distribution of reagent kits that do not contain radioactive material, it does regulate the use of such reagent kits for the preparation of radiopharmaceuticals containing radioactive material as part of its licensing and regulation of the users of radioactive material. Any manufacturer of reagent kits that do not contain radioactive material who desires to have reagent kits approved by the Department for use by persons licensed pursuant to Chapter 0400-20-07 may submit the pertinent information specified in this paragraph.*

1. Information, from a radiation safety standpoint, on the procedures to be followed and the equipment and shielding to be used in eluting the generator or processing radioactive material with the reagent kit; and

2. A statement that this generator or reagent kit, as appropriate, is approved for use by persons licensed by the Division pursuant to Chapter 0400-20-07 of these ~~regulations~~ rules, or under equivalent licenses of the U.S. Nuclear Regulatory Commission, an Agreement State or a Licensing State; and

(f) The labels, leaflets or brochures required by subparagraphs (d) and (e) of this paragraph are in addition to the labeling required by the FDA and they may be separate from or, with the approval of FDA, may be combined with the labeling required by FDA.

(12) Manufacture and distribution of sources or devices containing radioactive material for medical uses.

(a) In addition to the requirements set forth in Rule 0400-20-10-.12, an application for a specific license to manufacture and distribute sources and devices containing radioactive material to persons licensed under Chapter 0400-20-07 of these ~~regulations~~ rules for use as a calibration, transmission, or reference source or for the uses listed in Rules 0400-20-07-.51, 0400-20-07-.61, 0400-20-07-.63, and 0400-20-07-.81 will be approved if:

~~(a)~~1. The applicant satisfies the general requirements in Rule 0400-20-10-.12.

~~(b)~~2. The applicant submits information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

~~1.~~(i) The radioactive material contained, its chemical and physical form and amount;

~~2.~~(ii) Details of design and construction of the source or device;

~~3.~~(iii) Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered;

~~4.~~(iv) For devices containing radioactive material, the radiation profile of a prototype device;

~~5.~~(v) Details of quality control procedures to assure that production sources and devices meet the standards of the design and prototype tests;

~~6.~~(vi) Procedures and standards for calibrating sources and devices;

~~7.~~(vii) Legend and methods for labeling sources and devices as to their radioactive content; and

~~8.~~(viii) Instructions for handling and storing the source or device for radiation safety; these instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device; provided that instructions which are too lengthy for such label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

~~(c)~~3. The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the Division has approved distribution of the (name of the source or device) to persons licensed to use radioactive material identified in Rules 0400-20-07-

.31, 0400-20-07-.51, 0400-20-07-.61, and 0400-20-07-.63 as appropriate, and to persons who hold an equivalent license issued by the U.S. NRC or an Agreement State.

4. The source or device has been registered in the Sealed Source and Device Registry.

~~(d)~~(b) In the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than 6 months, the applicant shall include in his application information to demonstrate that such longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source. In determining the acceptable interval for test of leakage of radioactive material, the Division will consider information that includes, but is not limited to:

1. Primary containment (source capsule);

2. Protection of primary containment;

3. Method of sealing containment;

4. Containment construction materials;

5. Form of contained radioactive material;

6. Maximum temperature withstood during prototype tests;

7. Maximum pressure withstood during prototype tests;

8. Maximum quantity of contained radioactive material;

9. Radiotoxicity of contained radioactive material; and

10. Operating experience with identical sources or devices or similarly designed and constructed devices;

(13) Manufacture and distribution of radioactive material for certain in vitro clinical or laboratory testing under general license.

In addition to the requirements set forth in Rule 0400-20-10-.12, a specific license to manufacture or distribute radioactive material for use under the general license of paragraph (7) of Rule 0400-20-10-.10 will be issued only if:

(a) The radioactive material is to be prepared for distribution in prepackaged units of:

1. Iodine-125 in units not exceeding 10 microcuries each.

2. Iodine-131 in units not exceeding 10 microcuries each.

3. Carbon-14 in units not exceeding 10 microcuries each.

4. Hydrogen-3 (tritium) in units not exceeding 50 microcuries each.

5. Iron-59 in units not exceeding 20 microcuries each.

6. Cobalt-57 in units not exceeding 10 microcuries each.

7. Selenium-75 in units not exceeding 10 microcuries each.

8. Mock Iodine-125 in units not exceeding 0.05 microcurie of iodine-129 and 0.005 microcurie of americium-241 each.

(b) Each prepackaged unit bears a durable, clearly visible label:

1. Identifying the radioactive contents as to chemical form and radionuclide, and indicating that the amount of radioactivity does not exceed 10 microcuries of iodine-131, iodine-125, cobalt-57, selenium-75, or carbon-14; 50 microcuries of hydrogen-3 (tritium); 20 microcuries of iron-59; or Mock Iodine-125 in units not exceeding 0.05 microcurie of iodine-129 and 0.005 microcurie of americium-241 each; and

2. Displaying the radiation caution symbol described in Rule 0400-20-05-.110 and the words, "Caution, Radioactive Material" and "Not for Internal or External Use in Humans or Animals."

(c) The following statement or a substantially similar statement which contains the information called for in the following statement, appears on a label affixed to each prepackaged unit or appears in a leaflet or brochure which accompanies the package:

1. This radioactive material may be received, acquired, possessed and used only by physicians, veterinarians in the practice of veterinary medicine, clinical laboratories or hospitals and only for "in vitro" clinical or laboratory tests not involving internal or external administration of the material, or the radiation there from, to human beings or animals. Its receipt, acquisition, possession, use and transfer are subject to the regulations and a general license of the U.S. Nuclear Regulatory Commission or of a state with which the Commission has entered into an agreement for the exercise of regulatory authority.

_____
(Name of Manufacturer)

(d) The label affixed to the unit, or the leaflet or brochure which accompanies the package, contains adequate information as to the precautions to be observed in handling and storing such radioactive material. In the case of the Mock Iodine-125 reference or calibration source, the information accompanying the source must also contain directions to the licensee regarding the waste disposal requirements set out in Rule 0400-20-05-.120.

(14) Distribution of radioactive material in exempt quantities[9].

(a) An application for a specific license to distribute NARM to persons exempt from these ~~regulations~~ rules pursuant to paragraph (3) of Rule 0400-20-10-.04 will be approved if:

1. The radioactive material is not contained in any food, beverage, cosmetic, drug, or other commodity designed for ingestion or inhalation by, or application to, a human being;

2. The radioactive material is in the form of processed chemical elements, compounds, or mixtures, tissue samples, bioassay samples, counting standards, plated or encapsulated sources, or similar substances, identified as radioactive and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product, or device intended for commercial distribution; and

3. The applicant submits copies of prototype labels and brochures and the Division approves such labels and brochures.

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[9] *See footnote 2 of this Chapter.*

(b) The license issued under subparagraph (a) of this paragraph is subject to the following conditions:

1. No more than 10 exempt quantities shall be sold or transferred in any single transaction. However, an exempt quantity may be composed of fractional parts of one or more of the exempt quantity provided the sum of the fractions shall not exceed unity.

2. Each exempt quantity shall be separately and individually packaged. No more that 10 such packaged exempt quantities shall be contained in any outer package for transfer to persons exempt pursuant to paragraph (3) of Rule 0400-20-10-.04. The outer package shall be such that the dose rate at the external surface of the package does not exceed 0.5 millirem per hour.

3. The immediate container of each quantity or separately packaged fractional quantity of radioactive material shall bear a durable, legible label which:

   (i) Identifies the radionuclide and the quantity of radioactivity; and

   (ii) Bears the words "Radioactive Material."

4. In addition to the labeling information required by part 3 of this subparagraph, the label affixed to the immediate container, or an accompanying brochure, shall:

   (i) State that the contents are exempt from Licensing State requirements;

   (ii) Bear the words "Radioactive Material - Not for Human Use -Incorporation into Foods, Beverages, Cosmetics, Drugs, or Medicinals, or into Products Manufactured for Commercial Distribution is Prohibited - Exempt Quantities Should Not Be Combined"; and

   (iii) Set forth appropriate additional radiation safety precautions and instructions relating to the handling, use, storage and disposal of the radioactive material.

(c) Each person licensed under this paragraph shall maintain records identifying, by name and address, each person to whom radioactive material is transferred for use under paragraph (3) of Rule 0400-20-10-.04 or the equivalent regulations of a Licensing State, and stating the kinds and quantities of radioactive material transferred. An annual summary report stating the total quantity of each radionuclide transferred under the specific license shall be filed with the Division. Each report shall cover the year ending June 30, and shall be filed within 30 days thereafter. If no transfers of radioactive material have been made pursuant to this paragraph during the reporting period, the report shall so indicate.

~~(15) Incorporation of naturally occurring and accelerator-produced radioactive material into gas and aerosol detectors.~~

~~An application for a specific license authorizing the incorporation of NARM into gas and aerosol detectors to be distributed to persons exempt under part (2)(a)9 of Rule 0400-20-10-.04 will be approved if the application satisfies requirements equivalent to those contained in Section 32.26 of 10 CFR Part 32. The maximum quantity of radium-226 in each device shall not exceed 0.1 microcurie.~~

~~(16)~~(15) Special requirements for license to manufacture or initially transfer calibration sources containing americium-241, ~~plutonium~~ or radium-226 for distribution to persons generally licensed under paragraph (4) of Rule 0400-20-10-.10.

(a) An application for a specific license to manufacture or initially transfer calibration or reference sources containing americium-241, ~~plutonium,~~ or radium-226 for distribution to persons generally licensed under paragraph (4) of Rule 0400-20-10-.10 will be approved if:

1. The applicant satisfies the general requirement of Rule 0400-20-10-.12; and

2. The applicant submits sufficient information regarding each type of calibration or reference source pertinent to evaluation of the potential radiation exposure, including:

   (i) Chemical and physical form and maximum quantity of americium 241, ~~plutonium~~ or radium-226 in the source;

   (ii) Details of construction and design;

   (iii) Details of the method of incorporation and binding of the americium-241, ~~plutonium~~ or radium-226 in the source;

   (iv) Procedures for and results of prototype testing of sources, which are designed to contain more than 185 Bq (0.005 µCi) of americium-241, ~~plutonium~~ or radium-226, to demonstrate that the americium-241, ~~plutonium~~ or radium-226 contained in each source will not be released or be removed from the source under normal conditions of use;

   (v) Details of quality control procedures to be followed in manufacture of the source;

   (vi) Description of labeling to be affixed to the source or the storage container for the source; and

   (vii) Any additional information, including experimental studies and tests, required by the Division to facilitate a determination of the safety of the source.

3. Each source will contain no more than 185 kBq (5 µCi) of americium-241, ~~plutonium~~ or radium-226.

4. The Division determines, with respect to any type of source containing more than 185 Bq (0.005 µCi) of americium-241, ~~plutonium~~ or radium-226, that:

   (i) The method of incorporation and binding of the americium-241, ~~plutonium~~ or radium-226 in the source is such that the americium-241, ~~plutonium~~ or radium-226 will not be released or be removed from the source under normal conditions of use and handling of the source; and

   (ii) The source has been subjected to and has satisfactorily passed ~~the prototype~~ appropriate tests prescribed by part 5 of this subparagraph ~~(b) of this paragraph~~.

5. The applicant shall subject at least five prototypes of each source that is designed to contain more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226 to tests as follows:

   (i) The initial quantity of radioactive material deposited on each source is measured by direct counting of the source.

   (ii) The sources are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could adversely affect the effective containment or

binding of americium-241 or radium-226, such as physical handling, moisture, and water immersion.

(iii) The sources are inspected for evidence of physical damage and for loss of americium-241 or radium-226, after each stage of testing, using methods of inspection adequate for determining compliance with the criteria in subpart (iv) of this part.

(iv) Source designs are rejected for which the following has been detected for any unit: Removal of more than 0.185 kilobecquerel (0.005 microcurie) of americium-241 or radium-226 from the source or any other evidence of physical damage.

(b) Reserved. ~~Schedule C- prototype tests for calibration or reference sources containing americium-241, plutonium or radium-226.~~

~~An applicant for a license pursuant to subparagraph (a) of this paragraph shall conduct prototype tests for any type of source which is designed to contain more than 185 Bq (0.005 µCi) of americium-241, plutonium or radium-226, in the order listed, on each of five prototypes of such source, which contains more than 185 Bq (0.005 µCi) of americium-241, plutonium or radium-226, as follows:~~

~~1. Initial measurement.~~

~~The quantity of radioactive material deposited on the source shall be measured by direct counting of the source.~~

~~2. Dry wipe test.~~

~~The entire radioactive surface of the source shall be wiped with filter paper with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper or by direct measurement of the radioactivity on the source following the dry wipe.~~

~~3. Wet wipe test.~~

~~The entire radioactive surface of the source shall be wiped with filter paper, moistened with water, with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper after it has dried or by direct measurement of the radioactivity on the source following the wet wipe.~~

~~4. Water soak test.~~

~~The source shall be immersed in water at room temperature for a period of 24 consecutive hours. The source shall then be removed from the water. Removal of radioactive material from the source shall be determined by direct measurement of the radioactivity on the source after it has dried or by measuring the radioactivity in the residue obtained by evaporation of the water in which the source was immersed.~~

~~5. Dry wipe test.~~

~~On completion of the preceding test in part 4 of this subparagraph, the dry wipe test described in part 2 of this subparagraph shall be repeated.~~

~~6. Observations.~~

~~Removal of more than 185 Bq (0.005 μCi) of radioactivity in any test prescribed by this subparagraph shall be cause for rejection of the source design. Results of prototype tests submitted to the Division shall be given in terms of radioactivity in microcuries and percent of removal from the total amount of radioactive material deposited on the source.~~

(c) Labeling of devices.

Each person licensed under subparagraph (a) of this paragraph shall affix to each source, or storage container for the source, a label which shall contain sufficient information relative to safe use and storage of the source and shall include the following statement or a substantially similar statement which contains the information called for in the following statement:

The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the NRC or an Agreement State. Do not remove this label.

CAUTION--RADIOACTIVE MATERIAL--
THIS SOURCE CONTAINS AMERICIUM-241 [~~PLUTONIUM~~ OR RADIUM-226].
DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

_____
Name of manufacturer or initial transferor

(d) Leak testing of each source. Each person licensed under subparagraph (a) of this paragraph shall perform a dry wipe test upon each source containing more than 3.7 kBq (0.1 μCi) of americium-241, ~~plutonium~~ or radium 226 prior to transferring the source to a general licensee under paragraph (4) of Rule 0400-20-10-.10. This test ~~shall~~ must be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure. The radioactivity on the filter paper ~~shall~~ must be measured by using ~~radiation detection instrumentation~~ methods capable of detecting 185 Bq (0.005 μCi) of americium-241, ~~plutonium,~~ or radium-226. If ~~any such test discloses~~ a source has been shown to be leaking or losing more than 185 Bq (0.005 μCi) of ~~radioactive material~~ americium-241 or radium-226 by the methods described in this subparagraph, the source ~~shall be deemed to be leaking or losing americium-241, plutonium or radium-226~~ must be rejected and ~~shall~~ must not be transferred to a general licensee under paragraph (4) of Rule 0400-20-10-.10 or equivalent regulations of the NRC or an Agreement State.

(16) Special requirements for license to manufacture or initially transfer calibration sources containing plutonium, for distribution to persons generally licensed under paragraph (4) of Rule 0400-20-10-.10.

(a) An application for a specific license to manufacture or initially transfer calibration or reference sources containing plutonium, for distribution to persons generally licensed under paragraph (4) of Rule 0400-20-10-.10 will be approved if:

1. The applicant satisfies the general requirement of Rule 0400-20-10-.12; and

2. The applicant submits sufficient information regarding each type of calibration or reference source pertinent to evaluation of the potential radiation exposure, including:

(i) Chemical and physical form and maximum quantity of plutonium in the source;

(ii) Details of construction and design;

(iii) Details of the method of incorporation and binding of the plutonium in the source;

(iv) Procedures for and results of prototype testing of sources, which are designed to contain more than 185 Bq (0.005 μCi) of plutonium, to demonstrate that the

plutonium contained in each source will not be released or be removed from the source under normal conditions of use;

(v) Details of quality control procedures to be followed in manufacture of the source;

(vi) Description of labeling to be affixed to the source or the storage container for the source; and

(vii) Any additional information, including experimental studies and tests, required by the Division to facilitate a determination of the safety of the source.

3. Each source will contain no more than 185 kBq (5 μCi) plutonium.

4. The Division determines, with respect to any type of source containing more than 185 Bq (0.005 μCi) of plutonium, that:

(i) The method of incorporation and binding of the plutonium in the source is such that the plutonium will not be released or be removed from the source under normal conditions of use and handling of the source; and

(ii) The source has been subjected to and has satisfactorily passed prototype tests prescribed by subparagraph (b) of this paragraph.

(b) An applicant for a license pursuant to subparagraph (a) of this paragraph shall conduct prototype tests for any type of source which is designed to contain more than 185 Bq (0.005 μCi) of plutonium in the order listed, on each of five prototypes of such source, which contains more than 185 Bq (0.005 μCi) of plutonium, as follows:

1. Initial measurement.

The quantity of radioactive material deposited on the source shall be measured by direct counting of the source.

2. Dry wipe test.

The entire radioactive surface of the source shall be wiped with filter paper with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper or by direct measurement of the radioactivity on the source following the dry wipe.

3. Wet wipe test.

The entire radioactive surface of the source shall be wiped with filter paper, moistened with water, with the application of moderate finger pressure. Removal of radioactive material from the source shall be determined by measuring the radioactivity on the filter paper after it has dried or by direct measurement of the radioactivity on the source following the wet wipe.

4. Water soak test.

The source shall be immersed in water at room temperature for a period of 24 consecutive hours. The source shall then be removed from the water. Removal of radioactive material from the source shall be determined by direct measurement of the radioactivity on the source after it has dried or by measuring the radioactivity in the residue obtained by evaporation of the water in which the source was immersed.

5. Dry wipe test.

On completion of the preceding test in part 4 of this subparagraph, the dry wipe test described in part 2 of this subparagraph shall be repeated.

6. Observations.

Removal of more than 185 Bq (0.005 µCi) of radioactivity in any test prescribed by this subparagraph shall be cause for rejection of the source design. Results of prototype tests submitted to the Division shall be given in terms of radioactivity in microcuries and percent of removal from the total amount of radioactive material deposited on the source.

(c) Each person licensed under subparagraph (a) of this paragraph shall affix to each source, or storage container for the source, a label which shall contain sufficient information relative to safe use and storage of the source and shall include the following statement or a substantially similar statement which contains the information called for in the following statement:

1. The receipt, possession, use and transfer of this source, Model _____, Serial No. _____, are subject to a general license and the regulations of the NRC or an Agreement State. Do not remove this label.

CAUTION--RADIOACTIVE MATERIAL—
THIS SOURCE CONTAINS PLUTONIUM.
DO NOT TOUCH RADIOACTIVE PORTION OF THIS SOURCE.

_____
Name of manufacturer or initial transferor

2. Sources generally licensed in this state prior to January 19, 1975 may bear labels authorized by the rules in effect on January 1, 1975.

(d) Leak testing of each source. Each person licensed under subparagraph (a) of this paragraph shall perform a dry wipe test upon each source containing more than 3.7 kBq (0.1 µCi) of plutonium prior to transferring the source to a general licensee under paragraph (4) of Rule 0400-20-10-.10. This test shall be performed by wiping the entire radioactive surface of the source with a filter paper with the application of moderate finger pressure. The radioactivity on the paper shall be measured by using radiation detection instrumentation capable of detecting 185 Bq (0.005 µCi) of plutonium. If any-such test discloses more than 185 Bq (0.005 µCi) of radioactive material, the source shall be deemed to be leaking or losing plutonium and shall not be transferred to a general licensee under paragraph (4) of Rule 0400-20-10-.10 or equivalent regulations of the NRC or an Agreement State.

(17) Ice detection devices containing strontium-90; requirements for license to manufacture or initially transfer; quality assurance; prohibition of transfer.

(a) An application for a specific license to manufacture or initially transfer ice detection devices containing strontium-90 for distribution to persons generally licensed under Rule 0400-20-10-.10 will be approved if:

1. The applicant satisfies the general requirements specified in Rule 0400-20-10-.12;

2. The applicant submits sufficient information regarding each type of device pertinent to evaluation of the potential radiation exposure, including:

(i) Chemical and physical form and maximum quantity of strontium-90 in the device;

(ii) Details of construction and design of the source of radiation and its shielding;

(iii) Radiation profile of a prototype device;

(iv) Procedures for and results of prototype testing of devices to demonstrate that the strontium-90 contained in each device will not be released or be removed from the device under the most severe conditions likely to be encountered in normal handling and use;

(v) Details of quality control procedures to be followed in manufacture of the device;

(vi) Description of labeling to be affixed to the device;

(vii) Instructions for handling and installation of the device;

(viii) Any additional information, including experimental studies and tests, required by the Division to facilitate a determination of the safety of the device;

3. Each device will contain no more than 50 microcuries of strontium-90 in an insoluble form;

4. Each device will bear durable, legible labeling which includes the radiation caution symbol prescribed by Rule 0400-20-05-.110, a statement that the device contains strontium-90 and the quantity thereof, instructions for disposal and statements that the device may be possessed pursuant to a general license, that the manufacturer or civil authorities should be notified if the device is found, that removal of the labeling is prohibited and that disassembly and repair of the device may be performed only by a person holding a specific license to manufacture or service such devices;

5. The Division determines that:

(i) The method of incorporation and binding of the strontium-90 in the device is such that the strontium-90 will not be released from the device under the most severe conditions which are likely to be encountered in normal use and handling of the device;

(ii) The strontium-90 is incorporated or enclosed so as to preclude direct physical contact by any individual with it and is shielded so that no individual will receive a radiation exposure to a major portion of his body in excess of 0.5 rem in a year under ordinary circumstances of use;

(iii) The device is so designed that it cannot be easily disassembled;

(iv) Prototypes of the device have been subjected to and have satisfactorily passed the tests required by subparagraph (b) of this paragraph.

(v) Quality control procedures have been established to satisfy the requirements of subparagraph (c) of this paragraph.

6. The device has been registered in the Sealed Source and Device Registry.

(b) The applicant shall subject at least five prototypes of the device to tests as follows:

1. The devices are subjected to tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that

could adversely affect the effective containment of strontium-90, such as temperature, moisture, absolute pressure, water immersion, vibration, shock, and weathering.

2. The devices are inspected for evidence of physical damage and for loss of strontium-90 after each stage of testing, using methods of inspection adequate for determining compliance with the criteria in part 3 of this subparagraph.

3. Device designs are rejected for which the following has been detected for any unit:

(i) A leak resulting in a loss of 0.1 percent or more of the original amount of strontium-90 from the device; or

(ii) Surface contamination of strontium-90 on the device of more than 2,200 disintegrations per minute per 100 square centimeters of surface area; or

(iii) Any other evidence of physical damage.

(c) 1. Each person licensed under this paragraph shall visually inspect each device and shall reject any which has an observable physical defect that could affect containment of the strontium-90.

2. Each person licensed under this paragraph shall test each device for possible loss of strontium-90 or for contamination by wiping with filter paper an area of at least 100 square centimeters on the outside surface of the device, or by wiping the entire surface area if it is less than 100 square centimeters. The detection on the filter paper of more than 2,200 disintegrations per minute of radioactive material per 100 square centimeters of surface wiped shall be cause for rejection of the tested device.

3. Each person licensed under this paragraph shall:

(i) Maintain quality assurance systems in the manufacture of the ice detection device containing strontium-90 in a manner sufficient to provide reasonable assurance that the safety-related components of the distributed devices are capable of performing their intended functions; and

(ii) Subject inspection lots to acceptance sampling procedures, by procedures specified in part 4 of this subparagraph and in the license issued under this paragraph, to provide at least 95 percent confidence that the Lot Tolerance Percent Defective of 5.0 percent will not be exceeded.

4. Each person licensed under this paragraph shall subject each inspection lot to:

(i) Tests that adequately take into account the individual, aggregate, and cumulative effects of environmental conditions expected in service that could possibly affect the effective containment of strontium-90, such as absolute pressure and water immersion.

(ii) Inspection for evidence of physical damage, containment failure, or for loss of strontium-90 after each stage of testing, using methods of inspection adequate to determine compliance with the following criteria for defective: A leak resulting in a loss of 0.1 percent or more of the original amount of strontium-90 from the device and any other criteria specified in the license issued under this paragraph.

5. No person licensed under this paragraph shall transfer to persons generally licensed under paragraph (6) of Rule 0400-20-10-.10, or under an equivalent general license of an Agreement State:

(i) Any ice detection device containing strontium-90 tested and found defective under the criteria specified in a license issued under this paragraph, unless the defective ice detection device has been repaired or reworked, retested, and determined by an independent inspector to meet the applicable acceptance criteria; or

(ii) Any ice detection device containing strontium-90 contained within any lot that has been sampled and rejected as a result of the procedures in subpart 3(ii) of this subparagraph, unless:

(I) A procedure for defining sub-lot size, independence, and additional testing procedures is contained in the license issued under this paragraph, and

(II) Each individual sub-lot is sampled, tested, and accepted in accordance with subpart 3(ii) of this subparagraph and item (I) of this subpart and any other criteria as may be required as a condition of the license issued under this paragraph.

(18) Registration of sealed source and device product information.

(a) Any manufacturer or initial distributor of a sealed source or device containing a sealed source may submit a request to the Division for evaluation of radiation safety information about its product and for its registration.

(b) The request for review must be sent to the Tennessee Division of Radiological Health at the address given in subparagraph (1)(c) of Rule 0400-20-04-.07.

(c) The request for review of a sealed source or a device must include sufficient information about the design, manufacture, prototype testing, quality control program, labeling, proposed uses and leak testing and, for a device, the request must also include sufficient information about installation, service and maintenance, operating and safety instructions, and its potential hazards, to provide reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property.

(d) The Division normally evaluates a sealed source or a device using radiation safety criteria in accepted industry standards. If these standards and criteria do not readily apply to a particular case, the Division formulates reasonable standards and criteria with the help of the manufacturer or distributor. The Division shall use criteria and standards sufficient to ensure that the radiation safety properties of the device or sealed source are adequate to protect health and minimize danger to life and property. Rule 0400-20-10-.04 includes specific criteria that apply to certain exempt products and Rule 0400-20-10-.10 includes specific criteria applicable to certain generally licensed devices. This rule includes specific provisions that apply to certain specifically licensed items.

(e) After completion of the evaluation, the Division issues a certificate of registration to the person making the request. The certificate of registration acknowledges the availability of the submitted information for inclusion in an application for a specific license proposing use of the product, or concerning use under an exemption from licensing or general license as applicable for the category of certificate.

(f) The person submitting the request for evaluation and registration of safety information about the product shall manufacture and distribute the product in accordance with:

1. The statements and representations, including quality control program, contained in the

request; and

2. The provisions of the registration certificate.

(g) Authority to manufacture or initially distribute a sealed source or device to specific licensees may be provided in the license without the issuance of a certificate of registration in the following cases:

1. Calibration and reference sources containing no more than:

(i) 37 MBq (1 mCi), for beta and/or gamma emitting radionuclides; or

(ii) 0.37 MBq (10 µCi), for alpha emitting radionuclides; or

2. The intended recipients are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in any form in the case of unregistered sources or, for registered sealed sources contained in unregistered devices, are qualified by training and experience and have sufficient facilities and equipment to safely use and handle the requested quantity of radioactive material in unshielded form, as specified in their licenses; and

(i) The intended recipients are licensed under paragraph (4) of this rule.

(ii) The recipients are authorized for research and development; or

(iii) The sources and devices are to be built to the unique specifications of the particular recipient and contain no more than 740 GBq (20 Ci) of tritium or 7.4 GBq (200 mCi) of any other radionuclide.

(h) After the certificate is issued, the Division may conduct an additional review as it determines is necessary to ensure compliance with current regulatory standards. In conducting its review, the Division will complete its evaluation in accordance with criteria specified in this paragraph. The Division may request such additional information as it considers necessary to conduct its review and the certificate holder shall provide the information as requested.

(19) Inactivation of certificates of registration of sealed sources and devices.

(a) A certificate holder who no longer manufactures or initially transfers any of the sealed source(s) or device(s) covered by a particular certificate issued by the Division shall request inactivation of the registration certificate. Such a request must be made to the Tennessee Division of Radiological Health at the address given in subparagraph (1)(c) of Rule 0400-20-04-.07 and must normally be made no later than two years after initial distribution of all of the source(s) or device(s) covered by the certificate has ceased. However, if the certificate holder determines that an initial transfer was in fact the last initial transfer more than two years after that transfer, the certificate holder shall request inactivation of the certificate within 90 days of this determination and briefly describe the circumstances of the delay.

(b) If a distribution license is to be terminated in accordance with Rule 0400-20-10-.17, the licensee shall request inactivation of its registration certificates associated with that distribution license before the Division will terminate the license. Such a request for inactivation of certificate(s) must indicate that the license is being terminated and include the associated specific license number.

(c) A specific license to manufacture or initially transfer a source or device covered only by an inactivated certificate no longer authorizes the licensee to initially transfer such sources or devices for use. Servicing of devices must be in accordance with any conditions in the certificate, including in the case of an inactive certificate.

~~(17)~~(20)Emergency preparedness.

(a) Emergency preparedness for possession of radioactive material other than uranium and plutonium.

1. In addition to the requirements set forth in Rule 0400-20-10-.12, all specific licenses issued, or for which an initial application or an application to amend is submitted, to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Table RHS 7-2 must contain either:

(i) An evaluation showing that the maximum dose to a person offsite due to a release of radioactive materials would not exceed 1 rem effective dose equivalent or 5 rems to the thyroid; or

(ii) An emergency plan for responding to a release of radioactive material.

2. One or more of the following factors may be used to support an evaluation submitted under subpart 1(i) of this subparagraph:

(i) The radioactive material is physically separated so that only a portion could be involved in an accident;

(ii) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

(iii) The release fraction in the respirable size range would be lower than the release fraction shown in Table RHS 7-2 due to the chemical or physical form of the material;

(iv) The solubility of the radioactive material would reduce the dose received;

(v) Facility design or engineered safety features in the facility would cause the release fraction to be lower than shown in Table RHS 7-2;

(vi) Operating restrictions or procedures would prevent a release fraction as large as that shown in Table RHS 7-2; or

(vii) Other factors appropriate for the specific facility.

Table RHS 7-2
Quantities of radioactive materials requiring consideration of the need for an emergency plan for responding to a release.

Radioactive material [1]	Release fraction	Quantity (curies)	Radioactive material [1]	Release fraction	Quantity (curies)
			Cadmium-113	0.01	80
Actinium-228	0.001	4,000	Calcium-45	0.01	20,000
Americium-241	0.001	2	Californium-252	0.001	9 (20 mg)
Americium-242	0.001	2	Carbon-14	0.01	50,000
Americium-243	0.001	2	Cerium-141	0.01	10,000
Antimony-124	0.01	4,000	Cerium-144	0.01	300
Antimony-126	0.01	6,000	Cesium-134	0.01	2,000
Barium-133	0.01	10,000	Cesium-137	0.01	3,000
Barium-140	0.01	30,000	Chlorine-36	0.5	100
Bismuth-207	0.01	5,000	Chromium-51	0.01	300,000
Bismuth-210	0.01	600	Cobalt-60	0.001	5,000
Cadmium-109	0.01	1,000	Copper-64	0.01	200,000

Curium-242	0.001	60
Curium-243	0.001	3
Curium-244	0.001	4
Curium-245	0.001	2
Europium-152	0.01	500
Europium-154	0.01	400
Europium-155	0.01	3,000
Germanium-68	0.01	2,000
Gadolinium-153	0.01	5,000
Gold-198	0.01	30,000
Hafnium-172	0.01	400
Hafnium-181	0.01	7,000
Holmium-166m	0.01	100
Hydrogen-3	0.5	20,000
Iodine-125	0.5	10
Iodine-131	0.5	10
Indium-114m	0.01	1,000
Iridium-192	0.001	40,000
Iron-55	0.01	40,000
Iron-59	0.01	7,000
Krypton-85	1.0	6,000,000
Lead-210	0.01	8
Manganese-56	0.01	60,000
Mercury-203	0.01	10,000
Molybdenum-99	0.01	30,000
Neptunium-237	0.001	2
Nickel-63	0.01	20,000
Niobium-94	0.01	300
Phosphorus-32	0.5	100
Phosphorus-33	0.5	1,000
Polonium-210	0.01	10
Potassium-42	0.01	9,000
Promethium-145	0.01	4,000
Promethium-147	0.01	4,000
Radium-226	0.001	100
Ruthenium-106	0.01	200
Samarium-151	0.01	4,000
Scandium-46	0.01	3,000
Selenium-75	0.01	10,000
Silver-110m	0.01	1,000
Sodium-22	0.01	9,000
Sodium-24	0.01	10,000
Strontium-89	0.01	3,000
Strontium-90	0.01	90
Sulfur-35	0.5	900
Technetium-99	0.01	10,000
Technetium-99m	0.01	400,000
Tellurium-127m	0.01	5,000
Tellurium-129m	0.01	5,000
Terbium-160	0.01	4,000
Thulium-170	0.01	4,000
Tin-113	0.01	10,000
Tin-123	0.01	3,000
Tin-126	0.01	1,000
Titanium-44	0.01	100
Vanadium-48	0.01	7,000
Xenon-133	1.0	900,000
Yttrium-91	0.01	2,000
Zinc-65	0.01	5,000
Zirconium-93	0.01	400
Zirconium-95	0.01	5,000
Any other beta-gamma emitter	0.01	10,000
Mixed fission products	0.01	1,000
Mixed corrosion products	0.01	10,000
Contaminated equipment beta-gamma	0.001	10,000
Irradiated material, any form other than solid noncombustible	0.01	1,000
Irradiated material, solid noncombustible	0.001	10,000
Mixed radioactive waste, beta-gamma	0.01	1,000
Packaged mixed waste, beta-gamma[2]	0.001	10,000
Any other alpha emitter	0.001	2
Contaminated equipment, alpha	0.0001	20
Packaged waste, alpha[2]	0.0001	20
Combinations of radioactive materials listed above [1]		

[1] For combinations of radioactive materials, consideration of the need for an emergency plan is required if the sum of the ratios of the quantity of each radioactive material authorized to the quantity listed for that material in Table RHS 7-2 exceeds one.

[2] Waste packaged in Type B containers does not require an emergency plan.

(b) Emergency preparedness for possession of uranium hexafluoride.

1. In addition to the requirements set forth in Rule 0400-20-10-.12, all specific licenses to possess uranium hexafluoride in excess of 50 kilograms in a single container or 1000 kilograms total must contain either:

   (i) An evaluation showing that the maximum intake of uranium by a member of the public due to a release would not exceed 2 milligrams; or

   (ii) An emergency plan for responding to the radiological hazards of an accidental release of source material and to any associated chemical hazards directly incident thereto.

2. One or more of the following factors may be used to support an evaluation submitted under subpart 1(i) of this subparagraph:

   (i) All or part of the radioactive material is not subject to release during an accident because of the way it is stored or packaged;

   (ii) Facility design or engineered safety features in the facility would reduce the amount of the release; or

   (iii) Other factors appropriate for the specific facility.

(c) Emergency preparedness for possession of plutonium.

1. In addition to the requirements set forth in Rule 0400-20-10-.12, all specific licenses to possess plutonium in excess of 2 curies in unsealed form or on foils or plated sources must contain either:

   (i) An evaluation showing that the maximum dose to a member of the public offsite due to a release of plutonium would not exceed 1 rem effective dose equivalent, or

   (ii) An emergency plan for responding to the radiological hazards of an accidental release of special nuclear material and to any associated chemical hazards directly incident thereto.

2. One or more of the following factors may be used to support an evaluation submitted under subpart 1(i) of this subparagraph:

   (i) The plutonium is physically separated so that only a portion could be involved in an accident;

   (ii) All or part of the plutonium is not subject to release during an accident because of the way it is stored or packaged;

   (iii) In the case of fires or explosions, the release fraction would be lower than 0.001 due to the chemical or physical form of the material;

   (iv) The solubility of the material released would reduce the dose received;

   (v) The facility design or engineered safety features in the facility would cause the release fraction to be lower than 0.001;

(vi) Operating restrictions or procedures would prevent a release large enough to cause a member of the public offsite to receive a dose exceeding 1 rem effective dose equivalent; or

(vii) Other factors appropriate for the specific facility.

(d) An emergency plan for responding to a release of radioactive material submitted under subpart (a)1(ii), (b)1(ii) or (c)1(ii) of this paragraph must include the following information:

1. Facility description.

A brief description of the licensee's facility and area near the site.

2. Types of accidents.

An identification of each type of accident for which protective actions may be needed.

3. Classification of accidents.

A classification system for classifying accidents as alerts or site area emergencies.

4. Detection of accidents.

Identification of the means of detecting each type of radioactive materials accident in a timely manner.

5. Mitigation of consequences.

A brief description of the means and equipment for mitigating the consequences of each type of accident, including those provided to protect workers onsite, and a description of the program for maintaining the equipment.

6. Assessment of releases.

A brief description of the methods and equipment to assess releases of radioactive material.

7. Responsibilities.

A brief description of the responsibilities of licensee personnel should an accident occur, including identification of personnel responsible for promptly notifying offsite response organizations and the Division of Radiological Health; also responsibilities for developing, maintaining and updating the plan.

8. Notification and coordination.

A commitment to and a brief description of the means to promptly notify offsite response organizations and request offsite assistance, including medical assistance for the treatment of contaminated, injured onsite workers when appropriate. A control point must be established. The notification and coordination must be planned so that unavailability of some personnel, parts of the facility, and some equipment will not prevent the notification and coordination. The licensee shall also commit to notify the Division of Radiological Health immediately after notification of the offsite response organizations and not later that 1 hour after the licensee declares an emergency. [10]

9. Information to be communicated.

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[10] *These reporting requirements do not supersede or release licensees of complying with the requirements under the Emergency Planning and Community Right–to–Know Act of 1986, Title III, Public Law 99–499 (42 U.S.C. Chapter 112) or other state or federal reporting requirements.*

A brief description of the types of information on facility status, radioactive releases and recommended protective actions, if necessary, to be given to offsite response organizations and to the Division of Radiological Health.

10. Training.

A brief description of the frequency, performance objectives and plan for the training that the licensee will provide workers on how to respond to an emergency including any special instructions and orientation tours the licensee would offer to fire, police, medical and other emergency personnel. The training shall familiarize personnel with site-specific emergency procedures. Also, the training shall thoroughly prepare site personnel for their responsibilities in the event of accident scenarios postulated as most probable for the specific site, including the use of team training for such scenarios.

11. Safe shutdown.

A brief description of the means of restoring the facility to a safe condition after an accident.

12. Exercises.

Provisions for conducting quarterly communications checks with offsite response organizations and biennial onsite exercises to test response to simulated emergencies. Quarterly communications checks with offsite response organizations must include the check and update of all necessary telephone numbers. The licensee shall invite offsite response organizations to participate in the biennial exercises. Participation of offsite response organizations in biennial exercises although recommended is not required. Exercises must use accident scenarios postulated as most probable for the specific site and the scenarios shall not be known to most exercise participants. The licensee shall critique each exercise using individuals not having direct implementation responsibility for the plan. Critiques of exercises must evaluate the appropriateness of the plan, emergency procedures, facilities, equipment, training of personnel and overall effectiveness of the response. Deficiencies found by the critiques must be corrected.

13. Hazardous chemicals.

A certification that the applicant has met its responsibilities under the Emergency Planning and Community Right-to-Know Act of 1986, Title III, Public Law 99-499 (42 U.S.C. Chapter 116), if applicable to the applicant's activities at the proposed place of the use of the source material.

(e) The licensee shall allow the offsite response organizations expected to respond in case of an accident 60 days to comment on the licensee's emergency plan before submitting it to the Division of Radiological Health. The licensee shall provide any comments received within the 60 days to the Division of Radiological Health with the emergency plan.

(f) Licensees required to submit emergency plans by this paragraph shall follow the emergency plan approved by the Division of Radiological Health. The licensee may change the plan without Division of Radiological Health approval if the changes do not decrease the effectiveness of the plan. The licensee shall furnish the change to the Division of Radiological Health and to affected offsite response organizations within 6 months after the change is made. Proposed changes that decrease the effectiveness of the approved emergency plan may not be implemented without application to and prior approval by the Division of Radiological Health.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Rule 0400-20-10-.21 Inalienability of Licenses is amended by deleting it in its entirety and substituting instead the following:

0400-20-10-.21 Inalienability of Licenses.

(1) No license issued or granted under this ~~Chapter~~ chapter and no right to possess or utilize radioactive material granted by any license issued pursuant to this ~~Chapter~~ chapter shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the Division shall, after securing full information, find that the transfer is in accordance with the provisions of T.C.A. §§ 68-202-201 et seq., and shall give its consent in writing.

(2) An application for transfer of license must include:

(a) The identity, technical and financial qualifications of the proposed transferee; and

(b) Financial assurance for decommissioning information required by Rule 0400-20-10-.12.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Rule 0400-20-10-.33 Reserved is amended by deleting it in its entirety and substituting instead the following:

0400-20-10-.33 Reserved.

(Note: The following has been moved to the Appendix to this Chapter (Rule 0400-20-10-.38): Schedule RHS 8-3 Exempt Quantities Schedule RHS 8-4 Exempt Concentrations ~~Schedule RHS 8-5 General Licensing of Certain Named Devices~~)

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Rule 0400-20-10-.36 Radiological Criteria for License Termination is amended by deleting it in its entirety and substituting instead the following:

0400-20-10-.36 Radiological Criteria for License Termination.

(1) General provisions and scope.

(a) The criteria in this rule apply to the decommissioning of facilities licensed under this Chapter and Chapters 0400-20-07, 0400-20-08, 0400-20-09, 0400-20-11 and 0400-20-12. For low-level waste disposal facilities (Chapter 0400-20-11), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities.

(b) Reserved.

(c) After a site has been decommissioned and the license terminated in accordance with the criteria in this rule, the Division will require additional cleanup if, based on new information, it determines that the criteria of this rule were not met and residual radioactivity remaining at the site could result in a significant threat to public health and safety.

(d) When calculating TEDE to the average member of the critical group the licensee shall determine the peak annual TEDE dose expected within the first 1,000 years after decommissioning.

(2) Radiological criteria for unrestricted use.

A site will be considered acceptable for unrestricted use if:

(a) The residual radioactivity that is distinguishable from background radiation results in a TEDE to an average member of the critical group that does not exceed 25 mrem (0.25 mSv) per year, including that from groundwater sources of drinking water~~,~~; and

(b) The residual radioactivity has been reduced to levels that are as low as reasonably achievable (ALARA). Determination of the levels that are ALARA must take into account consideration of any detriments, such as deaths from transportation accidents, potentially expected to result from decontamination and waste disposal.

(3) Criteria for license termination under restricted conditions.

A site will be considered acceptable for license termination under restricted conditions if:

(a) A licensee can demonstrate that further reductions in residual radioactivity necessary to comply with the provisions of paragraph (2) of this rule:

1. Would result in net public or environmental harm or

2. Were not being made because the residual levels associated with restricted conditions are ALARA. Determination of the levels that are ALARA must take into account consideration of any detriments, such as traffic accidents, expected to potentially result from decontamination and waste disposal;

(b) The licensee has made provisions for legally enforceable institutional controls that provide reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group will not exceed 25 mrem (0.25 mSv) per year;

(c) The licensee has provided sufficient financial assurance to enable an independent third party, including a governmental custodian of a site, to assume and carry out responsibilities for any necessary control and maintenance of the site. Acceptable financial assurance mechanisms are specified in paragraph (4) of Rule 0400-20-10-.12; and

(d) Residual radioactivity at the site has been reduced so that if the institutional controls were no longer in effect, there is reasonable assurance that the TEDE from residual radioactivity distinguishable from background to the average member of the critical group is ALARA and would not exceed either:

1. 100 mrem (1 mSv) per year; or

2. 500 mrem (5 mSv) per year provided the licensee:

(i) Demonstrates that further reductions in residual radioactivity necessary to comply with the 100 mrem/y (1 mSv/y) value of part 1 of this subparagraph:

(I) Are not technically achievable~~,~~;

(II) Would be prohibitively expensive; or

(III) Would result in net public or environmental harm;

(ii) Makes provisions for durable institutional controls; and

(iii) Provides sufficient financial assurance in the form of a trust fund segregated from the licensee's assets and outside the licensee's administrative control, and in which the adequacy of the trust funds is to be assessed based on an assumed annual 1 percent real rate of return on investment to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site and to assume and carry out responsibilities for any necessary control and maintenance of those controls. Periodic rechecks shall be carried out no less frequently than every 5 years to assure that the institutional controls remain in place as necessary to meet the criteria of subparagraph (b) of this paragraph. ~~Acceptable financial assurance mechanisms are those in subparagraph (4)(d) of Rule 0400-20-10-.12.~~

(4) Alternate criteria for license termination.

(a) The Division may terminate a license using alternate criteria greater than the dose criterion of paragraph (2) of this rule and subparagraph (3)(b) of this rule, if the licensee:

1. Provides assurance that public health and safety would continue to be protected, and that it is unlikely that the dose from all man-made sources combined, other than medical, would be more than the 1 mSv/y (100 mrem/y) limit of Rules 0400-20-05-.60 and 0400-20-05-.61, by submitting an analysis of possible sources of exposure;

2. Has employed to the extent practicable restrictions on site use according to the provisions of paragraph (3) of this rule in minimizing exposures at the site; and

   (i) Reduces doses to ALARA levels, taking into consideration any detriments such as traffic accidents expected to potentially result from decontamination and waste disposal~~.~~; and

   (ii) Reserved~~.~~; and

3. Provides sufficient financial assurance in the form of a trust fund to enable a responsible government entity or independent third party, including a governmental custodian of a site, both to carry out periodic rechecks of the site and to assume and carry out responsibilities for any necessary control and maintenance of the site. Periodic rechecks shall be carried out no less frequently than every 5 years to assure that the institutional controls remain in place as necessary to meet the criteria of subparagraph (b) of this paragraph.

(b) The use of alternate criteria to terminate a license requires the approval of the Division. The Division will consider staff recommendations to address any comments provided by the Environmental Protection Agency and any public comments submitted under paragraph (5) of this rule.

(5) Public notification and public participation.

Whenever the Division deems such notice to be in the public interest, the Division may:

(a) Notify and solicit comments from:

1. Local governments and other ~~State~~ state government agencies in the vicinity of the site that could be affected by the decommissioning; and

2. The Environmental Protection Agency for cases where the licensee proposes to release a site under paragraph (4) of this rule.

(b) Publish a notice on the Tennessee Administrative Register web site, and in another appropriate forum that is readily accessible to individuals near the site, and solicit comments from affected parties. Another appropriate forum may include local newspapers and letters to ~~State~~ state or local organizations.

(6) Minimization of Contamination.

Licensees shall, to the extent practical, conduct operations to minimize the introduction of residual radioactivity, as defined in subparagraph (1)(ooo) of Rule 0400-20-04-.04, into the site, in accordance with the existing radiation protection requirements in Rule 0400-20-05-.40 and radiological criteria for license termination in this rule.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

SCHEDULE RHS 8–5: GENERAL LICENSING OF CERTAIN NAMED DEVICES of Rule 0400-20-10-.38 Appendix—Schedules is amended by deleting it in its entirety and substituting instead the following:

SCHEDULE RHS 8–5: Reserved. ~~GENERAL LICENSING OF CERTAIN NAMED DEVICES~~

~~The following devices and equipment incorporating radioactive material, when manufactured, tested, and labeled by the manufacturer in accordance with the specification contained in a specific license or equivalent licensing document issued by the Division, the U.S. Nuclear Regulatory Commission or any Agreement State are placed under a general license pursuant to paragraph (1) of Rule 0400-20-10-.10:~~

~~(1) Static elimination device. Devices designed for use as static eliminators that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 500 microcuries of polonium 210 per device.~~

~~(2) Ion generating tube. Devices designed for ionization of air that contain, as a sealed source or sources, radioactive material consisting of a total of not more than 50 millicuries of hydrogen 3 (tritium) per device.~~

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

Chapter 0400-20-10 Licensing and Registration is amended by renumbering the footnotes appropriately.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-20-13
Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material

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0400-20-13-.01 General Provisions.

(1) Purpose.

This chapter has been established to provide the requirements for the physical protection program for any licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material listed in Table 1 of Rule 0400-20-13-.08. These requirements provide reasonable assurance of the security of category 1 or category 2 quantities of radioactive material by protecting these materials from theft or diversion. Specific requirements for access to material, use of material, transfer of material, and transport of material are included. No provision of this chapter authorizes possession of licensed material.

(2) Scope.

(a) Rules 0400-20-13-.02 and 0400-20-13-.03 apply to any person who, under the rules in Rule Division 0400-20, possesses or uses at any site, an aggregated category 1 or category 2 quantity of radioactive material.

(b) Rule 0400-20-13-.04 applies to any person who, under the rules in Rule Division 0400-20:

1. Transports or delivers to a carrier for transport in a single shipment, a category 1 or category 2 quantity of radioactive material; or

2. Imports or exports a category 1 or category 2 quantity of radioactive material; the provisions only apply to the domestic portion of the transport.

(3) Definitions.

As used in this chapter:

(a) "Access control" means a system for allowing only approved individuals to have unescorted access to the security zone and for ensuring that all other individuals are subject to escorted access.

(b) "Act" means the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto.

(c) "Aggregated" means accessible by the breach of a single physical barrier that would allow access to radioactive material in any form, including any devices that contain the radioactive material, when the total activity equals or exceeds a category 2 quantity of radioactive material.

(d) "Agreement State" means any state with which the Atomic Energy Commission or the U.S. Nuclear Regulatory Commission has entered into an effective agreement under subsection 274b. of the Act. "Non-agreement State" means any other state.

(e) "Approved individual" means an individual whom the licensee has determined to be trustworthy and reliable for unescorted access in accordance with Rule 0400-20-13-.02 and who has completed the training required by subparagraph (2)(c) of Rule 0400-20-13-.03.

(f) "Background investigation" means the investigation conducted by a licensee or applicant to support the determination of trustworthiness and reliability.

(g) "Becquerel (Bq)" means one disintegration per second.

(h) "Byproduct material" means:

1. Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or using special nuclear material;

2. The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition;

3. (i) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; or

   (ii) Any material that:

      (I) Has been made radioactive by use of a particle accelerator; and

      (II) Is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and

4. Any discrete source of naturally occurring radioactive material, other than source material, that:

   (i) The Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security; and

   (ii) Is extracted or converted after extraction for use in a commercial, medical, or research activity.

(i) "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(j) "Category 1 quantity of radioactive material" means a quantity of radioactive material meeting or exceeding the category 1 threshold in Table 1 of Rule 0400-20-13-.08. This is determined by calculating the ratio of the total activity of each radionuclide to the category 1 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 1 quantity. Category 1 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(k) "Category 2 quantity of radioactive material" means a quantity of radioactive material meeting or exceeding the category 2 threshold but less than the category 1 threshold in Table 1 of Rule 0400-20-13-.08. This is determined by calculating the ratio of the total activity of each radionuclide to the category 2 threshold for that radionuclide and adding the ratios together. If the sum is equal to or exceeds 1, the quantity would be considered a category 2 quantity. Category 2 quantities of radioactive material do not include the radioactive material contained in any fuel assembly, subassembly, fuel rod, or fuel pellet.

(l) "Commission" and "NRC" mean the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

(m) "Curie" means that amount of radioactive material which disintegrates at the rate of 37 billion atoms per second.

(n) "Diversion" means the unauthorized movement of radioactive material subject to this chapter to a location different from the material's authorized destination inside or outside of the site at which the material is used or stored.

(o) "Division" means the Division of Radiological Health of the Tennessee Department of Environment and Conservation.

(p) "Escorted access" means accompaniment while in a security zone by an approved individual who maintains continuous direct visual surveillance at all times over an individual who is not approved for unescorted access.

(q) "Fingerprint Orders" means the orders issued by the U.S. Nuclear Regulatory Commission or the legally binding requirements issued by Agreement States that require fingerprints and criminal history records checks for individuals with unescorted access to category 1 and category 2 quantities of radioactive material or safeguards information-modified handling.

(r) "Government agency" means any executive department, commission, independent establishment, corporation, wholly or partly owned by the United States of America which is an instrumentality of the United States, or any board, bureau, division, service, office, officer, authority, administration, or other establishment in the executive branch of the Government.

(s) "License," except where otherwise specified, means a license for material issued pursuant to the rules in Chapter 0400-20-10.

(t) "License issuing authority" means the licensing agency that issued the license, i.e. the U.S. Nuclear Regulatory Commission or the appropriate agency of an Agreement State;

(u) "Local law enforcement agency (LLEA)" means a public or private organization that has been approved by a federal, state, or local government to carry firearms and make arrests, and is authorized and has the capability to provide an armed response in the jurisdiction where the licensed category 1 or category 2 quantity of radioactive material is used, stored, or transported.

(v) "Lost or missing licensed material" means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(w) "Mobile device" means a piece of equipment containing licensed radioactive material that is either mounted on wheels or casters, or otherwise equipped for moving without a need for disassembly or dismounting; or designed to be hand carried. Mobile devices do not include stationary equipment installed in a fixed location.

(x) "Movement control center" means an operations center that is remote from transport activity and that maintains position information on the movement of radioactive material, receives reports of attempted attacks or thefts, provides a means for reporting these and other problems to appropriate agencies and can request and coordinate appropriate aid.

(y) "No-later-than arrival time" means the date and time that the shipping licensee and receiving licensee have established as the time at which an investigation will be initiated if the shipment has not arrived at the receiving facility. The no-later-than-arrival time may not be more than 6 hours after the estimated arrival time for shipments of category 2 quantities of radioactive material.

(z) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the DOE (except that DOE shall be considered a person within the meaning of the regulations in 10 CFR chapter I to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the Commission under section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), the Nuclear Waste Policy Act of 1982 (96 Stat. 2201), and section 3(b)(2) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (99 Stat. 1842)), any state or any political subdivision of or any political entity within a state, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and any legal successor, representative, agent, or agency of the foregoing.

(aa) "Reviewing official" means the individual who shall make the trustworthiness and reliability determination of an individual to determine whether the individual may have, or continue to have, unescorted access to the category 1 or category 2 quantities of radioactive materials that are possessed by the licensee.

(bb) "Sabotage" means deliberate damage, with malevolent intent, to a category 1 or category 2 quantity of radioactive material, a device that contains a category 1 or category 2 quantity of radioactive material, or the components of the security system.

(cc) "Safe haven" means a readily recognizable and readily accessible site at which security is present or from which, in the event of an emergency, the transport crew can notify and wait for the local law enforcement authorities.

(dd) "Security zone" means any temporary or permanent area determined and established by the licensee for the physical protection of category 1 or category 2 quantities of radioactive material.

(ee) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(ff) "Telemetric position monitoring system" means a data transfer system that captures information by instrumentation and/or measuring devices about the location and status of a transport vehicle or package between the departure and destination locations.

(gg) "Trustworthiness and reliability" are characteristics of an individual considered dependable in judgment, character, and performance, such that unescorted access to category 1 or category 2 quantities of radioactive material by that individual does not constitute an unreasonable risk to the public health and safety or security. A determination of trustworthiness and reliability for this purpose is based upon the results from a background investigation.

(hh) "Unescorted access" means solitary access to an aggregated category 1 or category 2 quantity of radioactive material or the devices that contain the material.

(ii) "United States," when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States.

(4) Communications.

Unless stated otherwise, address notifications and reports required by these rules, communications concerning these rules, and applications filed thereunder shall be made according to Rule 0400-20-04-.07.

(5) Reserved.

(6) Specific exemptions.

(a) The Division may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the rules in this chapter as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

(b) A licensee that possesses radioactive waste that contains category 1 or category 2 quantities of radioactive material is exempt from the requirements of Rules 0400-20-13-.02, 0400-20-13-.03 and 0400-20-13-.04. Except that any radioactive waste that contains discrete sources, ion-exchange resins, or activated material that weighs less than 2,000 kg (4,409 lbs) is not exempt from the requirements of this chapter. The licensee shall implement the following requirements to secure the radioactive waste:

1. Use continuous physical barriers that allow access to the radioactive waste only through established access control points;

2. Use a locked door or gate with monitored alarm at the access control point;

3. Assess and respond to each actual or attempted unauthorized access to determine whether an actual or attempted theft, sabotage, or diversion occurred; and

4. Immediately notify the LLEA and request an armed response from the LLEA upon determination that there was an actual or attempted theft, sabotage, or diversion of the radioactive waste that contains category 1 or category 2 quantities of radioactive material.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

0400-20-13-.02 Background Investigations and Access Authorization Program.

(1) Personnel access authorization requirements for category 1 or category 2 quantities of radioactive material

(a) General.

1. Each licensee that possesses an aggregated quantity of radioactive material at or above the category 2 threshold shall establish, implement, and maintain its access authorization program in accordance with the requirements of this chapter.

2. An applicant for a new license and each licensee that would become newly subject to the requirements of this chapter upon application for modification of its license shall implement the requirements of this chapter, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

3. Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this chapter shall implement the provisions of this chapter before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(b) General performance objective.

The licensee's access authorization program must ensure that the individuals specified in part (c)1 of this paragraph are trustworthy and reliable.

(c) Applicability.

1. Licensees shall subject the following individuals to an access authorization program:

(i) Any individual whose assigned duties require unescorted access to category 1 or category 2 quantities of radioactive material or to any device that contains the radioactive material; and

(ii) Reviewing officials.

2. Licensees need not subject the categories of individuals listed in parts (5)(a)1 through 13 of this rule to the investigation elements of the access authorization program.

3. Licensees shall approve for unescorted access to category 1 or category 2 quantities of radioactive material only those individuals with job duties that require unescorted access to category 1 or category 2 quantities of radioactive material.

4. Licensees may include individuals needing access to safeguards information-modified handling under 10 CFR part 73 in the access authorization program under this chapter.

(2) Access authorization program requirements.

(a) Granting unescorted access authorization.

1. Licensees shall implement the requirements of this chapter for granting initial or reinstated unescorted access authorization.

2. Individuals who have been determined to be trustworthy and reliable shall also complete the security training required by subparagraph (2)(c) of Rule 0400-20-13-.03 before being allowed unescorted access to category 1 or category 2 quantities of radioactive material.

(b) Reviewing officials.

1. Reviewing officials are the only individuals who may make trustworthiness and reliability determinations that allow individuals to have unescorted access to category 1 or category 2 quantities of radioactive materials possessed by the licensee.

2. Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. The fingerprints of the named reviewing official must be taken by a law enforcement agency, federal or state agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a state to take fingerprints. The licensee shall recertify that the reviewing official is deemed trustworthy and reliable every 10 years in accordance with subparagraph (3)(b) of this rule.

3. Reviewing officials must be permitted to have unescorted access to category 1 or category 2 quantities of radioactive materials or access to safeguards information or

safeguards information-modified handling, if the licensee possesses safeguards information or safeguards information-modified handling.

4. Reviewing officials cannot approve other individuals to act as reviewing officials.

5. A reviewing official does not need to undergo a new background investigation before being named by the licensee as the reviewing official if:

   (i) The individual has undergone a background investigation that included fingerprinting and an FBI criminal history records check and has been determined to be trustworthy and reliable by the licensee; or

   (ii) The individual is subject to a category listed in subparagraph (5)(a) of this rule.

(c) Informed consent.

1. Licensees may not initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation. Before a final adverse determination, the licensee shall provide the individual with an opportunity to correct any inaccurate or incomplete information that is developed during the background investigation. Licensees do not need to obtain signed consent from those individuals that meet the requirements of subparagraph (3)(b) of this rule. A signed consent must be obtained prior to any reinvestigation.

2. The subject individual may withdraw his or her consent at any time. Licensees shall inform the individual that:

   (i) If an individual withdraws his or her consent, the licensee may not initiate any elements of the background investigation that were not in progress at the time the individual withdrew his or her consent; and

   (ii) The withdrawal of consent for the background investigation is sufficient cause for denial or termination of unescorted access authorization.

(d) Personal history disclosure.

Any individual who is applying for unescorted access authorization shall disclose the personal history information that is required by the licensee's access authorization program for the reviewing official to make a determination of the individual's trustworthiness and reliability. Refusal to provide, or the falsification of, any personal history information required by this chapter is sufficient cause for denial or termination of unescorted access.

(e) Determination basis.

1. The reviewing official shall determine whether to permit, deny, unfavorably terminate, maintain, or administratively withdraw an individual's unescorted access authorization based on an evaluation of all of the information collected to meet the requirements of this chapter.

2. The reviewing official may not permit any individual to have unescorted access until the reviewing official has evaluated all of the information collected to meet the requirements of this chapter and determined that the individual is trustworthy and reliable. The reviewing official may deny unescorted access to any individual based on information obtained at any time during the background investigation.

3. The licensee shall document the basis for concluding whether or not there is reasonable assurance that an individual is trustworthy and reliable.

4. The reviewing official may terminate or administratively withdraw an individual's unescorted access authorization based on information obtained after the background investigation has been completed and the individual granted unescorted access authorization.

5. Licensees shall maintain a list of persons currently approved for unescorted access authorization. When a licensee determines that a person no longer requires unescorted access or meets the access authorization requirement, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to have unescorted access to the material.

(f) Procedures.

Licensees shall develop, implement, and maintain written procedures for implementing the access authorization program. The procedures must include provisions for the notification of individuals who are denied unescorted access. The procedures must include provisions for the review, at the request of the affected individual, of a denial or termination of unescorted access authorization. The procedures must contain a provision to ensure that the individual is informed of the grounds for the denial or termination of unescorted access authorization and allow the individual an opportunity to provide additional relevant information.

(g) Right to correct and complete information.

1. Prior to any final adverse determination, licensees shall provide each individual subject to this chapter with the right to complete, correct, and explain information obtained as a result of the licensee's background investigation. Confirmation of receipt by the individual of this notification must be maintained by the licensee for a period of 1 year from the date of the notification.

2. If, after reviewing his or her criminal history record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, update, or explain anything in the record, the individual may initiate challenge procedures. These procedures include direct application by the individual challenging the record to the law enforcement agency that contributed the questioned information or a direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Federal Bureau of Investigation, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306 as set forth in 28 CFR 16.30 through 16.34. In the latter case, the Federal Bureau of Investigation (FBI) will forward the challenge to the agency that submitted the data, and will request that the agency verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division will make any changes necessary in accordance with the information supplied by that agency. Licensees must provide at least 10 days for an individual to initiate action to challenge the results of an FBI criminal history records check after the record being made available for his or her review. The licensee may make a final adverse determination based upon the criminal history records only after receipt of the FBI's confirmation or correction of the record.

(h) Records.

1. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

2. The licensee shall retain a copy of the current access authorization program procedures as a record for 3 years after the procedure is no longer needed. If any portion of the procedure is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.

3. The licensee shall retain the list of persons approved for unescorted access authorization for 3 years after the list is superseded or replaced.

(3) Background investigations.

(a) Initial investigation.

Before allowing an individual unescorted access to category 1 or category 2 quantities of radioactive material or to the devices that contain the material, licensees shall complete a background investigation of the individual seeking unescorted access authorization. The scope of the investigation must encompass at least the 7 years preceding the date of the background investigation or since the individual's eighteenth birthday, whichever is shorter. The background investigation must include at a minimum:

1. Fingerprinting and an FBI identification and criminal history records check in accordance with paragraph (4) of this rule;

2. Verification of true identity.

Licensees shall verify the true identity of the individual who is applying for unescorted access authorization to ensure that the applicant is who he or she claims to be. A licensee shall review official identification documents (e.g., driver's license; passport; government identification; certificate of birth issued by the state, province, or country of birth) and compare the documents to personal information data provided by the individual to identify any discrepancy in the information. Licensees shall document the type, expiration, and identification number of the identification document, or maintain a photocopy of identifying documents on file in accordance with paragraph (6) of this rule. Licensees shall certify in writing that the identification was properly reviewed, and shall maintain the certification and all related documents for review upon inspection;

3. Employment history verification.

Licensees shall complete an employment history verification, including military history. Licensees shall verify the individual's employment with each previous employer for the most recent 7 years before the date of application;

4. Verification of education.

Licensees shall verify that the individual participated in the education process during the claimed period;

5. Character and reputation determination.

Licensees shall complete reference checks to determine the character and reputation of the individual who has applied for unescorted access authorization. Unless other references are not available, reference checks may not be conducted with any person who is known to be a close member of the individual's family, including but not limited to the individual's spouse, parents, siblings, or children, or any individual who resides in the individual's permanent household. Reference checks under this rule must be limited to whether the individual has been and continues to be trustworthy and reliable;

6. The licensee shall also, to the extent possible, obtain independent information to corroborate that provided by the individual (e.g., seek references not supplied by the individual); and

7. If a previous employer, educational institution, or any other entity with which the individual claims to have been engaged fails to provide information or indicates an inability or unwillingness to provide information within a time frame deemed appropriate by the licensee but at least after 10 business days of the request or if the licensee is unable to

reach the entity, the licensee shall document the refusal, unwillingness, or inability in the record of investigation; and attempt to obtain the information from an alternate source.

(b) Grandfathering.

1. Individuals who have been determined to be trustworthy and reliable for unescorted access to category 1 or category 2 quantities of radioactive material under the Fingerprint Orders may continue to have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. These individuals shall be subject to the reinvestigation requirement.

2. Individuals who have been determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or the Security Orders for access to safeguards information, safeguards information-modified handling, or risk-significant material may have unescorted access to category 1 and category 2 quantities of radioactive material without further investigation. The licensee shall document that the individual was determined to be trustworthy and reliable under the provisions of 10 CFR Part 73 or a Security Order. Security Order, in this context, refers to any order that was issued by the NRC that required fingerprints and an FBI criminal history records check for access to safeguards information, safeguards information-modified handling, or risk significant material such as special nuclear material or large quantities of uranium hexafluoride. These individuals shall be subject to the reinvestigation requirement.

(c) Reinvestigations.

Licensees shall conduct a reinvestigation every 10 years for any individual with unescorted access to category 1 or category 2 quantities of radioactive material. The reinvestigation shall consist of fingerprinting and an FBI identification and criminal history records check in accordance with paragraph (4) of this rule. The reinvestigations must be completed within 10 years of the date on which these elements were last completed.

(4) Requirements for criminal history records checks of individuals granted unescorted access to category 1 or category 2 quantities of radioactive material.

(a) General performance objective and requirements.

1. Except for those individuals listed in paragraph (5) of this rule and those individuals grandfathered under subparagraph (3)(b) of this rule, each licensee subject to the provisions of this chapter shall fingerprint each individual who is to be permitted unescorted access to category 1 or category 2 quantities of radioactive material. Licensees shall transmit all collected fingerprints to the Commission for transmission to the FBI. The licensee shall use the information received from the FBI as part of the required background investigation to determine whether to grant or deny further unescorted access to category 1 or category 2 quantities of radioactive materials for that individual.

2. The licensee shall notify each affected individual that his or her fingerprints will be used to secure a review of his or her criminal history record, and shall inform him or her of the procedures for revising the record or adding explanations to the record.

3. Fingerprinting is not required if a licensee is reinstating an individual's unescorted access authorization to category 1 or category 2 quantities of radioactive materials if:

(i) The individual returns to the same facility that granted unescorted access authorization within 365 days of the termination of his or her unescorted access authorization; and

(ii) The previous access was terminated under favorable conditions.

4. Fingerprints do not need to be taken if an individual who is an employee of a licensee, contractor, manufacturer, or supplier has been granted unescorted access to category 1 or category 2 quantities of radioactive material, access to safeguards information, or safeguards information-modified handling by another licensee, based upon a background investigation conducted under this chapter, the Fingerprint Orders, or 10 CFR Part 73. An existing criminal history records check file may be transferred to the licensee asked to grant unescorted access in accordance with the provisions of subparagraph (6)(c) of this rule.

5. Licensees shall use the information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for unescorted access authorization to category 1 or category 2 quantities of radioactive materials, access to safeguards information, or safeguards information-modified handling.

(b) Prohibitions.

1. Licensees may not base a final determination to deny an individual unescorted access authorization to category 1 or category 2 quantities of radioactive material solely on the basis of information received from the FBI involving:

   (i) An arrest more than 1 year old for which there is no information of the disposition of the case; or

   (ii) An arrest that resulted in dismissal of the charge or an acquittal.

2. Licensees may not use information received from a criminal history records check obtained under this chapter in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall licensees use the information in any way that would discriminate among individuals on the basis of race, religion, national origin, gender, or age.

(c) Procedures for processing of fingerprint checks.

1. For the purpose of complying with this chapter, licensees shall use an appropriate method listed in 10 CFR 37.7 to submit to the U.S. Nuclear Regulatory Commission, Director, Division of Facilities and Security, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop TWB-05 B32M, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling 1-630-829-9565, or by email to FORMS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at http://www.nrc.gov/site-help/e-submittals.html.

2. Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the Security Branch, Division of Facilities and Security at 301-492-3531.) Combined payment for multiple applications is acceptable. The Commission publishes the amount of the fingerprint check application fee on the NRC's public Web site. (To find the current fee amount, go to the Electronic Submittals page at http://www.nrc.gov/site-help/e-submittals.html and see the link for the Criminal History Program under Electronic Submission Systems.)

3. The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

(5) Relief from fingerprinting, identification, and criminal history records checks and other elements of background investigations for designated categories of individuals permitted unescorted access to certain radioactive materials.

(a) Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, and other elements of the background investigation are not required for the following individuals prior to granting unescorted access to category 1 or category 2 quantities of radioactive materials:

1. An employee of the Commission or of the Executive Branch of the U.S. Government who has undergone fingerprinting for a prior U.S. Government criminal history records check;

2. A member of Congress;

3. An employee of a member of Congress or Congressional committee who has undergone fingerprinting for a prior U.S. Government criminal history records check;

4. The governor of a state or his or her designated state employee representative;

5. Federal, state, or local law enforcement personnel;

6. State Radiation Control Program Directors and State Homeland Security Advisors or their designated state employee representatives;

7. Agreement State employees conducting security inspections on behalf of the NRC under an agreement executed under section 274.i. of the Atomic Energy Act;

8. Representatives of the International Atomic Energy Agency (IAEA) engaged in activities associated with the U.S./IAEA Safeguards Agreement who have been certified by the NRC;

9. Emergency response personnel who are responding to an emergency;

10. Commercial vehicle drivers for road shipments of category 1 and category 2 quantities of radioactive material;

11. Package handlers at transportation facilities such as freight terminals and railroad yards;

12. Any individual who has an active federal security clearance, provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that granted the federal security clearance or reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material; and

13. Any individual employed by a service provider licensee for which the service provider licensee has conducted the background investigation for the individual and approved the individual for unescorted access to category 1 or category 2 quantities of radioactive material. Written verification from the service provider must be provided to the licensee. The licensee shall retain the documentation for a period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(b) Fingerprinting, and the identification and criminal history records checks required by section 149 of the Atomic Energy Act of 1954, as amended, are not required for an individual who has had a favorably adjudicated U.S. Government criminal history records check within the last 5 years, under a comparable U.S. Government program involving fingerprinting and an FBI identification and criminal history records check provided that he or she makes available the appropriate documentation. Written confirmation from the agency/employer that reviewed the criminal history records check must be provided to the licensee. The licensee shall retain this documentation for a

period of 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material. These programs include, but are not limited to:

1. National Agency Check;

2. Transportation Worker Identification Credentials (TWIC) under 49 CFR part 1572;

3. Bureau of Alcohol, Tobacco, Firearms, and Explosives background check and clearances under 27 CFR part 555;

4. Health and Human Services security risk assessments for possession and use of select agents and toxins under 42 CFR part 73;

5. Hazardous Material security threat assessment for hazardous material endorsement to commercial driver's license under 49 CFR part 1572; and

6. Customs and Border Protection's Free and Secure Trade (FAST) Program.

(6) Protection of information.

(a) Each licensee who obtains background information on an individual under this chapter shall establish and maintain a system of files and written procedures for protection of the record and the personal information from unauthorized disclosure.

(b) The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his or her representative, or to those who have a need to have access to the information in performing assigned duties in the process of granting or denying unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling. No individual authorized to have access to the information may disseminate the information to any other individual who does not have a need to know.

(c) The personal information obtained on an individual from a background investigation may be provided to another licensee:

1. Upon the individual's written request to the licensee holding the data to disseminate the information contained in his or her file; and

2. The recipient licensee verifies information such as name, date of birth, social security number, gender, and other applicable physical characteristics.

(d) The licensee shall make background investigation records obtained under this chapter available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

(e) The licensee shall retain all fingerprint and criminal history records (including data indicating no record) received from the FBI, or a copy of these records if the individual's file has been transferred, on an individual for 3 years from the date the individual no longer requires unescorted access to category 1 or category 2 quantities of radioactive material.

(7) Access authorization program review.

(a) Each licensee shall be responsible for the continuing effectiveness of the access authorization program. Each licensee shall ensure that access authorization programs are reviewed to confirm compliance with the requirements of this chapter and that comprehensive actions are taken to correct any noncompliance that is identified. The review program shall evaluate all program performance objectives and requirements. Each licensee shall periodically (at least annually) review the access program content and implementation.

(b) The results of the reviews, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the access authorization program, the cause of the condition(s), and, when appropriate, recommend corrective actions, and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(c) Review records must be maintained for 3 years.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

0400-20-13-.03 Physical Protection Requirements During Use.

(1) Security program.

(a) Applicability.

1. Each licensee that possesses an aggregated category 1 or category 2 quantity of radioactive material shall establish, implement, and maintain a security program in accordance with the requirements of this rule.

2. An applicant for a new license and each licensee that would become newly subject to the requirements of this chapter upon application for modification of its license shall implement the requirements of this chapter, as appropriate, before taking possession of an aggregated category 1 or category 2 quantity of radioactive material.

3. Any licensee that has not previously implemented the Security Orders or been subject to the provisions of this chapter shall provide written notification to the Division specified in paragraph (4) of Rule 0400-20-13-.01 at least 90 days before aggregating radioactive material to a quantity that equals or exceeds the category 2 threshold.

(b) General performance objective.

Each licensee shall establish, implement, and maintain a security program that is designed to monitor and, without delay, detect, assess, and respond to an actual or attempted unauthorized access to category 1 or category 2 quantities of radioactive material.

(c) Program features.

Each licensee's security program must include the program features, as appropriate, described in paragraphs (2) through (8) of this rule.

(2) General security program requirements.

(a) Security plan.

1. Each licensee identified in subparagraph (1)(a) of this rule shall develop a written security plan specific to its facilities and operations. The purpose of the security plan is to establish the licensee's overall security strategy to ensure the integrated and effective functioning of the security program required by this rule. The security plan must, at a minimum:

(i) Describe the measures and strategies used to implement the requirements of this rule; and

(ii) Identify the security resources, equipment, and technology used to satisfy the requirements of this rule.

2. The security plan must be reviewed and approved by the individual with overall responsibility for the security program.

3. A licensee shall revise its security plan as necessary to ensure the effective implementation of Division requirements. The licensee shall ensure that:

   (i) The revision has been reviewed and approved by the individual with overall responsibility for the security program; and

   (ii) The affected individuals are instructed on the revised plan before the changes are implemented.

4. The licensee shall retain a copy of the current security plan as a record for 3 years after the security plan is no longer required. If any portion of the plan is superseded, the licensee shall retain the superseded material for 3 years after the record is superseded.

(b) Implementing procedures.

1. The licensee shall develop and maintain written procedures that document how the requirements of this rule and the security plan will be met.

2. The implementing procedures and revisions to these procedures must be approved in writing by the individual with overall responsibility for the security program.

3. The licensee shall retain a copy of the current procedure as a record for 3 years after the procedure is no longer needed. Superseded portions of the procedure must be retained for 3 years after the record is superseded.

(c) Training.

1. Each licensee shall conduct training to ensure that those individuals implementing the security program possess and maintain the knowledge, skills, and abilities to carry out their assigned duties and responsibilities effectively. The training must include instruction in:

   (i) The licensee's security program and procedures to secure category 1 or category 2 quantities of radioactive material, and in the purposes and functions of the security measures employed;

   (ii) The responsibility to report promptly to the licensee any condition that causes or may cause a violation of Division requirements;

   (iii) The responsibility of the licensee to report promptly to the local law enforcement agency and licensee any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material; and

   (iv) The appropriate response to security alarms.

2. In determining those individuals who shall be trained on the security program, the licensee shall consider each individual's assigned activities during authorized use and response to potential situations involving actual or attempted theft, diversion, or sabotage of category 1 or category 2 quantities of radioactive material. The extent of the training must be commensurate with the individual's potential involvement in the security of category 1 or category 2 quantities of radioactive material.

3. Refresher training must be provided at a frequency not to exceed 12 months and when significant changes have been made to the security program. This training must include:

   (i) Review of the training requirements of this subparagraph and any changes made to the security program since the last training;

   (ii) Reports on any relevant security issues, problems, and lessons learned;

(iii) Relevant results of NRC inspections; and

(iv) Relevant results of the licensee's program review and testing and maintenance.

4. The licensee shall maintain records of the initial and refresher training for 3 years from the date of the training. The training records must include dates of the training, topics covered, a list of licensee personnel in attendance, and related information.

(d) Protection of information.

1. Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

2. Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan and implementing procedures.

3. Before granting an individual access to the security plan or implementing procedures, licensees shall:

(i) Evaluate an individual's need to know the security plan or implementing procedures; and

(ii) If the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in parts (3)(a)2 through 7 of Rule 0400-20-13-.02.

4. Licensees need not subject the following individuals to the background investigation elements for protection of information:

(i) The categories of individuals listed in parts (5)(a)1 through 13 of Rule 0400-20-13-.02; or

(ii) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in parts (3)(a)2 through 7 of Rule 0400-20-13-.02, has been provided by the security service provider.

5. The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan or implementing procedures.

6. Licensees shall maintain a list of persons currently approved for access to the security plan or implementing procedures. When a licensee determines that a person no longer needs access to the security plan or implementing procedures or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than 7 working days, and take prompt measures to ensure that the individual is unable to obtain the security plan or implementing procedures.

7. When not in use, the licensee shall store its security plan and implementing procedures in a manner to prevent unauthorized access. Information stored in nonremovable electronic form must be password protected.

8. The licensee shall retain as a record for 3 years after the document is no longer needed:

(i) A copy of the information protection procedures; and

(ii) The list of individuals approved for access to the security plan or implementing procedures.

(3) LLEA coordination.

(a) A licensee subject to this rule shall coordinate, to the extent practicable, with an LLEA for responding to threats to the licensee's facility, including any necessary armed response. The information provided to the LLEA must include:

1. A description of the facilities and the category 1 and category 2 quantities of radioactive materials along with a description of the licensee's security measures that have been implemented to comply with this rule; and

2. A notification that the licensee will request a timely armed response by the LLEA to any actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of material.

(b) The licensee shall notify the Division within 3 business days if:

1. The LLEA has not responded to the request for coordination within 60 days of the coordination request; or

2. The LLEA notifies the licensee that the LLEA does not plan to participate in coordination activities.

(c) The licensee shall document its efforts to coordinate with the LLEA. The documentation must be kept for 3 years.

(d) The licensee shall coordinate with the LLEA at least every 12 months, or when changes to the facility design or operation adversely affect the potential vulnerability of the licensee's material to theft, sabotage, or diversion.

(4) Security zones.

(a) Licensees shall ensure that all aggregated category 1 and category 2 quantities of radioactive material are used or stored within licensee-established security zones. Security zones may be permanent or temporary.

(b) Temporary security zones must be established as necessary to meet the licensee's transitory or intermittent business activities, such as periods of maintenance, source delivery, and source replacement.

(c) Security zones must, at a minimum, allow unescorted access only to approved individuals through:

1. Isolation of category 1 and category 2 quantities of radioactive materials by the use of continuous physical barriers that allow access to the security zone only through established access control points. A physical barrier is a natural or man-made structure or formation sufficient for the isolation of the category 1 or category 2 quantities of radioactive material within a security zone;

2. Direct control of the security zone by approved individuals at all times; or

3. A combination of continuous physical barriers and direct control.

(d) For category 1 quantities of radioactive material during periods of maintenance, source receipt, preparation for shipment, installation, or source removal or exchange, the licensee shall, at a minimum, provide sufficient individuals approved for unescorted access to maintain continuous surveillance of sources in temporary security zones and in any security zone in which physical barriers or intrusion detection systems have been disabled to allow such activities.

(e) Individuals not approved for unescorted access to category 1 or category 2 quantities of radioactive material must be escorted by an approved individual when in a security zone.

(5) Monitoring, detection, and assessment.

(a) Monitoring and detection.

1. Licensees shall establish and maintain the capability to continuously monitor and detect without delay all unauthorized entries into its security zones. Licensees shall provide the means to maintain continuous monitoring and detection capability in the event of a loss of the primary power source, or provide for an alarm and response in the event of a loss of this capability to continuously monitor and detect unauthorized entries.

2. Monitoring and detection must be performed by:

(i) A monitored intrusion detection system that is linked to an onsite or offsite central monitoring facility;

(ii) Electronic devices for intrusion detection alarms that will alert nearby facility personnel;

(iii) A monitored video surveillance system;

(iv) Direct visual surveillance by approved individuals located within the security zone; or

(v) Direct visual surveillance by a licensee designated individual located outside the security zone.

3. A licensee subject to this chapter shall also have a means to detect unauthorized removal of the radioactive material from the security zone. This detection capability must provide:

(i) For category 1 quantities of radioactive material, immediate detection of any attempted unauthorized removal of the radioactive material from the security zone. Such immediate detection capability must be provided by:

(I) Electronic sensors linked to an alarm;

(II) Continuous monitored video surveillance; or

(III) Direct visual surveillance.

(ii) For category 2 quantities of radioactive material, weekly verification through physical checks, tamper indicating devices, use, or other means to ensure that the radioactive material is present.

(b) Assessment.

Licensees shall immediately assess each actual or attempted unauthorized entry into the security zone to determine whether the unauthorized access was an actual or attempted theft, sabotage, or diversion.

(c) Personnel communications and data transmission.

For personnel and automated or electronic systems supporting the licensee's monitoring, detection, and assessment systems, licensees shall:

1. Maintain continuous capability for personnel communication and electronic data transmission and processing among site security systems; and

2. Provide an alternative communication capability for personnel, and an alternative data transmission and processing capability, in the event of a loss of the primary means of communication or data transmission and processing. Alternative communications and data transmission systems may not be subject to the same failure modes as the primary systems.

(d) Response.

Licensees shall immediately respond to any actual or attempted unauthorized access to the security zones, or actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material at licensee facilities or temporary job sites. For any unauthorized access involving an actual or attempted theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material, the licensee's response shall include requesting, without delay, an armed response from the LLEA.

(6) Maintenance and testing.

(a) Each licensee subject to this chapter shall implement a maintenance and testing program to ensure that intrusion alarms, associated communication systems, and other physical components of the systems used to secure or detect unauthorized access to radioactive material are maintained in operable condition and are capable of performing their intended function when needed. The equipment relied on to meet the security requirements of this chapter must be inspected and tested for operability and performance at the manufacturer's suggested frequency. If there is no suggested manufacturer's suggested frequency, the testing must be performed at least annually, not to exceed 12 months.

(b) The licensee shall maintain records on the maintenance and testing activities for 3 years.

(7) Requirements for mobile devices.

Each licensee that possesses mobile devices containing category 1 or category 2 quantities of radioactive material must:

(a) Have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee; and

(b) For devices in or on a vehicle or trailer, unless the health and safety requirements for a site prohibit the disabling of the vehicle, the licensee shall utilize a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee. Licensees shall not rely on the removal of an ignition key to meet this requirement.

(8) Security program review.

(a) Each licensee shall be responsible for the continuing effectiveness of the security program. Each licensee shall ensure that the security program is reviewed to confirm compliance with the requirements of this chapter and that comprehensive actions are taken to correct any noncompliance that is identified. The review must include the radioactive material security program content and implementation. Each licensee shall periodically (at least annually) review the security program content and implementation.

(b) The results of the review, along with any recommendations, must be documented. Each review report must identify conditions that are adverse to the proper performance of the security program, the cause of the condition(s), and, when appropriate, recommend corrective actions,

and corrective actions taken. The licensee shall review the findings and take any additional corrective actions necessary to preclude repetition of the condition, including reassessment of the deficient areas where indicated.

(c) The licensee shall maintain the review documentation for 3 years.

(9) Reporting of events.

(a) The licensee shall immediately notify the LLEA after determining that an unauthorized entry resulted in an actual or attempted theft, sabotage, or diversion of a category 1 or category 2 quantity of radioactive material. As soon as possible after initiating a response, but not at the expense of causing delay or interfering with the LLEA response to the event, the licensee shall notify the Division. In no case shall the notification to the Division be later than 4 hours after the discovery of any attempted or actual theft, sabotage, or diversion.

(b) The licensee shall assess any suspicious activity related to possible theft, sabotage, or diversion of category 1 or category 2 quantities of radioactive material and notify the LLEA as appropriate. As soon as possible but not later than 4 hours after notifying the LLEA, the licensee shall notify the Division at (615) 532-0364. For after-hours notifications, the licensee shall contact the Tennessee Emergency Management Agency, (615) 741-0001.

(c) The initial telephonic notification required by subparagraph (a) of this paragraph must be followed within a period of 30 days by a written report submitted to the Division by an appropriate method listed in paragraph (4) of Rule 0400-20-13-.01. The report must include sufficient information for Division analysis and evaluation, including identification of any necessary corrective actions to prevent future instances.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

0400-20-13-.04 Physical Protection in Transit.

(1) Additional requirements for transfer of category 1 and category 2 quantities of radioactive material.

A licensee transferring a category 1 or category 2 quantity of radioactive material to a licensee of the Division, Commission, or an Agreement State shall meet the license verification provisions listed below instead of those listed in Rule 0400-20-10-.22.

(a) Any licensee transferring category 1 quantities of radioactive material to a licensee of the Division, Commission, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred and that the licensee is authorized to receive radioactive material at the location requested for delivery. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(b) Any licensee transferring category 2 quantities of radioactive material to a licensee of the Division, Commission, or an Agreement State, prior to conducting such transfer, shall verify with the NRC's license verification system or the license issuing authority that the transferee's license authorizes the receipt of the type, form, and quantity of radioactive material to be transferred. If the verification is conducted by contacting the license issuing authority, the transferor shall document the verification. For transfers within the same organization, the licensee does not need to verify the transfer.

(c) In an emergency where the licensee cannot reach the license issuing authority and the license verification system is nonfunctional, the licensee may accept a written certification by the transferee that it is authorized by license to receive the type, form, and quantity of radioactive material to be transferred. The certification must include the license number, current revision number, issuing agency, expiration date, and for a category 1 shipment the authorized address. The licensee shall keep a copy of the certification. The certification must be confirmed by use of

the NRC's license verification system or by contacting the license issuing authority by the end of the next business day.

(d) The transferor shall keep a copy of the verification documentation as a record for 3 years.

(2) Applicability of physical protection of category 1 and category 2 quantities of radioactive material during transit.

(a) For shipments of category 1 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in subparagraphs (3)(a) and (e) of this rule; paragraph (4) of this rule; part (5)(a)1 of this rule; part (5)(b)1 of this rule; subparagraph (5)(c) of this rule; and subparagraphs (6)(a), (c), (e), (g) and (h) of this rule.

(b) For shipments of category 2 quantities of radioactive material, each shipping licensee shall comply with the requirements for physical protection contained in subparagraphs (3)(b) through (e) of this rule; parts (5)(a)2 and 3 of this rule; part (5)(b)2 of this rule; subparagraph (5)(c) of this rule; and subparagraphs (6)(b), (d), (f), (g), and (h) of this rule. For those shipments of category 2 quantities of radioactive material that meet the criteria of subparagraph (21)(v) of Rule 0400-20-10-.30, the shipping licensee shall also comply with the advance notification provisions of paragraph (21) of Rule 0400-20-10-.30.

(c) The shipping licensee shall be responsible for meeting the requirements of this rule unless the receiving licensee has agreed in writing to arrange for the in-transit physical protection required under this rule.

(d) Each licensee that imports or exports category 1 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in part (3)(a)2 and subparagraph (3)(e) of this rule; paragraph (4) of this rule; part (5)(a)1 and (5)(b)1, and subparagraph (5)(c) of this rule; and subparagraphs (6)(a), (c), (e), (g), and (h) of this rule for the domestic portion of the shipment.

(e) Each licensee that imports or exports category 2 quantities of radioactive material shall comply with the requirements for physical protection during transit contained in parts (5)(a)2 and 3, and (5)(b)2 of this rule; and subparagraphs (6)(b), (d), (f), (g), and (h) of this rule for the domestic portion of the shipment.

(3) Preplanning and coordination of shipment of category 1 or category 2 quantities of radioactive material.

(a) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 1 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall:

1. Preplan and coordinate shipment arrival and departure times with the receiving licensee;

2. Preplan and coordinate shipment information with the governor or the governor's designee, identified in the contact information source described in subparagraph (4)(a) of this rule, of any state through which the shipment will pass to:

(i) Discuss the state's intention to provide law enforcement escorts; and

(ii) Identify safe havens; and

3. Document the preplanning and coordination activities.

(b) Each licensee that plans to transport, or deliver to a carrier for transport, licensed material that is a category 2 quantity of radioactive material outside the confines of the licensee's facility or other place of use or storage shall coordinate the shipment no-later-than arrival time and the expected shipment arrival with the receiving licensee. The licensee shall document the coordination activities.

(c) Each licensee who receives a shipment of a category 2 quantity of radioactive material shall confirm receipt of the shipment with the originator. If the shipment has not arrived by the no-later-than arrival time, the receiving licensee shall notify the originator.

(d) Each licensee, who transports or plans to transport a shipment of a category 2 quantity of radioactive material, and determines that the shipment will arrive after the no-later-than arrival time provided pursuant to paragraph (b) of this paragraph, shall promptly notify the receiving licensee of the new no-later-than arrival time.

(e) The licensee shall retain a copy of the documentation for preplanning and coordination and any revision thereof, as a record for 3 years.

(4) Advance notification of shipment of category 1 quantities of radioactive material.

As specified in subparagraphs (a) and (b) of this paragraph, each licensee shall provide advance notification to the Division, and to the governor of a state, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport, or delivery to a carrier for transport of the licensed material outside the confines of the licensee's facility or other place of use or storage.

(a) Procedures for submitting advance notification.

1. The notification must be made to the Division and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's Web site at https://scp.nrc.gov/special/designee.pdf. A list of the contact information is also available upon request from the Director, Division of Materials Safety, State, Tribal, and Rulemaking Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Notifications to the NRC must be to the NRC's Director, Division of Security Policy, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The notification to the NRC may be made by email to RAMQCSHIPMENTS@nrc.gov or by fax to 301-816-5151.

2. A notification delivered by mail must be postmarked at least 7 days before transport of the shipment commences at the shipping facility.

3. A notification delivered by any means other than mail must reach the Division at least 4 days before the transport of the shipment commences and must reach the office of the governor or the governor's designee at least 4 days before transport of a shipment within or through the state.

(b) Information to be furnished in advance notification of shipment. Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

1. The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

2. The license numbers of the shipper and receiver;

3. A description of the radioactive material contained in the shipment, including the radionuclides and quantity;

4. The point of origin of the shipment and the estimated time and date that shipment will commence;

5. The estimated time and date that the shipment is expected to enter each state along the route;

6. The estimated time and date of arrival of the shipment at the destination; and

7. A point of contact, with a telephone number, for current shipment information.

(c) Revision notice.

1. The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the Division and to the governor of the state, or the governor's designee.

2. A licensee shall promptly notify the governor of a state or the governor's designee of any changes to the information provided in accordance with subparagraph (b) of this paragraph and part (1) of this subparagraph. The licensee shall also immediately notify the Division of any such changes.

(d) Cancellation notice.

Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the Division and to the governor or governor's designee previously notified. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being cancelled.

(e) Records.

The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for 3 years.

(f) Protection of information.

State officials, state employees, and other individuals, whether or not licensees of the Commission or an Agreement State, who receive schedule information of the kind specified in subparagraph (b) of this paragraph shall protect that information against unauthorized disclosure as specified in subparagraph (2)(d) of Rule 0400-20-13-.03.

(5) Requirements for physical protection of category 1 and category 2 quantities of radioactive material during shipment.

(a) Shipments by road.

1. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that movement control centers are established that maintain position information from a remote location. These control centers must monitor shipments 24 hours a day, 7 days a week, and have the ability to communicate immediately, in an emergency, with the appropriate law enforcement agencies.

(ii) Ensure that redundant communications are established that allow the transport to contact the escort vehicle (when used) and movement control center at all times. Redundant communications may not be subject to the same interference factors as the primary communication.

(iii) Ensure that shipments are continuously and actively monitored by a telemetric position monitoring system or an alternative tracking system reporting to a movement control center. A movement control center must provide positive confirmation of the location, status, and control over the shipment. The movement control center must be prepared to promptly implement preplanned procedures in response to deviations from the authorized route or a notification of

actual, attempted, or suspicious activities related to the theft, loss, or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(iv) Provide an individual to accompany the driver for those highway shipments with a driving time period greater than the maximum number of allowable hours of service in a 24-hour duty day as established by the Department of Transportation Federal Motor Carrier Safety Administration. The accompanying individual may be another driver.

(v) Develop written normal and contingency procedures to address:

(I) Notifications to the communication center and law enforcement agencies;

(II) Communication protocols. Communication protocols must include a strategy for the use of authentication codes and duress codes and provisions for refueling or other stops, detours, and locations where communication is expected to be temporarily lost;

(III) Loss of communications; and

(IV) Responses to an actual or attempted theft or diversion of a shipment.

(vi) Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall ensure that drivers, accompanying personnel, and movement control center personnel have access to the normal and contingency procedures.

2. Each licensee that transports category 2 quantities of radioactive material shall maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance.

3. Each licensee who delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(b) Shipments by rail.

1. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 1 quantity of radioactive material shall:

(i) Ensure that rail shipments are monitored by a telemetric position monitoring system or an alternative tracking system reporting to the licensee, third-party, or railroad communications center. The communications center shall provide positive confirmation of the location of the shipment and its status. The communications center shall implement preplanned procedures in response to

deviations from the authorized route or to a notification of actual, attempted, or suspicious activities related to the theft or diversion of a shipment. These procedures will include, but not be limited to, the identification of and contact information for the appropriate LLEA along the shipment route.

(ii) Ensure that periodic reports to the communications center are made at preset intervals.

2. Each licensee who transports, or delivers to a carrier for transport, in a single shipment, a category 2 quantity of radioactive material shall:

(i) Use carriers that have established package tracking systems. An established package tracking system is a documented, proven, and reliable system routinely used to transport objects of value. In order for a package tracking system to maintain constant control and/or surveillance, the package tracking system must allow the shipper or transporter to identify when and where the package was last and when it should arrive at the next point of control.

(ii) Use carriers that maintain constant control and/or surveillance during transit and have the capability for immediate communication to summon appropriate response or assistance; and

(iii) Use carriers that have established tracking systems that require an authorized signature prior to releasing the package for delivery or return.

(c) Investigations.

Each licensee who makes arrangements for the shipment of category 1 quantities of radioactive material shall immediately conduct an investigation upon the discovery that a category 1 shipment is lost or missing. Each licensee who makes arrangements for the shipment of category 2 quantities of radioactive material shall immediately conduct an investigation, in coordination with the receiving licensee, of any shipment that has not arrived by the designated no-later-than arrival time.

(6) Reporting of events.

(a) The shipping licensee shall notify the appropriate LLEA and the Division within 1 hour of its determination that a shipment of category 1 quantities of radioactive material is lost or missing. The appropriate LLEA would be the law enforcement agency in the area of the shipment's last confirmed location. During the investigation required by subparagraph (5)(c) of this rule, the shipping licensee will provide agreed upon updates to the Division on the status of the investigation.

(b) The shipping licensee shall notify the Division within 4 hours of its determination that a shipment of category 2 quantities of radioactive material is lost or missing. If, after 24 hours of its determination that the shipment is lost or missing, the radioactive material has not been located and secured, the licensee shall immediately notify the Division.

(c) The shipping licensee shall notify the designated LLEA along the shipment route as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment or suspicious activities related to the theft or diversion of a shipment of a category 1 quantity of radioactive material. As soon as possible after notifying the LLEA, the licensee shall notify the Division upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment of category 1 radioactive material.

(d) The shipping licensee shall notify the Division as soon as possible upon discovery of any actual or attempted theft or diversion of a shipment, or any suspicious activity related to the shipment, of a category 2 quantity of radioactive material.

(e) The shipping licensee shall notify the Division and the LLEA as soon as possible upon recovery of any lost or missing category 1 quantities of radioactive material.

(f) The shipping licensee shall notify the Division as soon as possible upon recovery of any lost or missing category 2 quantities of radioactive material.

(g) The initial telephonic notification required by subparagraphs (a) through (d) of this paragraph must be followed within a period of 30 days by a written report submitted to the Division. A written report is not required for notifications on suspicious activities required by subparagraphs (c) and (d) of this paragraph. The report must set forth the following information:

1. A description of the licensed material involved, including kind, quantity, and chemical and physical form;

2. A description of the circumstances under which the loss or theft occurred;

3. A statement of disposition, or probable disposition, of the licensed material involved;

4. Actions that have been taken, or will be taken, to recover the material; and

5. Procedures or measures that have been, or will be, adopted to ensure against a recurrence of the loss or theft of licensed material.

(h) Subsequent to filing the written report, the licensee shall also report any additional substantive information on the loss or theft within 30 days after the licensee learns of such information.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

0400-20-13-.05 Reserved.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

0400-20-13-.06 Records.

(1) Form of records.

Each record required by this chapter must be legible throughout the retention period specified by this chapter. The record may be the original or a reproduced copy or a microform, provided that the copy or microform is authenticated by authorized personnel and that the microform is capable of producing a clear copy throughout the required retention period. The record may also be stored in electronic media with the capability for producing legible, accurate, and complete records during the required retention period. Records such as letters, drawings, and specifications, must include all pertinent information such as stamps, initials, and signatures. The licensee shall maintain adequate safeguards against tampering with and loss of records.

(2) Record retention.

Licensees shall maintain the records that are required by the rules in this chapter for the period specified by the appropriate rule. If a retention period is not otherwise specified, these records must be retained until the Division terminates the facility's license. All records related to this chapter may be destroyed upon the Division's termination of the facility license.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

0400-20-13-.07 Enforcement.

(1) Inspections.

(a) Each licensee shall afford to the Division at all reasonable times opportunity to inspect category 1 or category 2 quantities of radioactive material and the premises and facilities wherein the nuclear material is used, produced, or stored.

(b) Each licensee shall make available to the Division for inspection, upon reasonable notice, records kept by the licensee pertaining to its receipt, possession, use, acquisition, import, export, or transfer of category 1 or category 2 quantities of radioactive material.

(2) Reserved.

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

0400-20-13-.08 Appendix to Chapter 0400-20-13.

Table 1--Category 1 and Category 2 Threshold

The terabecquerel (TBq) values are the regulatory standard. The curie (Ci) values specified are obtained by converting from the TBq value. The curie values are provided for practical usefulness only.

Table 1 – Category 1 and Category 2 Threshold

Radioactive material	Category 1 (TBq)	Category 1 (Ci)	Category 2 (TBq)	Category 2 (Ci)
Americium-241	60	1,620	0.6	16.2
Americium-241/Be	60	1,620	0.6	16.2
Californium-252	20	540	0.2	5.40
Cobalt-60	30	810	0.3	8.10
Curium-244	50	1,350	0.5	13.5
Cesium-137	100	2,700	1	27.0
Gadolinium-153	1,000	27,000	10	270
Iridium-192	80	2,160	0.8	21.6
Plutonium-238	60	1,620	0.6	16.2
Plutonium-239/Be	60	1,620	0.6	16.2
Promethium-147	40,000	1,080,000	400	10,800
Radium-226	40	1,080	0.4	10.8
Selenium-75	200	5,400	2	54.0
Strontium-90	1,000	27,000	10	270
Thulium-170	20,000	540,000	200	5,400
Ytterbium-169	300	8,100	2	81.0

Note: Calculations Concerning Multiple Sources or Multiple Radionuclides

The "sum of fractions" methodology for evaluating combinations of multiple sources or multiple radionuclides is to be used in determining whether a location meets or exceeds the threshold and is thus subject to the requirements of this chapter.

I. If multiple sources of the same radionuclide and/or multiple radionuclides are aggregated at a location, the sum of the ratios of the total activity of each of the radionuclides must be determined to verify whether the activity at the location is less than the category 1 or category 2 thresholds of Table 1, as appropriate. If the calculated sum of the ratios, using the equation below, is greater than or equal to 1.0, then the applicable requirements of this chapter apply.

II. First determine the total activity for each radionuclide from Table 1. This is done by adding the activity of each individual source, material in any device, and any loose or bulk material that contains the radionuclide. Then use the equation below to calculate the sum of the ratios by inserting the total activity of the applicable radionuclides from Table 1 in the numerator of the equation and the corresponding threshold activity from Table 1 in the denominator of the equation. Calculations must be performed in metric values (i.e., TBq) and the numerator and denominator values must be in the same units.

R_1 = total activity for radionuclide 1
R_2 = total activity for radionuclide 2
R_n = total activity for radionuclide n
AR_1 = activity threshold for radionuclide 1
AR_2 = activity threshold for radionuclide 2
AR_n = activity threshold for radionuclide n

$$\sum_{1}^{n}\left[\frac{R_1}{AR_1}+\frac{R_2}{AR_2}+\frac{R_n}{AR_n}\right] \geq 1.0$$

Authority: T.C.A. §§ 68-202-101 et seq., 68-202-201 et seq., and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner on 01/10/2017, 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: *01/06/16*

Rulemaking Hearing(s) Conducted on: (add more dates). *03/17/16*

Date: January 10, 2017

Signature: [signature]

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

CAROL L. GRICE
STATE OF TENNESSEE
NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: January 10, 2017

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

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

4/11/2017
Date

Department of State Use Only

Filed with the Department of State on: 6/14/17

Effective on: 9/12/17

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Air Pollution Control
SUBJECT:	Volatile Organic Compounds / Gasoline Dispensing Facilities
STATUTORY AUTHORITY:	No federal or state law mandates this change. The Air Pollution Control Board is amending the rule to more clearly state the existing rule.
EFFECTIVE DATES:	August 31, 2017 through June 30, 2018
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	To add clarity for the benefit of the regulated community with gasoline dispensing facilities, the Air Pollution Control Board is proposing the following amendments to Rule 1200-03-18-.24:

- To paragraph (1) by adding a new subparagraph (e). Subparagraph (e) cross-references the existing reporting requirement from paragraph (8) of Rule 1200-03-18-.02 in Rule 1200-03-18-.24 to simplify future issuance of Notices of Authorization under pending streamlining permit-by-rule provisions.

- To subparagraph (1)(d) by adding the words "ever" and "shall remain subject to those requirements" to clarify the meaning of the provision.

- To subparagraph (2)(b) by replacing the phrase "three years after the effective date of this rule" with the actual compliance date of July 14, 2019.

• To subparagraph (2)(c) by replacing the phrase "the effective date of this rule" with the actual effective date of July 14, 2016.

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.

A public hearing for the proposed rule was held on November 2, 2016. There were no comments received during the public hearing, and there were no other comments received from the public during the comment period.

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

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

The Air Pollution Control Board projects that no small businesses will bear the cost of, or directly benefit from, the rule amendment.

(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 Air Pollution Control Board projects that there will be no reporting, recordkeeping, and other administrative costs required for compliance with this rule amendment.

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

There will be no effect on impacted small businesses and consumers as a result of this rule amendment.

(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.

This rule amendment updates and corrects an existing rule, but does not make substantive changes.

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

This rule amendment makes minor changes to existing Rule 1200-03-18-.24 which is similar to 40 CFR 63.11111(i).

(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.

Exempting small businesses from the rule amendment would not benefit small businesses because the rule amendment has no impact on small businesses.

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;

To add clarity for the benefit of the regulated community with gasoline dispensing facilities, the Air Pollution Control Board is proposing the following amendments to Rule 1200-03-18-.24:

- To paragraph (1) by adding a new subparagraph (e). Subparagraph (e) cross-references the existing reporting requirement from paragraph (8) of Rule 1200-03-18-.02 in Rule 1200-03-18-.24 to simplify future issuance of Notices of Authorization under pending streamlining permit-by-rule provisions.
- To subparagraph (1)(d) by adding the words "ever" and "shall remain subject to those requirements" to clarify the meaning of the provision.
- To subparagraph (2)(b) by replacing the phrase "three years after the effective date of this rule" with the actual compliance date of July 14, 2019.
- To subparagraph (2)(c) by replacing the phrase "the effective date of this rule" with the actual effective date of July 14, 2016.

(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;

No federal or state law mandates this change. The Air Pollution Control Board is amending the rule to more clearly state the existing 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;

This amendment affects gasoline dispensing facilities in Tennessee.

(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 revenue and expenditures is expected to result from this amendment.

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

Travis Blake
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243
travis.blake@tn.gov

(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 William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 2nd Floor Nashville, Tennessee 37243 (615) 532-0108 Lucian.Geise@tn.gov

(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.

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: 06-03-17
Rule ID(s): 6546
File Date: 6/2/17
Effective Date: 8/31/17

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:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Travis Blake
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0617
Email:	travis.blake@tn.gov

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**
1200-03-18	Volatile Organic Compounds
Rule Number	**Rule Title**
1200-03-18-.24	Gasoline Dispensing Facilities

(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 1200-03-18
Volatile Organic Compounds

Amendments

Subparagraph (d) of paragraph (1) of Rule 1200-03-18-.24 Gasoline Dispensing Facilities is amended by deleting it in its entirety and substituting instead the following:

(d) For any GDF otherwise exempt from subparagraph (c) of this paragraph based on monthly throughput, if the GDF ever exceeds the applicability threshold specified in subparagraph (c) of this paragraph, it shall be subject to the requirements of subparagraph (c) of this paragraph and shall remain subject to those requirements even if its throughput later falls below the threshold. The owner or operator shall inform the Technical Secretary within 30 days following the exceedance.

Paragraph (1) of Rule 1200-03-18-.24 Gasoline Dispensing Facilities is amended by adding a new subparagraph (e) to read as follows:

(e) The owner or operator of any GDF in Davidson, Rutherford, Shelby, Sumner, Knox, Blount, Anderson, Williamson, or Wilson County which has actual emissions from stationary sources of 25 tons or more of volatile organic compounds (VOC) during a calendar year shall report to their permitting authority in accordance with paragraph (8) of Rule 1200-03-18-.02.

Subparagraph (b) of paragraph (2) of Rule 1200-03-18-.24 Gasoline Dispensing Facilities is amended by deleting it in its entirety and substituting instead the following:

(b) Any GDF with an existing Stage II vapor recovery system shall decommission and remove the system no later than ~~three years after the effective date of this rule~~ July 14, 2019, and no GDF shall install a Stage II vapor recovery system on or after such date.

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

Subparagraph (c) of paragraph (2) of Rule 1200-03-18-.24 Gasoline Dispensing Facilities is amended by deleting it in its entirety and substituting instead the following:

(c) On and after ~~the effective date of this rule~~ July 14, 2016, no GDF shall be required to install a Stage II vapor recovery system and a GDF may decommission and remove the GDF's existing Stage II vapor recovery system.

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				
Caitlin Roberts Jennings Small Generator of Air Pollution representing Automotive Interests	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	
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 11/09/2016, 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: 09/07/16

Rulemaking Hearing(s) Conducted on: (add more dates). *11/02/16*

Date: November 9, 2016

Signature: Quincy N. Styke III

Name of Officer: Quincy N. Styke III

Title of Officer: Acting Technical Secretary

MALCOLM H. BUTLER STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

Subscribed and sworn to before me on: November 9, 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
Herbert H. Slatery III
Attorney General and Reporter

6/1/2017
Date

Department of State Use Only

Filed with the Department of State on: 6/2/17

Effective on: 8/31/17

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2017 JUN -2 PM 12:19
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Insurance
SUBJECT:	Navigator and Certified Application Counselor Registration Requirements
STATUTORY AUTHORITY:	The Center for Medicare and Medicaid Services ("CMS") sets minimum standards for navigators, business entity navigators, CACs, and CAC organizations. States may set additional standards, so long as such standards do not prevent application of CMS requirements found in 45 C.F.R. §§ 155.210 and 155.225.
EFFECTIVE DATES:	September 26, 2017 through June 30, 2018
FISCAL IMPACT:	The amendment to Rule 0780-01-55-.09 will slightly decrease the expenditures of state and local government entities because they will no longer be required to pay for background checks for their employees and contractors who will be exempt from registering as navigators or certified application counselors as a result of the amendment. The cost savings will be approximately $38.31 per background check.
STAFF RULE ABSTRACT:	The attached Rulemaking Hearing Rules Filing Form amends Tenn. Comp. R. & Regs. Chapter 0780-01 -55 Navigator and Certified Application Counselor Registration Requirements. Specifically, it amends the Rule 0780-01 -55-.05 and Rule 0780-01-55-.09. Currently, the registration renewals for navigators, business entity navigators, CACs, and CAC organizations expire twelve (12) months after the date of the registration. The amendment to Rule 0780-01 -55-.05(1) provides that all registration renewals for navigators, business entity navigators, CACs, and CAC organizations will instead expire annually on September 30th. Rule 0780-01-55-.05(1) is also being amended by adding subdivisions (1)(a) and (1)(b). Subdivision (1)(a) explains that any navigators, business entity navigators, CACs, and CAC

organizations registration in effect on the effective date of these rules will expire on September 30, 2018. This will extend all of the existing registrations at the time the rules take effect until September 30, 2018. Subdivision (1)(b) explains that the navigators, business entity navigators, CACs, and CAC organizations registrants whose registrations are extended pursuant to subdivision (1)(a) need only comply with renewal requirements at the time of their September 30, 2018 renewal.

Currently, the registration renewals for navigators, business entity navigators, CACs, and CAC organizations must be filed no more than thirty (30) days prior to expiration date. The amendment to Rule 0780-01 -55-.05(2) provides that the renewals may be filed between September 1 and September 30 of each year.

Rule 0780-01-55-.05 is also amended by deleting language in the first sentence of subdivision (4)(b) and by deleting Paragraphs (5), (6), and (7). The purpose of these amendments is to delete obsolete language relating to emergency Chapter 0780-01-55, which was in effect from September 18, 2013, to March 17, 2014.

Rule 0780-01-55-.09 is amended by deleting language in Paragraph (4) and substituting with new language. Currently, Paragraph (4) exempts the Tennessee Department of Human Services ("OHS"), including OHS employees and contractors, from the Chapter 0780-01-55 Navigator and Certified Application Counselor Registration Requirements. The amendment expands this exemption to all state and local government entities, specifically employees and contractors acting in their official capacities for those entities.

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 1

Jacqueline Shrago, representing Tennessee Healthcare Campaign ("THC"), a nonprofit consumer health care advocacy group, inquired as to whether certification counselors with existing registrations that have been extended to September 30, 2018, pursuant to the amended rules, are going to be required to have an additional twelve (12) hours of training when they renew in September 30, 2018?

Agency Response to Comment 1

The Department responded that twelve (12) additional hours will not be required for current registrations that have expiration dates extended to September 30, 2018.

Comment 2

The THC representative inquired about a situation in which a person who currently does not have a registration and is unable to submit proof of training prior to September 30th, due to the federal website not being available in time, and how that person would be treated by the Department as related to initial licensure.

Agency Response to Comment 2

The Department responded that the applicant would be permitted to submit an application whenever he or she obtains the proof of training, even if after September 30th, and the registration for that applicant will still expire on September 30th of the following year.

Comment 3

The THC representative inquired as to whether an applicant can submit, and whether the Department will approve for licensure, proof of training from other means besides the federal program if an applicant is unable to submit proof of training prior to September 30th, due to the federal website not being available in time.

Agency Response to Comment 3

The Department responded that any proof of training will be reviewed when the application is submitted.

Comment 4

The THC representative inquired as to how long it takes for the approval of training outlines.

Agency Respondent to Comment 4

The Department responded that the process for the approval of training is not being amended by these rules and that there is already a procedure in place regarding Department approval of training courses.

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.

The Department of Commerce and Insurance has considered whether the proposed rules in these Rulemaking Hearing Rules will affect small businesses. The proposed rules may have some effect on small businesses as far as the amendments to the rules change the renewal process for the registrations of business entity navigators and their navigator employees and certified application counselor organizations and their counselor employees. The statement of economic impact, required pursuant to 4-5-403, on small business is as follows:

(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.

Business entity navigators and certified application counselor organizations are required to report the individual navigators and CACs that are associated with their entity and/or organization and to certify that each navigator and CAC has completed their continuing education. The amendments to the rules will affect the process in which these tasks are performed in that the registrations for business entity navigators and their navigator employees and certified application counselor organizations and their counselor employees will now expire each year on September 30th as opposed to the current expiration period which is twelve (12) months from the time of registration. This change is anticipated to benefit small businesses because all renewal applications will be due at the same time as opposed to staggered expiration dates. There are two (2) registered business entity navigators in Tennessee and fifty-four (54) certified application counselor organizations.

(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.

It is anticipated that the business entity navigators and certified application counselor organizations affected by this rule will need an administrative staff that is commensurate with the amount of registered navigator employees or counselor employees that the entity/organization employs in order to ensure that the renewal requirements are met. However, the amendment to the rule is intended to streamline the renewal process so it is unanticipated that any entity/organization would be subject to increased reporting, recordkeeping, or administrative costs due to the rule amendments.

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

It is probable that the amended rules will have a positive effect on business entity navigators and certified application counselor organizations because the registration renewal process will be more efficient.

(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 amendment to the rules is thought to be the least burdensome, least intrusive, and least costly method to effectuate a more efficient renewal process for business entity navigators, certified application counselor organizations, and their individual employees.

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

45 C.F.R. §§ 155.210 and 155.225 contain the licensing and certification standards for navigators and certified application counselors. Both sections require navigator and certified counselors to meet any licensing or certification standards prescribed by a State if a state has promulgated such standards. Such state standards are not permitted to interfere with the application of aforementioned federal licensing and certification standards.

Numerous states including, but not limited to, Georgia, Texas, Florida, and Colorado have similar navigator licensing schemes and the Departments of Insurance in those states are responsible for overseeing navigator registration.

(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 rules are intended to create a more efficient renewal process by establishing the same expiration date for all registrations of business entity navigators, certified application counselor organizations, and their individual employees. An exemption from the new registration expiration date for some small businesses would be illogical as the amendment is meant to make the registration renewal process more efficient.

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 amendment to Paragraph (4) of Rule 0780-01-55-.09 may have an impact on local governments in that the amendment broadens the registration exemption for navigators, business entity navigators, certified application counselors, or certified application counselor organizations to all state and local government agencies, employees acting in their official capacities as employees of state and local government agencies, or any contractors to the extent of their official duties for state and local government agencies.

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 attached Rulemaking Hearing Rules Filing Form amends Tenn. Comp. R. & Regs. Chapter 0780-01-55 Navigator and Certified Application Counselor Registration Requirements. Specifically, it amends the Rule 0780-01-55-.05 and Rule 0780-01-55-.09.

Currently, the registration renewals for navigators, business entity navigators, CACs, and CAC organizations expire twelve (12) months after the date of the registration. The amendment to Rule 0780-01-55-.05(1) provides that all registration renewals for navigators, business entity navigators, CACs, and CAC organizations will instead expire annually on September 30th. Rule 0780-01-55-.05(1) is also being amended by adding subdivisions (1)(a) and (1)(b). Subdivision (1)(a) explains that any navigators, business entity navigators, CACs, and CAC organizations registration in effect on the effective date of these rules will expire on September 30, 2018. This will extend all of the existing registrations at the time the rules take effect until September 30, 2018. Subdivision (1)(b) explains that the navigators, business entity navigators, CACs, and CAC organizations registrants whose registrations are extended pursuant to subdivision (1)(a) need only comply with renewal requirements at the time of their September 30, 2018 renewal.

Currently, the registration renewals for navigators, business entity navigators, CACs, and CAC organizations must be filed no more than thirty (30) days prior to expiration date. The amendment to Rule 0780-01-55-.05(2) provides that the renewals may be filed between September 1 and September 30 of each year.

Rule 0780-01-55-.05 is also amended by deleting language in the first sentence of subdivision (4)(b) and by deleting Paragraphs (5), (6), and (7). The purpose of these amendments is to delete obsolete language relating to emergency Chapter 0780-01-55, which was in effect from September 18, 2013, to March 17, 2014.

Rule 0780-01-55-.09 is amended by deleting language in Paragraph (4) and substituting with new language. Currently, Paragraph (4) exempts the Tennessee Department of Human Services ("DHS"), including DHS employees and contractors, from the Chapter 0780-01-55 Navigator and Certified Application Counselor Registration Requirements. The amendment expands this exemption to all state and local government entities, specifically employees and contractors acting in their official capacities for those entities.

(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 Center for Medicare and Medicaid Services ("CMS") sets minimum standards for navigators, business entity navigators, CACs, and CAC organizations. States may set additional standards, so long as such standards do not prevent application of CMS requirements found in 45 C.F.R. §§ 155.210 and 155.225.

(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;

Navigators, business entity navigators, CACs, and CAC organizations that are currently registered and future applicants for registration are most directly affected by the amendments to the rules. A notice of the rulemaking hearing was posted on the Secretary of State website for approximately forty-five (45) days, a notice of the rulemaking hearing was mailed to all domestic insurance companies in compliance with T.C.A. § 56-1-701, and a notice of the rulemaking hearing was mailed to every registered business entity navigator and CAC organization in Tennessee.

(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;

The amendment to Rule 0780-01-55-.09 will slightly decrease the expenditures of state and local government entities because they will no longer be required to pay for background checks for their employees and contractors who will be exempt from registering as navigators or certified application counselors as a result of the amendment. The cost savings will be approximately $38.31 per background check.

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

Kimberly Biggs, Director of Agent Licensing of the Insurance Division of the Tennessee 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;

Michael Humphreys, Assistant Commissioner for Insurance; Jenny Taylor, Assistant General Counsel for 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

Davy Crockett Tower, 8th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243; 615-770-5305; jenny.taylor@tn.gov

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

N/A.

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: 06-23-17
Rule ID(s): 6555
File Date: 6/28/17
Effective Date: 9/26/17

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:	Insurance
Contact Person:	Jenny Taylor, Assistant General Counsel
Address:	Davy Crockett Tower, 8th Floor 500 James Robertson Pkwy Nashville, TN
Zip:	37243
Phone:	(615) 770-5305
Email:	Jenny.taylor@tn.gov

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**
0780-01-55	Navigator and Certified Application Counselor Registration Requirements
Rule Number	**Rule Title**
0780-01-55-.05	Registration Renewal
0780-01-55-.09	Other Laws; Severability

Chapter 0780-01-55
Navigator and Certified Application Counselor Registration Requirements

Amendments

Rule 0780-01-55-.05
Registration Renewal

(1) ~~A navigator, business entity navigator, certified application counselor and certified application counselor organization registration shall be valid for one year.~~ A navigator, business entity navigator, certified application counselor, or certified application counselor organization registration shall expire ~~twelve (12) months after registration~~ on September 30 of each year. A navigator's, business entity navigator's, certified application counselor's, or certified application counselor organization's existing registration shall remain in effect during the pendency of a renewal application.

(a) A navigator, business entity navigator, certified application counselor, or certified application counselor organization registration that is in effect on [effective date of this rule filing] shall expire on September 30, 2018.

(b) For registrations that were extended to September 30, 2018, pursuant to 0780-01-55-.05(1)(a), the registrant need only comply with renewal requirements as prescribed by 0780-01-55-.05 at the time of the September 30, 2018, renewal and for purposes of meeting continuing education requirements, proof of completion of twelve (12) continuing education hours at the time of the September 30, 2018, renewal will be satisfactory.

(2) ~~Thirty days prior to the end of the twelve (12) month period, a navigator, business entity navigator, certified application counselor and certified application counselor organization may file an application for renewal on the application prescribed by the commissioner.~~ A navigator, business entity navigator, certified application counselor, or certified application counselor organization may file an application for renewal from September 1 to September 30 of each year. All applications for renewal must use the application prescribed by the commissioner. A navigator, business entity navigator, certified application counselor, or certified application counselor whose registration lapses for more than twelve (12) months from the renewal date shall be required to submit a new application and meet all new application requirements provided by Rule 0780-01-55-.04.

(3) Prior to the filing date for application for renewal of a license, an individual navigator or certified application counselor shall complete twelve (12) hours of continuing education requirements with one (1) credit hour equaling fifty (50) minutes in length. An entity registered as a navigator or a certified application counselor organization shall provide or shall arrange for continuing education to be provided to the individual navigators and certified application counselors. Any failure to fulfill the ongoing continuing education requirements shall result in the expiration of the individual navigator's or certified application counselor's registration. Individual navigators and certified application counselors whose registration has expired for failing to complete the continuing education requirements may not apply for a registration until they have provided satisfactory proof to the commissioner that they have completed the required continuing education requirements and have filed for an application for registration in accordance with rule 0780-01-55-.04.

(4) For continuing education provided to navigators and certified application counselors:

(a) It is recommended that one (1) hour should have course concentration in ethics during each continuing education year.

(b) ~~Except as those individuals described in rule 0780-01-55-.05(5), the~~ The federal training required for navigators and certified application counselors may only count toward a maximum of five (5) continuing education requirement hours under this rule.

(c) It is recommended an educational program should be a formal program of learning which contributes directly to the professional competence of the registrant. It is recommended that such formal programs:

1. File the education program with the commissioner on a form approved by the commissioner;

2. Prepare and maintain a detailed outline for four (4) years after the presentation;

3. Concentrate on subject areas such as:

(i) Insurance laws and regulations;

(ii) Health insurance overview;

(iii) Providing assistance in the marketplace;

(iv) Eligibility and enrollment;

(v) Privacy and security;

(vi) Tenncare and other Tennessee assistance programs;

(vii) Financial literacy;

(viii) Special marketplace circumstances;

(ix) Ethics;

4. Avoid subject areas such as:

(i) Committee service in any professional organization;

(ii) Computer science courses; and

(iii) Motivational, psychology, or sales training courses.

(d) Reporting of Continuing Education. Entities registered as navigators and certified application counselor organizations shall, in a manner prescribed by the commissioner, provide the commissioner with a list of all individual navigators or certified application counselors that it employs, supervises or is affiliated with on an annual basis upon renewal. This list shall certify that continuing education has been provided for individual navigator and certified application counselor registrants.

(e) The commissioner may, upon written request, extend the time in which a registrant must comply with or grant exception to the continuing education requirements of this Rule for reasons of poor health, military service, or other reasonable and just causes, including situations in which an individual navigator

or certified application counselor becomes affiliated with, employed by, or supervised by an entity registered as a navigator or certified application organization, and such individual has not completed the continuing education requirements before the individual's renewal because the continuing education has not yet been provided by the entity or organization.

~~(5) For individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, proof of satisfactory completion of federal training requirements shall meet the continuing education requirements for their first registration renewal only, provided that such proof is filed with the Department on a form prescribed by the Commissioner.~~

~~(6) For individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, those registrations shall remain effective until this rule becomes effective. Individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, may renew their registrations in accordance with the provisions of this rule. For individuals registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, such registrations shall remain in effect during the review of the renewal application.~~

~~(7) For individuals not registered as navigators and certified application counselors under the emergency Chapter 0780-01-55, that was effective from September 18, 2013 to March 17, 2014, that have received federal navigator or certified application counselor certifications, such applicants may continue to offer navigator or certified application counselor assistance after receiving notification that a completed application that includes a federal certification number has been received by the Department during the review of the application.~~

Authority: Tenn. Pub. Acts 2013, ch. 377, T.C.A. §§ 56-2-301 and 56-6-1301 through 56-6-1305

Rule 0780-01-55-.09
Other Laws; Severability

(1) The requirements of Title 56, Chapter 8, Part 1, and any related rules, shall apply to individuals and entities registered under this chapter. The activities and duties of navigators and certified application counselors shall be deemed to constitute transacting the business of insurance.

(2) The requirements of this chapter shall not apply to any individual or entity licensed as an insurance producer in this state or any entity or individual exempted from having to have an insurance producer license under T.C.A. § 56-6-104(b)(1).

(3) The requirements of this chapter shall not apply to hospitals licensed in this state under Title 68 or Title 33 of the Tennessee Code Annotated.

(4) ~~The requirements of this chapter shall not apply to the Department of Human Services of this state and any employees of the Department of Human Services acting in their official capacities as employees of that department, or any contractors to the extent of their official duties for that department.~~ The requirements of this chapter shall not apply to state and local government agencies, employees acting in their official capacities as employees of state and local government agencies, or any contractors to the extent of their official duties for state and local government agencies.

(5) If any provision of this chapter or its application to any person or circumstance is held invalid by a court, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable and the valid provisions or applications shall remain in full force and effect.

Authority: Tenn. Pub. Acts 2013, ch. 377, T.C.A. §§ 56-2-301, 56-6-104, 56-8-101 through 56-8-113 and 56-6-1301 through 56-6-1305.

* 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)
N/A					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 06/12/2017 (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: March 6, 2017

Rulemaking Hearing(s) Conducted on: (add more dates). May 9, 2017

Date: 6/12/17

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

DENISE M. LEWIS STATE OF TENNESSEE NOTARY PUBLIC WILSON COUNTY, TENN. My Commission Expires

Subscribed and sworn to before me on: 6/12/17

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Tennessee Department of Commerce and Insurance

Rule Chapter Number(s): 0780-1-55

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

6/27/2017
Date

Department of State Use Only

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Filed with the Department of State on: 6/28/17

Effective on: 9/26/17

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Board for Licensing Contractors
SUBJECT:	Licensing and General Regulations for Home Improvement Contractors
STATUTORY AUTHORITY:	The promulgation of these rules is not mandated by any federal or state law or regulation.
EFFECTIVE DATES:	September 6, 2017 through June 30, 2018
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The amendment to 0680-01-.02 Consideration of Applications clarifies who may perform as qualified agent for different types of entities and creates a deadline regarding how long a contractor has to replace a qualified agent before the license becomes invalid. The rule also mandates that the license of an individual or sole proprietorship shall automatically become inactive three (3) months after death of the individual or individual owner of the sole proprietorship unless another person or entity has applied to transfer the license. The amendment to 0680-01-.13 Monetary Limitations clarifies the Board policy regarding personal guaranties which are utilized by licensees to supplement their financial statement in order to increase their license monetary limitation. The amendment to 0680-01-.16 Appendix A of Rule 0680-01-12 (Classification System) adds details to existing license classifications and renames current classifications so as to clarify what work is covered by that classification. The amendment to 0680-01-.24 Bidding Procedures requires roofing subcontractors to report their license information accurately to general contractors when the roofing project exceeds twenty-five thousand dollars ($25,000.00).

New rule 0680-01-.28 renames current rule "Emergency Actions" as "Temporary Licensing" and adds details on the expedited licensed procedure for military personnel and spouses as required by TCA § 4-3-1304. All other aspects of the rule remain the same.

New rule 0680-07-.08 Temporary Licenses replaces the current rule pertaining to temporary licenses for home improvement applications and adds details on the expedited licensed procedure for military personnel and spouses as required by T.C.A. § 4-3-1304. All other aspects of the rule remain the same.

New rule 0680-07-.15 Civil Penalties details the grounds for disciplinary action by the Board against home improvement licensees and corresponding penalty amounts.

New rule 0680-07-.16 Contracting in Correct Name; Change of Name clarifies that licensees have a responsibility to enter into contracts and operate related contracting business under the name in which they are licensed in order to notify and prevent confusion on the part of the public at large regarding an entity's licensure status.

New rule 0680-07-.17 Misconduct lists grounds for disciplinary actions against home improvement licensees.

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.

See attached.

STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243
TELEPHONE (615) 741-3072 FACSIMILE (615) 532-4750

MEMORANDUM

TO: Tennessee Secretary of State, Division of Publications

FROM: Laura E. Martin

DATE: 3/29/2017

RE: Tennessee Board for Licensing Contractors Rulemaking Hearing; Public Comments

On March 28, 2017 at a regularly scheduled meeting the Tennessee Board for Licensing Contractors held a Rulemaking Hearing. This hearing was noticed on the Tennessee Department of Commerce and Insurance website on February 14, 2017.

At the time of the hearing a summary of the rules were read into the record. The public was then invited to make comments on the rules. There were no members of the public present that wished to make any comments on the rules. No additional comments were sent the Board's office prior to the hearing.

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.

T. C. A. § 4-5-403

§ 4-5-403. 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;

The proposed rules will affect more than 40 trades and professions across all facets of the construction industry in Tennessee. The vast majority of these trades and professions are considered 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;

These rules provide clear expectations to contractors who are looking to raise the limitation on their license. Its also clearly states the considerations the Board undertakes when assessing penalties.

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

The effect on small businesses will be positive. These rules should allow small business owners clarity on how to raise their limitations, and should also give them a better understanding of the factors that were taken into consideration when penalties have been assessed against them.

(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. The rules are specifically created to cater to small business owners, since the majority of the licensed businesses of the Board are small businesses.

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

There is no federal counterpart to the proposed rules.

(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 rules are specifically created to cater to small business owners, since the majority of the licensed businesses of the Board are small businesses.

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 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 amendment to 0680-01-.02 Consideration of Applications clarifies who may perform as qualified agent for different types of entities and creates a deadline regarding how long a contractor has to replace a qualified agent before the license becomes invalid. The rule also mandates that the license of an individual or sole proprietorship shall automatically become inactive three (3) months after death of the individual or individual owner of the sole proprietorship unless another person or entity has applied to transfer the license.

The amendment to 0680-01-.13 Monetary Limitations clarifies the Board policy regarding personal guaranties which are utilized by licensees to supplement their financial statement in order to increase their license monetary limitation.

The amendment to 0680-01-.16 Appendix A of Rule 0680-01- 12 (Classification System) adds details to existing license classifications and renames current classifications so as to clarify what work is covered by that classification.

The amendment to 0680-01-.24 Bidding Procedures requires roofing subcontractors to report their license information accurately to -general contractors when the -roofing project exceeds twenty- five thousand ¬ dollars ($25,000.00).

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New rule 0680-07-.08 Temporary Licenses replaces the current rule pertaining to temporary licenses for home improvement applicants and adds details on the expedited licensed procedure for military personnel and spouses as required by T.C.A. § 4-3-1304. All other aspects of the rule remain the same.

New rule 0680-07-.15 Civil Penalties details the grounds for disciplinary action by the Board against home improvement licensees and corresponding penalty amounts.

New rule 0680-07-.16 Contracting in Correct Name; Change of Name clarifies that licensees have a responsibility to enter into contracts and operate related contracting business under the name in which they are licensed in order to notify and prevent confusion on the part of the public at large regarding an entity's licensure status.

New rule 0680-07-.17 Misconduct lists grounds for disciplinary actions against home improvement licensees.

(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 Known.

(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;

Licensed Contractors and potential applicants will be most affected by these rules.. The rule relating to personal guarantees was developed after the Home builders association asked the board to interpret the intended use of the personal guaranty agreement. The other subject matter covered was developed when the Board members concluded that there were additional areas that the public did not have the clear information that they needed.

(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

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

N/A

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: 06-06-17
Rule ID(s): 6549-6550
File Date: 6/8/17
Effective Date: 9/6/17

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 for Licensing Contractors
Division:	Regulatory Boards
Contact Person:	Laura E. Martin, Assistant General Counsel
Address:	500 James Robertson Parkway, Nashville, TN 37243
Phone:	6157413072
Email:	Laura.Martin@tn.gov
Agency/Board/Commission:	Tennessee Board for Licensing Contractors

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
0680-01	Licensing
Rule Number	Rule Title
0680-01-.02	Consideration of Applicant
0680-01-.13	Monetary Limitations
0680-01-.16	Appendix A of rule 0680-01-.12 (Classification System)
0680-01-.24	Bidding Procedure
0680-01-.28	Emergency Actions

Chapter Number	**Chapter Title**
0680-07	General regulations for home Improvement contractors
Rule Number	**Rule Title**
0680-07-.08	Temporary licensing
0680-07-.15	Civil Penalties
0680-07-.16	Contracting in correct Name, Change of Name
0680-07-.17	Misconduct

{Redline}

Chapter 0680-01
Licensing
Amendments

0680-01-.01 Application for License
0680-01-.02 Consideration of Applications
0860-01-.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-.02 CONSIDERATION OF APPLICATIONS.

(1) All applications for licenses will be considered at the regular meetings of the Board. Such meetings shall be held in Nashville, Tennessee, in the months of January, March, May, July, September and November; provided, however, that the Board may change the location of meetings at its discretion. Applicants will receive adequate notice of any such change.

(2) At each regular meeting the Board will consider applications which have been properly completed and received in the Office of the Board by the twentieth (20th) day of the preceding month, however, this deadline may be waived for good cause shown. The Board reserves the right to consider an application for license at any time if consideration of the application at the regularly scheduled meeting would cause an undue hardship on the owner and be in the best interest of the public safety and welfare.

(3) In order to obtain a certification authorizing the applicant to operate as a contractor, the following persons, otherwise known as the qualifying agent, must obtain a successful score on the examination in the appropriate classification, and must meet all Board requirements for a qualifying agent, and may be required to appear before the Board for an interview:

(a) for a sole proprietorship- ~~the person who is in responsible supervision of the business management and construction practice and is either the individual owner or the full time employee with a written power of attorney;~~ either the individual owner or full time employee with a written power of attorney to bind the sole proprietor, who has sufficient knowledge of the construction business in which the persons are licensed to perform.

(b) for any partnership- ~~the person who is in responsible supervision of the business~~

~~management and construction practice and is either a general partner or a full time employee with written power of attorney;~~ either a general partner or full time employee with written power of attorney to bind the partnership, who has sufficient knowledge of the construction business in which the persons are licensed to perform.

(c) for any corporation-~~the person who is in responsible supervision of the business managementand construction practice and is either a major stockholder or a full time employee with a written power of attorney;~~ either a major stockholder (owning at least 20% of stock) or full time employee with written power of attorney to bind the corporation, who has sufficient knowledge of the construction business in which the persons are licensed to perform.

(d) for any limited liability company-~~the person who is in responsible supervision of the business management and construction practice and is either manage or full time employee with a written power of attorney;~~ either a manager, member or full-time employee with a written power of attorney to bind the organization, who has sufficient knowledge of the construction business in which the persons are licensed to perform.

(e) ~~in the event that the qualifying agent in (a), (b) or (c) above leaves the employment of the business, written notice must be given within ten (10) days to the Board.~~the Board must be notified within ten (10) days of the death, resignation, termination, or incapacity of a qualifying agent. If the qualifying agent for the sole proprietorship, partnership, corporation, or limited liability company leaves the firm for any reason, a new qualifying agent must take the examination and be appointed within three (3) months. If not, the license becomes inactive until a new qualifying agent is appointed.

(f) the license of an individual, sole proprietorship or partnership shall automatically become inactive three (3) months after the death of the individual, individual owner, or the sole proprietorship, or partner unless another person or entity has applied to transfer/change ownership of the license.

~~(f)~~(g) if anyone other than an individual with an ownership interest acts as a qualifying agent, then an owner or officer with an ownership interest or power of attorney must also appear along with the qualifying agent for interview before the Board.

Authority: T.C.A. §§ 62-6-108, 62-6-111, and 62-6-115.

Rule 0680-01-.13

(1) Generally, the monetary limitation placed on a classification of a license may be determined as follows:

(a) For applicants having no apparent deficiency with respect to plant or equipment, the lesser of:

1. ten (10) times the applicant's net worth; or

2. ten (10) times the applicant's working capital. Accounts receivable that are more than three (3) months overdue may not be included within the calculation of working capital.

(b) At the Board's discretion, renewal applicants having no apparent deficiency with respect to plant or equipment, but with limited working capital, the greater of:

1. ten (10) times the applicant's working capital; or

2. fifty percent (50%) of the applicant's net worth. (c) For other applicants, a lesser amount reflecting the degree of lack of plant or equipment.

(2) Lines of credit and indemnities (on forms furnished by the Board) may be considered to raise a monetary limitation. Lines of credit may be added up to its full value to the working capital. Credit for indemnities will be limited to fifty percent (50%). However, if the applicant has a negative working capital, lines of credit will be recognized at fifty percent (50%) of value.

~~(3) A tolerance of ten percent (10%) will be allowed on the monetary limitation placed on any classification of a license ether than a Limited Residential license.~~

~~(4) Subject to such tolerance, no contractor shall engage, or offer to engage, in any project of which the cost (including all material and labor furnished by or through another source other than the owner) would exceed the monetary limitation placed on his license. If a contractor holds a license with more than one classification with different monetary limits, the monetary limits shall not be combines to bid project~~

(3) A Guaranty Agreement, line of credit, bond, or other indemnity may be required in addition to the financial statement in the following situations.

(a) Applicants that have a primarily cash financial statement without fixed assets and;

(b) If an applicant company is completely or partly owned by a parent company then the Board may require the parent company to provide a financial statement along with a "Guaranty Agreement" in which the parent company agrees to guarantee the debts and obligations of the subsidiary company for all debts and obligations arising out of the contracting activities of the applicant. If the parent company cannot provide a "Guaranty Agreement" they may request the board to consider a bond in the Board's format. This bond would not be accepted in lieu of providing afinancial statement.

(4) A Guaranty Agreement may be utilized when an applicant wishes to supplement the working capital and/or net worth portion of their financial statement. The guarantor must submit a personal financial statement with a personal guaranty agreement.

(5) The Board reserves the right to accept or decline Guaranty Agreements as a supplement to applicant financial statements depending on the individual circumstances of each application.

(6) If a guarantor's spouse is named on the financial statement submitted with the Guaranty Agreement then the named spouse must also sign the Guaranty Agreement.

(7) All Guaranty Agreements shall expire on the same date as the license that the agreement was provided to support.

(8) Subject to such tolerance, no contractor shall engage, or offer to engage, in any project of which the cost (including all material and labor furnished by or through another source other than the owner) would exceed the monetary limitation placed on his license. If a contractor holds a license with more than one classification with different monetary limits, the monetary limits shall not be combined to bid a project.

(a) A tolerance of ten percent (10%) of the monetary limit is allowed, except for the BC-A/r licensees.

Authority: T.C.A. §§ 62-6-108, 62-6-111.

0680-01-.16 APPENDIX A OF RULE 0680-01-.12 (CLASSIFICATIONS SYSTEM).

Outline of Classifications

BC – Building Construction

A. Residential-"Residential building contractors" are those whose services are limited to construction, remodeling, repair, or improvement of one (1), two (2), three (3), or four (4) family unit residences not exceeding three (3) stories in height and accessory use structures in connection therewith.

1. Limited Residential (r)-A limited residential contractor is authorized to bid on and contract for the construction, remodel, repair, or improvement of a single family dwelling the total cost of which does not exceed one hundred twenty five thousand dollars ($125,000.00).

B. Commercial-A commercial building contractor is authorized to bid on and contract for the construction, erection, alteration, repair or demolition of any building or structure for use and occupancy by the general public, including residential construction with more than four (4) units or greater than three (3) stories in height.

2. Small Commercial (b)-A small commercial building contractor is authorized to bid on and contract for the construction, erection, alteration, repair or demolition of any building or structure for use and occupancy by the general public the total cost of which does not exceed seven hundred and fifty thousand dollars ($750,000.00).

C. Industrial-A contractor under this classification is authorized to bid on and contract for the erection, alteration, repair and demolition of buildings or structures used for industrial production and service, such as manufacturing plants.

Building Categories

1. Each building category may apply to any major construction classification.

2. Pursuant to T.C.A. § 62-6-113, a contractor may not be licensed in six (6) or more categories under any one (1) major classification without successfully passing the written or oral examination, or both, for the major classification.

1. Acoustical Treatments

2. Carpentry, Framing and Millwork, etc.

3. Drywall

4. Floor Covering

5. Foundations

6. Glass, Window and Door Construction

7. Institutional and Recreational Equipment

8. Lathe, Plaster, Stucco, and Aluminum Siding

9. Masonry -under one hundred thousand dollars ($100,000.00), materials and

10. Ornamental and Miscellaneous Metal

11. Painting, Interior Decorating

12. Roof Decks

13. Site and Subdivision Development

14. Special Coatings and Waterproofing

15. Tile, Terrazzo and Marble

16. Insulation

17. Elevators, Escalators, and Dumbwaiters

18. Erection and Fabrication of Structural Steel

19. Concrete

20. Sheet Metal

21. Roofing-includes gutters and vinyl siding

22. Conveyors

23. Sandblasting

24. Golf Courses

25. Tennis Courts

26. Swimming Pools

27. Outdoor Advertising

28. Excavation

29. Landscaping

30. Fencing

31. Demolition

32. Millwright

33. Irrigation

34. Scaffolding

HC – Heavy Construction

A. Marine (Wharves, Docks, Harbor Improvements and Terminals)

B. Tunnel and Shaft

C. Energy and Power Plants

D. Dams, Dikes, Levees and Canals

E. Mining Surface and Underground

F. Oil Field Construction

G. Oil Refineries

H. Storm Damage Cleanup

I. Landfill Construction

Heavy Construction Categories (Apply to All Areas)

1. Structural Steel Erection

2. Tower and Stack Construction

3. Foundation Construction, Pile Driving, Foundation Drilling, and Stabilization

4. Demolition and Movement of Structures

5. Clearing, Grubbing, Snagging and Rip Rap

6. Slipform Concrete Structures

7. Rigging and Crane Rigging

8. Welding

HRA - Highway, Railroad and Airport Construction

A. Grading and Drainage-Includes grading, drainage pipe and structures, clearing and grubbing.

B. Base and Paving

    1. Base Construction

    2. Hot and Cold Mix Asphalt

    3. Surface Treatment Asphalt

    4. Concrete Paving

C. Bridges and Culverts

1. Painting

2. Repair

3. Demolition

4. Bridge Deck Overlay (Sealant)

5. Gunite 6. Cofferdam

7. Steel Erection

D. Railroad Construction and Related Items

E. Miscellaneous and Specialty Items

1. Traffic Safety

(a) Pavement Markers

(b) Signing

(c) Guardrail and Fencing

(d) Attenuators, signalization and roadway lighting

2. Landscaping-Includes seeding, sodding, planting, and chemical weed and brush control.

3. Pavement Rehabilitation-Includes pressure grouting, grinding and grooving, concrete joints, and underdrains.

4. Well Drilling

5. Miscellaneous Concrete-Includes sidewalks, driveways, curb and gutter, and box culverts.

MU – Municipal and Utility Construction

Municipal and Utility Construction includes all supervision, labor, material and equipment to complete underground piping, water and sewer plants and sewer disposal, grading and drainage, and paving (unless restricted to specific areas named).

A. Underground Piping-Furnish supervision, labor, material and equipment to complete all underground piping for municipal and utility construction (unless restricted to specific areas names).

1. Gas Distribution and Transmission Lines

2. Sewer Lines, Storm Drains, Rehabilitation and Structures

3. Waterlines

4. Underground Conduit

B. Water and Sewer Systems*-* Classification BC-B is necessary in order to construct water and sewer plants.

C. Grading and Drainage-Includes grading, drainage pipe and structures, clearing and grubbing.

D. Base and Paving

1. Base Construction

2. Hot and Cold Mix Asphalt

3. Surface Treatment Asphalt

4. Concrete Pavement

5. Miscellaneous Concrete (includes sidewalks, driveways, curb and gutter, and box culverts)

MC (CMC)-Mechanical Contracting (the classification CMC is noted on licenses issued after 1992 and represents that the licensee has passed the Board licensing exam and that no county or municipality shall require such state licensee or its employees to pass any county or municipal test or examination pursuant to T.C.A. § 62-6-111 (i)(2)(C)).

A. Plumbing and Gas Piping

B. Process Piping

C. HVAC, Refrigeration, Gas Piping

D. Sprinklers & Fire Protection

E. Insulation of Mechanical Work

F. Pollution Control

G. Pneumatic Tube Systems

H. Temperature Controls (Pneumatic/Electric)

I. Boiler Construction & Repairs

J. Fuel Gas Piping and Systems

LMC-Licensed Masonry Contractor

E (CE) - Electrical Contracting (the classification CE is noted on licenses issued after 1992 and represents that the licensee has passed the Board licensing exam and that no county or municipality shall require such state licensee or its employees to pass any county or municipal test or examination pursuant to T.C.A. § 62-6-111(i)(2)(C)).

A. Electrical Transmission Lines

B. Electrical Work for Buildings and Structures

C. Underground Electrical Conduit Installation

D. Sound and Intercom Systems, Fire Detection Systems, Signal and Burglar Alarm Systems And Security Systems up to seventy (70) volts do not require examination- *Please note that a separate license, issued by the Tennessee Alarm Systems Contractors Board, is also required for alarm systems.

E. Electrical Signs

F. ~~Telephone Lines and Ducts~~ Data Communication Systems (e.g. fiber optics & cabling)

G. Cable T.V.

H. Substations

I. ~~Electrical Temperature Controls~~ Building Automation Controls

J. Fire detection systems, signal and burglar alarm systems, and security systems with conduit and wiring above seventy (70) volts require an electrical exam.

K. Roadway Lighting, Attenuators and Signalization - requires electrical examination.

L. Electric Meter Installation

S – Specialty The Board will utilize the system of classifications set forth in Appendix A. The Board reserves the right to depart from the classification system in appropriate individual cases.

S - Specialty/Environmental work falling within the definition of contracting pursuant to T.C.A. § 62-6-102.

A. Asbestos Material Handling/Removing

B. Underground Storage Tank

C. Lead-Based Paint Abatement

D. Hazardous Waste Removal

E. Air, Water or Soil Remediation

F. Mold Remediation

In each of the above environmental classifications, the following requirements apply:

1. In order to be eligible for licensure in this specialty classification, the applicant shall furnish evidence satisfactory to the Board that the designated employee(s) shall have completed all training courses as required by the applicant state and federal agencies. In

the event training courses are unavailable, the applicant's education, training, experience and equipment will be determined and considered in order to qualify the applicant for licensure.

2. A contractor holding a license in this specialty classification shall, as a condition for renewal of such license, keep abreast of all applicable state and federal requirements to ensure "state of the art" handling and removing of above materials by requiring its designated employee(s) to do so.

3. A contractor shall, whenever work in this specialty classification is in progress, have physically on the job site the designated employee(s) directly responsible for the work.

4. A contractor shall notify the Board of any citation lodged against it, or any of its employees, relative to work in a specialty classification within ten (10) days of receipt of the citation.

S-Specialty/Medical Gas Piping installation, maintenance and repair work falling within the regulation of medical gas piping pursuant to T.C.A. § 68-11-253.

A. Medical Gas Piping Installer Certification Requirements.

1. The minimum qualifications for board certification are the qualifications for certification established by the American Medical Gas Institute (AMGI) or the Piping Industry Progress and Education Trust Fund (PIPE). A minimum of thirty-two (32) hours of training, with eight (8) of such hours in brazing, shall be required for board certification. The board shall from time to time revise minimum qualifications for board certification to include the most current edition of NFPA 99C "Standard on Gas and Vacuum Systems."

(a) The minimum of thirty-two (32) hours of training for board certification as a medical gas installer shall include training in the following areas from the most current edition of NFPA 99C, Gas and Vacuum Systems:

(1) Medical Gas Systems.

(2) Gas Distribution Systems.

(3) Installation of Pressurized Gas Systems.

(4) Vacuum Piping.

(5) Brazing Techniques for Medical Gas Systems.

(6) Requirements for Levels of Patient Care.

2. The board may designate and approve independent examining agencies, as

necessary, to provide the training and examinations necessary for board certification required by T.C.A. § 68-11-253. The board will review an examining agency's curriculum prior to its designation to determine compliance with the minimum qualifications listed above in A.1.(a).

3. The designated examining agency may charge reasonable fees for training and examination as determined appropriate by the board.

Rule 0680-01-.24 Bidding Procedures

(1) Pursuant to T.C.A. § 62-6-102, a subcontractor is required to be licensed in order to perform electrical, plumbing, heating ventilation, air conditioning ~~work~~, and roofing work when the amount is twenty-five thousand dollars ($25,000.00) or more; and masonry work when the amount is one hundred thousand dollars ($100,000.00) or more, including materials and labor. It is the subcontractor's responsibility to furnish evidence to the prime contractor of an active license with the appropriate name, classification, monetary limit, and expiration date, regardless of how the bid is transmitted. Failure to comply with this rule shall not require no consideration of the subcontractor's bid, if appropriately licensed, but said subcontractor may be subject to discipline by the Board.

(2) Any prime contractor submitting a bid pursuant to T.C.A. § 62-6-119(b) shall list on the outside of the bid envelope or in the submission of an electronic bid only one electrical contractor, one plumbing contractor, one heating ventilation and air conditioning contractor and one masonry contractor with appropriate classification and monetary limit or the bid shall not be considered. Award of the subcontract to one not listed on the base bid envelope or in the submission of an electronic bid in violation of T.C.A. § 62-6-119 will be subject to review and disciplinary action by the Board.

Authority: T.C.A. §§ 62-6-102, 62-6-103, 62-6-108, 62-6-111, 62-6-119.

0680-01-.28 ~~Emergency Actions~~ Temporary Licensing

(1) Hardships or Emergency Actions

~~(1)~~(a) The Executive Director is permitted to approve increases in the monetary limits and to consider timely licensure applications or renewal applications for which there are no evident impediments to licensure and for which loss of substantial business is imminent if licensure is delayed. The Executive Director shall obtain consent of at least one (1) Board member for purposes of considering the issuance of the temporary license.

~~(2)~~(b) The application for a temporary license may be denied or delayed in order to request more information regarding a contractor's financial statement or any other issue which is deemed to have a possible detrimental effect to the public safety and welfare.

~~(3)~~(c) Notice of emergency actions shall be posted on the Board's website and shall be scheduled as the first agenda item at the next scheduled meeting of the Board in order that the Board may review and, in its discretion, modify the actions of the

executive director.

~~(4)~~(d) Applicants who wish to apply for an ~~emergency~~ hardship license shall submit the following:

~~(a)~~1. Contractor's License Application

~~(b)~~2. Written request from the project owner describing the hardship and letter must include: details of the hardship; reason the ~~emergency~~ hardship application process should be utilized; reason for requiring the use of the applicant contractor as opposed to a currently licensed contractor; description of the project and location; and the bid date, if applicable

(e) The Board must ratify the issuance of a hardship license at their next regularly scheduled board meeting. The Board may deny the license or terminate the temporary license by providing written notice of the rejection within fifteen (15) days of the board meeting.

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
Amendments

0680-07-.01	Fees	0680-07-.09	License Renewals
0680-07-.02	Definitions	0680-07-.10	Credit Reports
0680-07-.03	License for Home Improvement Contractors	0680-01-.11	Financial Statement
0680-07-.04	Advertising	0680-01-.12	Filing of Security Prior to Issuance of License
0680-07-.05	Notice of Change of Licensing Information		
0680-07-.06	Time Limitations for Filing Complaints	0680-01-.13	Bonds
0680-07-.07	Application for Licensure as Home Improvement Contractor	0680-07-.14	County Adoption of Home Improvement Law
0680-07-.08	Temporary Licenses	0680-07-.15	Civil Penalties
		0680-07-.16	Contracting in Correct Name; Change of Name
		0680-07-.17	Misconduct

Rule 0680-07-.08 Temporary Licenses

(1) Temporary Licenses

~~(1)~~(a) Pursuant to T.C.A. § 62-6-506(d), the Executive Director may grant an application for a home improvement ~~license a~~ temporary license pending a final decision of the Board on the Application for a permanent license if:

~~(a)~~1. applicant has properly filed for a permanent license and has paid the requisite license fee;

~~(b)~~2. applicant has filed a bond or evidence of financial responsibility in

accordance with T.C.A. § 62-6-506(h);

~~(c)~~3. applicant has submitted a written request for a temporary license to the Executive Director; and

~~(d)~~4. the Executive Director determines that granting the applicant a temporary license is in the public interest and that granting the applicant a temporary license does not pose a substantial risk of harm to owners for whom the applicant would do home improvement work.

~~(2)~~(b) As soon as ~~reasonably~~ possible after receiving a written request for a temporary license, but not more that forty five (45) days after receiving the request, the Executive Director shall inform the applicant in writing whether the Executive Director has denied or granted the applicant a temporary license. If the Executive Director grants an applicant a temporary license, the writing to the applicant shall state that the temporary license terminates automatically when the Board decides to issue or deny the applicant a permanent license and that the Executive Director can terminate the temporary license at any time before final action on the application for a permanent license. Notwithstanding the above, a temporary license shall automatically expire after sixty (60) days from the effective date, and may not be renewed. If an additional application for a temporary license is filed within thirty (30) days after expiration of a previously issued temporary license, then the fee shall be twenty-five dollars ($25.00).

~~(3)~~(c) When the Executive Director issues a temporary license to an applicant, the Executive Director shall issue the applicant a license which is specially marked as temporary. This temporary license may be in the form of a letter from the Executive Director. The Executive Director shall state in this letter the effective date of the temporary license.

~~(4)~~(d) A temporary license shall automatically expire if the Board issues a ~~Final Order~~ final decision denying the applicant's request for a permanent license.

~~(5)~~(e) The Executive Director or the Board may terminate a temporary license at any time for any reason which is not arbitrary or capricious. When the Executive Director or the Board terminates a temporary license, it shall take effect upon receipt by the applicant of the notice of termination, or ten (10) days after the mailing of the notice of termination, or whichever comes first.

Authority: T.C.A. §§ 4-3-1304 62-6-506(g), 62-6-506(f), 62-6-507, and 62-6-513.

Chapter 0680-07
General Regulations for Home Improvement Contractors
New Rules

0680-07-.15 Civil Penalties

(1) The Board may in a lawful proceeding respecting licensing (as defined in the Uniform Administrative Procedures Act), and T.C.A. § 56-1-308, 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. § 62-6-502	$50.00-$1,000.00
T.C.A. § 62-6-509(a)(1-6)	$50.00- $500.00
T.C.A. § 62-6-510(1)(2)(5)(6)(7)(8)(9)(10)(11)(12)(13)(15)(16)	$50.00- $500.00
T.C.A. § 62-6-510(3), (4), or (141)	$50.00-$25,000.00

(2) 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 to consumers;

(d) The economic benefits gained by the violator as a result of non-compliance;

(e) The interest of the public;

(f) The willfulness of the violation; and,

(g) The extent to which the licensee has sought to compensate any victim(s) of the violation.

(3) For the purposes of assessment of civil penalties pursuant to this rule each day of continued violation shall constitute a separate violation.

Authority: T.C.A. §§ 62-6-509. 62-6-513. 62-6-518.

0680-07-.16 Contracting in Correct Name; Change of Name is added as a new rules and shall read as follows:

0680-07-.16 Contracting in Correct Name; Change of Name

(1) Upon receiving a certificate of licensure from this Board, the licensee has an affirmative responsibility to enter into contracts and operate its related contracting business under the name in which it is licensed in order to notify and prevent confusion on the part of the public at large of an entity's licensure status. Contracting, as defined by T.C.A. § 62-6-102(4)(A)(i) in a name different than that in which an individual or entity is licensed by this Board is considered a violation of this chapter, and will be cause for appropriate disciplinary action.

Authority: T.C.A. §§ 62-6-509, 62-6-510, 62-6-513.

0680-07-.17 Misconduct shall be added as a new rule and shall be read as follows:

0680-07-.17 Misconduct

The following acts may constitute misconduct and may result in disciplinary action against licensees including possible revocation or suspension of license. The acts include, but are not limited to:

(1) Failure to cooperate with an investigation related to a complaint filed with the Board. This includes failure to respond in writing to any communication from the Board requesting a response within thirty (30) days of mailing such communication by registered or certified mail to the last address furnished to the Board by the licensee;

(2) Failure to abide by a warranty agreement;

(3) Pulling a building, electrical, plumbing, or like permit for a job in which an unlicensed contractor is acting as the general contractor or consenting to or allowing for a contractor's license number to be utilized by an unlicensed contractor or improperly licensed contractor in the furtherance of unlicensed contracting;

(4) Failure to maintain worker's compensation if insurance is required by Tennessee statute;

(5) Revocation, suspension, or voluntary surrender of contractor's license in another jurisdiction;

(6) Failure to pay a civil judgment rendered against the contractor by a court of competent jurisdiction if the conduct that is central to the judgement is related to the contracting industry;

(7) Failure to respond to customer inquiries regarding completion of work and/or dissatisfaction with quality of work;

(8) Submitting documentation to the Board that is false, forged, altered or otherwise misleading or knowingly making any false statement related to a license application or to an investigation conducted by the Board or Board employees.

Authority: TC.A §§ 62-6-509 62-6-510. 62-6-513.

* 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)
Ernest Owens	X				
Ronnie Tickle	X				
Keith Whittington	X				
Jerry Hayes	X				
Bill Mason	X				
Cindi DeBusk	X				
Randy Chase	X				
Mark Brodd	X				
Reese Smith				x	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Contractors on 07/26/2016, 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: *01/31/2017*

Rulemaking Hearing(s) Conducted on: (add more dates). *03/28/2017*

Date: 5/12/17

Signature: Laura E. Martin

Name of Officer: Laura E. Martin

Title of Officer: Assistant General Counsel

KATHERINE HOLLIMAN STATE OF TENNESSEE NOTARY PUBLIC COUNTY OF ROBERTSON

Subscribed and sworn to before me on: 5/12/17

Notary Public Signature: Katherine Holliman

My commission expires on: 6/28/2017

Agency/Board/Commission: Licensing Contractors

Rule Chapter Number(s): 0680-01, 0680-07

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

5/21/2017
Date

Department of State Use Only

Filed with the Department of State on: 6/8/17

Effective on: 9/6/17

Tre Hargett
Secretary of State

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