G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Transportation
DIVISION:	Traffic Operations
SUBJECT:	Specific Service Signs (Logo Sign Program)
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 54-5-1108
EFFECTIVE DATES:	August 13, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	See attached Summary of Rulemaking Hearing Rules, with attached redline copy of Chapter 1680-03-02, Specific Service Signs (Logo Sign Program), as amended by these proposed rule amendments.

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Division of Publications
312 Rosa L. Parks Ave., 8th Floor, Snodgrass/TN Tower
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Sequence Number: 07-22-18
Rule ID(s): n/a
File Date: 7/31/18
Effective Date: 7/31/18

Filing Form for Stay of Effective Date on Rules, Withdrawal of Stay, and Withdrawal of Rules

Agency/Board/Commission:	Tennessee Department of Transportation
Division:	Traffic Operations Division
Contact Person:	John H. Reinbold, General Counsel
Address:	505 Deaderick Street, Suite 300
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Type of Action on Rule:

____ **Stay of Effective Date of Rules**

Rule Filing Date: *(mm/dd/yy)*
Rule Original Effective Date: *(mm/dd/yy)*
Length of Stay (not to exceed 75 days): _____
New Effective Date of Rule Filing: *(mm/dd/yy)*

____ **Notice of Withdrawal of Stay**

Stay Filing Date: *(mm/dd/yy)*
Stay Effective Date: *(mm/dd/yy)*
New Effective Date of Rule Filing: *(mm/dd/yy)*

X **Notice of Withdrawal of Rules**

Rule Filing Date: *(05/15/18)*
Rule Effective Date: *(08/13/18)*

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 enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	**Chapter Title**
1680-03-03	Specific Service Signs (Logo Sign Program)
Rule Number	**Rule Title**
1680-03-03-.01	Preface
1680-03-03-.02	Definitions
1680-03-03-.04	Criteria for the Erection of Signs for the Logo Sign Program
1680-03-03-.05	Services Permitted

Rule Number	Rule Title
1680-03-03-.06	Measurements
1680-03-03-.07	Application Process
1680-03-03-.10	Sign Composition
1680-03-03-.11	Business Logo Dimensions and Details

Date: 7-30-18

Signature:

Name of Officer: John Schroer

Title of Officer: Commissioner

Subscribed and sworn to before me on: 7-30-18

Notary Public Signature: Angela P. Martin

My commission expires on: 1-6-2020

ANGELA P. MARTIN NOTARY PUBLIC AT LARGE DAVIDSON COUNTY, TENNESSEE

Department of State Use Only

Filed with the Department of State on: 7/31/18

Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

See attached Responses to Public Comments.

Rulemaking Hearing Rules
of the Tennessee Department of Transportation

Chapter 1680-03-03
Specific Service Signs (Logo Sign Program)

Responses to Public Comments

I. INTRODUCTION

On November 1, 2017, the Tennessee Department of Transportation ("TDOT") filed a notice of rulemaking hearing with the Secretary of State inviting public comment on the proposed revisions to Chapter 1680-03-03, Specific Service Signs (Logo Sign Program). These Logo Sign Program rules are promulgated in accordance with the Commissioner of Transportation's authority under T.C.A. § 54-5-1108.

In accordance with T.C.A. § 4-5-203(a)(1), TDOT transmitted a copy of the notice of rulemaking directly to interested parties, including the Tennessee Hospitality &Tourism Association, the Tennessee Fuel & Convenience Store Association, the Tennessee Outdoor Advertising Association, the Tennessee Outdoor Advertising Cooperative, TN Logos, Inc. (the current contract administrator of the Logo Sign Program), and the Federal Highway Administration, Tennessee Division.

TDOT held a public rulemaking hearing on January 4, 2018, to receive public comment on proposed revisions to Chapter 1680-03-03. TDOT did not receive any separate written comments. A copy of the transcript of the public hearing is available for inspection at TDOT by contacting the TDOT Office of General Counsel, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941; or by email at TDOT.RecordsRequest@tn.gov.

II. SUMMARY OF COMMENTS AND RESPONSES

In accordance with T.C.A. § 4-5-222 and Tennessee Department of State Rule 1360-01-02-.05(1), TDOT summarizes the public comments received at the public rulemaking hearing and makes the following responses to these comments.

General Comments

Mr. Brad Mizer, representing East-West Media and the Tennessee Outdoor Advertising Cooperative, offered general comments critical of the Logo Sign Program. He objected that the program unfairly competes with the outdoor advertising industry and suggested that it be discontinued. He also suggested that the contractor who administers the Logo Sign Program on behalf of TDOT be

required to pay a fee for each sign panel comparable to the fees the outdoor advertising industry pays for billboard permits.

Response: State law specifically authorizes TDOT to establish the Logo Sign Program within the rights-of-way of the interstate highway system and other controlled-access highways (collectively referred to hereinafter as "freeways") for the purpose of advising the traveling public of available services within certain eligible business categories, subject to the guidelines established in the Manual on Uniform Traffic Control Devices ("MUTCD"). T.C.A. § 54-5-1101. The Logo Sign Program has been in place since 1989 and the traveling public has come to rely on the program to provide information about motorist services available to the public upon exiting a freeway at a particular interchange.

In accordance with T.C.A. § 54-5-1103, TDOT has awarded a service contract to administer the Logo Sign Program. Pursuant to that contract, eligible businesses pay an annual fee to the administrative services contractor to install and maintain their logo signs at a freeway interchange, and the contractor in turns remits a substantial percentage of that fee revenue to TDOT. By contrast, the permit and annual renewal fees that billboard operators pay to erect and maintain outdoor advertising along highways regulated by TDOT are established by statute. T.C.A. § 54-21-104. The Logo Sign Program established under T.C.A. 54-5-1101, et seq., and the regulation of outdoor advertising as required under T.C.A. 54-21-101, et seq., are entirely different programs.

Rule 1680-03-03-.01 – Preface

Mr. Gary Douglas, Douglas Outdoor Media, objected to the rule provision allowing logo signs to be installed in urbanized areas of 100,000 or more upon written request of the local government, especially in the case of cities that severely restrict or ban outdoor advertising by private industry.

Response: The provision allowing logo signs on freeways in urbanized areas of 100,000 or more upon the written request of the local government is already in the current rule, and the proposed rule does not make any change in this provision. The existing rule does not require the local government of such an urbanized area to opt into the Logo Sign Program. TDOT does not believe it is appropriate for it to dictate how a local government may choose to exercise its independent authority to regulate outdoor advertising within its jurisdiction. There is no change in the final rule.

Rule 1680-03-03-.02 – Definitions

There were no public comments addressed specifically to the proposed amendment to this rule, and there is no change in the final rule.

Rule 1680-03-03-.04 – Criteria for the Erection of Signs for the Logo Sign Program

Mr. Brad Mizer, representing East-West Media and the Tennessee Outdoor Advertising Cooperative, objected to any expansion of the use of trailblazer signs to direct motorists to businesses off the freeway.

Response: The proposed rule does not expand the use of trailblazer signs. As under the current rules, the business is required to furnish the trailblazer signs to TDOT's administrative services contractor, and the business is also required to make arrangements with the appropriate local government for the installation of trailblazer signs if they are needed on a city street or county road to direct motorists to the business. If it is not feasible to install all the needed trailblazer signs, the business will not be considered eligible for a logo sign on the freeway. There is no change in the final rule.

Rule 1680-03-03-.05 – Services Permitted

Both Mr. Gary Douglas, Douglas Outdoor Media, and Mr. Brad Mizer, representing East-West Media and the Tennessee Outdoor Advertising Cooperative, objected to the expansion of the Logo Sign Program to businesses categorized as "Attractions".

Response: The Manual on Uniform Traffic Control Devices (MUTCD) was revised in 2000 to authorize "Attractions" as a new category of businesses eligible for specific service signs (logo signs) on freeways, and TDOT's rules have allowed "Attractions" to participate in the Logo Sign Program since 2002. The proposed rule will not remove that eligibility.

The proposed rule more specifically defines the eligibility criteria for particular types of Attractions, but as a practical matter it does not significantly expand eligibility under this category. More specifically, the proposed rule:

- Provides a general definition (from the MUTCD) of the types of businesses that will qualify as an Attraction;
- Adds specific eligibility criteria for particular types of businesses categorized as Attractions;
- Identifies alternative criteria for signing antique districts and historic districts, rather than individual businesses, where businesses of the same type are clustered within close walking distance;
- Deletes the existing requirement that eligible Attraction businesses must be open to walk-in business; and
- Clarifies that a seasonal business open at least six (6) months out of the year will be eligible as a "partially qualified" business.

Rule 1680-03-03-.06 – Measurements

Mr. Gary Douglas, Douglas Outdoor Media, offered a general objection regarding the expansion of eligibility for logo signs to businesses within fifteen (15) miles of an interchange and asked how the fifteen (15) miles is measured.

Response: Eligibility distance is the distance measured by road from the Primary Point of Intersection (PPOI), which is the point where the centerline of the freeway intersects with the centerline of the crossroad, to the Secondary Point of Intersecton (SPOI), which is the center line of road providing access to the business, and from there by a perpendicular line to the nearest corner of the business building. The eligibility distance of fifteen (15) miles applies only to the business categories of Camping and Attractions. Businesses offering gas, food, and lodging must be within three (3) miles of eligibility distance from the PPOI. These eligibility distances are already established in the current rule, and the proposed rule will not change any of the current eligibility distance requirements. There is no change in the final rule.

Rule 1680-03-03-.07 – Application Process

There were no public comments addressed specifically to the proposed amendment to this rule, and there is no change in the final rule.

Rule 1680-03-03-.10 – Logo Sign Composition

There were no public comments addressed specifically to the proposed amendments to this rule, and there is no change in the final rule apart from minor corrections in the text.

Rule 1680-03-03-.11 – Sign Dimensions and Details

There were no public comments addressed specifically to the proposed amendments to this rule, and there is no change in the final rule apart from minor corrections in the text.

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.

Introduction

T.C.A. § 54-5-1108 directs the Commissioner of Transportation to promulgate rules to implement and administer the Logo Sign Program for specific motorist services accessible from interstate highways and other freeways at interchanges with other streets and highways. Logo signs (also called specific service signs) provide the traveling public with business identification and directional information for essential motorist services – specifically for gas, food, lodging, camping and attractions – accessible from streets and highways that interchange with interstate highways and other freeways (fully access controlled highways) on the state highway system.

Analysis of Impact on Small Business[1] (T.C.A. § 4-5-402)

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The promulgated rules are consistent with the logo sign provisions in the Federal Highway Administration's Manual on Uniform Traffic Control Devices (adopted in Tennessee under TDOT Rule Chapter 1680-03-01).

(2) Clarity, conciseness, and lack of ambiguity in the rule:

The proposed rules include revisions intended to make the rules better organized and more clear.

(3) The establishment of flexible compliance and reporting requirements for small business:

The logo sign program rules do not regulate business activities but merely allow eligible businesses to obtain logo signs to identify motorist services accessible from freeway interchanges. There are no specific compliance or reporting requirements in the proposed rules.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small business:

There are no specific compliance or reporting requirements in the proposed rules.

(5) The consolidation or simplification of compliance or reporting requirements for small business:

There are no specific compliance or reporting requirements in the proposed rules.

(6) The establishment of performance standards for small business as opposed to design or operational standards required in the proposed rule:

The logo sign program rules do not regulate business standards or activities but merely allow eligible businesses to obtain logo signs to identify motorist services accessible from freeway interchanges.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The proposed rules do not create any occupational licenses or other barriers to enter into any particular business, profession, or nonprofit activity.

[1] Per T.C.A. § 4-5-102(13) "small business" means "a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees."

Economic Impact Statement (T.C.A. § 4-5-403)

(1) The type or types of small business[2] 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:

Logo signs provide the traveling public with business identification and directional information for essential motorist services – specifically for gas, food, lodging, camping and attractions – accessible from streets and highways that interchange with interstate highways and other freeways (fully access controlled highways) on the state highway system. There are currently 1,983 businesses participating in the Logo Sign Program by having their logo signs installed at one or more freeway interchanges, and there are many more that are eligible to participate. It is not known how many of these businesses could be characterized as 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:

The proposed rule amendments do not impose any reporting or recordkeeping requirements or any new administrative requirements. There is an existing application process for participation in the program.

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

The proposed rule amendment in 1680-03-02-.04(3)(f) will allow the logo signs of a particular motorist service type to "roll over" onto a second background sign panel, up to a maximum of twelve logo signs, where there are more than six eligible businesses of that motorist service type accessible from a particular interchange. Eligible businesses of the motorist service type normally assigned to a particular background sign panel will continue to have priority to occupy the available logo sign spaces. The overall effect will be to allow more businesses to be signed, which will benefit these additional businesses and the consumers who rely on logo signs to identify available motorist services at a particular interchange.

Rule 1680-03-03-.05 will be amended to provide more specific criteria for determining what businesses or facilities will be eligible for "Attraction" logo signs, including the criteria under which multiple businesses within close proximity may be signed together as an "antique district" or "historic district" or the like. This will provide greater clarity and transparency in determining how to allocate the available logo sign spaces to eligible businesses and could possibly result in more businesses being signed.

(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 on small business:

The existing rules and proposed rule amendments do not regulate business activities. As noted in Item (3) above, one effect of the proposed amendments is to expand the number of businesses able to participate in the logo sign program by allowing rollovers onto a second background sign panel.

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

The proposed rules are consistent with the Federal Highway Administration's standards for specific service signs as established in Chapter 2J. of the Manual on Uniform Traffic Control Devices (MUTCD).

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

The proposed rules do not impose regulations on business activities. Businesses of the same type are subject to the same eligibility requirements regardless of size. The proposed amendments do clarify eligibility criteria for Attractions, including alternative eligibility criteria for certain types of businesses, e.g., allowing multiple businesses within close proximity to be signed together as an "antique district" or "historic district" or the like even though one or more of the businesses individually does not meet minimum parking space requirements.

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[2] Per T.C.A. § 4-5-102(13) "small business" means "a business entity, including its affiliates, that employs fifty (50) or fewer full-time employees."

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The proposed rules implement and administer the Logo Sign Program for the specific motorist services accessible from streets and highways that interchange with interstate highways and other freeways (fully access controlled highways) on the state highway system. These proposed rules have no specific or direct 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;

See attached Summary of Rulemaking Hearing Rules, with attached redline copy of Chapter 1680-03-02, Specific Service Signs (Logo Sign Program), as amended by these proposed rule amendments.

(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. § 54-5-1108 directs the Commissioner of Transportation to promulgate rules to implement and administer the Logo Sign Program. The proposed rules are consistent the Federal Highway Administration's standards for specific service signs as established in Chapter 2J. of the Manual on Uniform Traffic Control Devices (MUTCD).

(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 persons or entities (including nonprofit organizations) that are most directly affected by these rule amendments are the owners of businesses that provide specific motorist services – specifically gas, food, lodging, camping and attractions – accessible from streets and highways that interchange with interstate highways and other freeways on the state highway system. Associations representing these types of businesses, including the Tennessee Fuel & Convenience Store Association and the Tennessee Hospitality & Tourism Association, received copies of the proposed rules but have not expressed any position regarding adoption of the rules. Some businesses in the outdoor advertising industry, and particularly those that are members of the Tennessee Outdoor Advertising Cooperative, are critical of the Logo Sign Program in general.

(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;

The promulgation of these rule amendments will not have any impact on local government revenues or expenditures. Because the amended rules will allow for the "rollover" of eligible businesses onto a second background sign panel, it is anticipated that more businesses will be eligible for, and will obtain, logo signs. If so, this will result in additional revenues coming to TDOT from the contractor that administers the logo sign program; however, these additional revenues are expected to be minimal (i.e., not more than $500,000).

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

John H. Reinbold, General Counsel; Joseph Sweat, Transportation Manager 1, Traffic Operations Division.

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

John H. Reinbold, General Counsel; Joseph Sweat, Transportation Manager 1, Traffic Operations Division.

(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

John H. Reinbold, General Counsel, Tennessee Department of Transportation, Suite 300, James K. Polk Building, 505 Deaderick Street, Nashville, TN 37243; telephone number (615) 741-2941.

Joseph Sweat, Transportation Manager 1, Traffic Operations Division, Tennessee Department of Transportation, Suite 1200, James K. Polk Building, Nashville, TN 37243; telephone number (615) 532-3431.

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

None at this time.

Tennessee Department of Transportation
Traffic Operations Division

Chapter 1680-03-03
Specific Service Signs (Logo Sign Program)

Summary of Rulemaking Hearing Rules (Final Rules)

The following is a summary of the amendments to TDOT's regulations regarding construction and administration of Specific Service Signs (Logo Sign Program), as directed in T.C.A. §54-5-1108. A "redline" version of Chapter 1680-07-03, as amended, is attached to this summary.

Rule 1680-03-03-.01: Preface.

The rule is amended by adding a new paragraph (2) to clarify that once an interchange has been determined eligible for logo signs because it is outside the census boundary of any city having 100,000 or more in population, the interchange will remain eligible for logo signs notwithstanding any subsequent change in the population or urbanized area boundary of the city. This is a modified version of a paragraph formerly contained in Rule 1680-03-03-.04.

Rule 1680-03-03-.02: Definitions.

Paragraph (2) is amended to clarify the definition of "business" to include any facility, whether commercial or nonprofit, that is open to the public and provides one of the five qualifying motorist services eligible to participate in the Logo Sign Program.

Rule 1680-03-03-.04: Criteria for the Erection of Signs for the Logo Sign Program.

As amended, the provisions within the current rule are reorganized under new paragraph subject matter headings to make them easier to follow. Some provisions in the current rule have also been moved to other rules where the subject matter is a better fit.

In addition, paragraph (3) of this rule, as amended, will allow logo signs for a particular motorist service type to "roll over" onto a second background sign panel where there are more than six eligible businesses of that motorist service type accessible from the interchange. Eligible businesses of the motorist service type normally assigned to a particular background sign panel will continue to have priority to occupy the available logo sign spaces.

Rule 1680-03-03-.05: Services Permitted.

There are only minor, mostly stylistic, changes to the several provisions regarding logo signs for Gas, Food, Lodging, and Camping motorist services.
Subparagraph (3)(e) regarding Attractions is amended to:

- Add a general description of the types of businesses that will qualify as an Attraction;
- Delete the requirement that the business must always be open to walk-ins without requiring an appointment;
- Provide more specific eligibility criteria for various categories of businesses that may qualify for an Attraction logo sign (Part 6);
- Allow logo signs for antique districts and historic districts, without signing for individual businesses within these districts, where businesses of the same category are clustered within close walking distance (Part 7);
- Clarify that a business open seasonally at least six months out of the year, but which otherwise meets all the minimum criteria for signing as an Attraction, will be considered a "partially qualified" business eligible for a logo sign where space is available (Part 8); and
- Clarify that a business having a supplemental guide sign will not be eligible for a logo sign if doing so would prevent another eligible business from obtaining a logo sign.

Rule 1680-03-03-.06: Measurements.

The rule is amended only to adopt the standard numbering format. There are no substantive changes.

Rule 1680-03-03-.07: Application Process.

The amended rule incorporates an existing provision, formerly in Rule 1680-03-03-.04, that requires applicants and business participants in the Logo Sign Program to hold TDOT and the State of Tennessee harmless for any loss of business caused by damage to or removal of background sign panels, logo signs, or trailblazer signs.

Rule 1680-03-03-.10: Logo Sign Composition.

As amended, the rule incorporates provisions formerly in Rule 1680-03-03-.04 that address the composition and wording of logo signs. Provisions relating to sign construction specifications have been moved to Rule 1680-03-03-.11.

Rule 1680-03-03-.11: Sign Dimensions and Details.

As amended, the rule incorporates provisions formerly in Rule 1680-03-03-.10 that address sign construction specifications.

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Sequence Number: 05-15-18
Rule ID(s): 6767
File Date: 5/15/18
Effective Date: 8/13/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Transportation
Division:	Traffic Operations Division
Contact Person:	John H. Reinbold, General Counsel
Address:	505 Deaderick Street, Suite 300, Nashville, TN
Zip:	37243
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Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1680-03-03	Specific Service Signs (Logo Sign Program)
Rule Number	**Rule Title**
1680-03-03-.01	Preface
1680-03-03-.02	Definitions
1680-03-03-.04	Criteria for the Erection of Signs for the Logo Sign Program
1680-03-03-.05	Services Permitted
1680-03-03-.06	Measurements
1680-03-03-.07	Application Process
1680-03-03-.10	Sign Composition
1680-03-03-.11	Business Logo Dimensions and Details

RULES
OF
TENNESSEE DEPARTMENT OF TRANSPORTATION

CHAPTER 1680-03-03
SPECIFIC SERVICE SIGNS (LOGO SIGN PROGRAM)

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1680-03-03-.01 PREFACE.

(1) Specific service signs (hereafter referred to as logo signs) provide the traveling public with business identification and directional information for essential motorist services. Logo signs will be permitted at interchanges on freeways that are located outside of the census boundary of cities of 100,000 or greater population as designated by the United States Bureau of Census in the most recent decennial federal census.

(2) An interchange that became an eligible location under paragraph (1) shall remain an eligible interchange notwithstanding any subsequent changes in the population of the city or in the urbanized area boundary of such city.

(~~2~~3) In addition, logo signs will be permitted on freeways within the urbanized area boundary of cities of 100,000 or greater population as designated by the United States Bureau of Census in the most recent decennial federal census, upon written request by the local government, provided all the criteria are met as described in these rules.

(~~2~~4) The following rules set forth the criteria to be followed in the administration of the Logo Sign Program. If questions arise in the interpretation of these rules, the Commissioner of the Tennessee Department of Transportation, or the Commissioner's designee, will make the final administrative determination. These rules supersede all prior rules related to gas, food, lodging, and camping or attraction service signs.

Authority: *T.C.A. §§ 54-5-1101 and 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed September 7, 1990; effective October 22, 1990. Amendment filed May 20, 1997; effective September 18, 1997. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.01 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.02 DEFINITIONS.

(1) Background Sign Panel means an official sign panel placed within the freeway right-of-way along the mainline of travel or exit ramp with the words Gas, Food, Lodging, Camping or Attraction, or a combination thereof, and with space where one to six individual business logo signs may be attached.

(2) Business means any ~~approved public commercial~~ facility, whether commercial or nonprofit, that is open to the public and provides one of the five qualifying motorist services eligible to participate in the Logo Sign Program.

(3) Commissioner means the Commissioner of the Tennessee Department of Transportation.

(4) Contractor means the firm awarded the administrative services contract by the Department

(Rule 1680-03-02, continued)

for the marketing, management, and maintenance of the Logo Sign Program.

(5) Department means the Tennessee Department of Transportation.

(6) Disadvantaged Business Enterprise means a small business concern that is certified as a "Disadvantaged Business Enterprise" pursuant to the Rules of the Tennessee Department of Transportation Contract Compliance Office, Chapter 1680-08-01, Certification of Disadvantaged Business Enterprises.

(7) Double Exit means an interchange design where, for a given direction of travel on the mainline, two exit ramps provide access to the crossroad, with one ramp for each direction of travel on the crossroad.

(8) Eligibility Distance means the total roadway distance plus the offset distance to the primary point of entrance to a business. (See Rule 1680-03-03-.13, Figure 9 for an example.)

(9) Exit Ramp means the travel lane at an interchange on a freeway leading from the mainline to the intersecting crossroad.

(10) Freeway means a divided highway with full control of access.

(11) Logo Sign means an individual sign of a participating business in the Logo Sign Program that consists of the business's name, trademark, logo, or combination of same. This is the sign that is attached on the background sign panels.

(12) Mainline means the through travel lanes of a freeway.

(13) Motorist Service means a place of business providing either gas, food, lodging, camping or attraction facilities.

(14) MUTCD means the Manual on Uniform Traffic Control Devices.

(15) Offset Distance means the distance measured from the secondary point of intersection (SPOI) to the nearest comer of the business's building. If the building has an offset the comer that will provide for the shortest eligibility distance will be used for measurement purposes. (See Rule 1680-03-03-.13, Figure 9 for an example.)

(16) PPOI (Primary Point of Intersection) means the point at which the centerline of the median on the freeway intersects with the centerline of the crossroad. When the crossroad has more than two lanes, the centerline of the median, bridge or the exact center of the roadway surface crossing the freeway mainline will be used. (See Rule 1680-03-03-.13, Figure 9 for an example.)

(17) Priority Distance means the distance measured from the Secondary Point of Intersection (SPOI) to the center of the main doorway of the business. (Used only in case of ties in eligibility distance measurements. See Rule 1680-03-03-.13, Figure 9 for an example.)

(18) Rest Room means a clean private rest room, having at least one flush toilet and at least one sink with running water, in working order.

(19) Roadway Distance means the distance measured from the Primary Point of Intersection (PPOI) along the centerline of the crossroad or other public/private roadway leading to the Secondary Point of Intersection (SPOI).

(20) Single Exit means an interchange design where, for a given direction of travel on the mainline, only one exit ramp provides access to the crossroad.

(21) SPOI (Secondary Point of Intersection) means the point at which the center line of the public or private thoroughfare providing direct access to the business facility intersects with a perpendicular line to the nearest corner of the business building.

(22) Tennessee-Based Business Enterprise means a person or entity that has an office in the State of Tennessee.

(23) Trailblazer Background Panel means an official sign panel placed before the intersection where a turn is required to get to the business to display Trailblazer Signs. These are placed at intersections with 3 or more trailblazers signs.

(24) Trailblazer Sign means the sign used in the Logo Sign Program that indicates the name, direction and distance to a motorist service.

(25) Urbanized Area Boundary means that boundary identified as the census boundary by the United States Bureau of Census for a specific geographical location.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed September 7, 1990; effective October 22, 1990. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.02 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.03 GENERAL PROVISIONS.

(1) The Department has the authority to provide for the construction and administration of the Logo Sign Program.

(a) Construction contract(s): The Department may enter into contract(s) for the construction of logo sign background sign panels. The construction contract(s) shall be for the construction and erection of the background sign panels.

(b) Administrative services contract(s): The Department may enter into contract(s) for administration of the Logo Sign Program. The contract(s) shall be subject to the provisions of T.C.A. § 54-5-1103.

(2) Contracts shall be awarded to Tennessee-based business enterprises pursuant to T.C.A. § 54-5-1105.

Authority: *T.C.A. §§ 54-5-1103, 54-5-1105, and 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.03 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.04 CRITERIA FOR THE ERECTION OF SIGNS FOR THE LOGO SIGN PROGRAM.

(1) The Department will allow the erection and maintenance of signs for the Logo Sign Program in accordance with the MUTCD, these rules, and contract provisions. ~~However, to minimize the interference with the more critical regulatory, warning and guide signs, the logo sign background sign panels will be erected prior to the advance guide sign on the mainline, where possible, and at close spacing on the exit ramp. In addition to the aforementioned, the following criteria should be met:~~

(2) Background Sign Panels – Mainline

(a) To minimize the interference with the more critical regulatory, warning and guide signs, the background sign panels shall be erected at least eight hundred feet (800′) in advance of the Exit Direction sign at the interchange.

(b) The desired spacing between each mainline background sign panel should be at least eight hundred feet (800′) ~~feet~~, and the mainline background sign panel shall not conflict or interfere with any other official highway guide sign.

~~Exit ramp background sign panels shall not be erected where the ramp terminus offers no options for turns. However, where no businesses are visible from the terminus, the contractor may install trailblazer signs at a location determined by the Department and in conformance to specifications for trailblazer signs.~~

(c) There shall be no more than a total of four (4) background sign panels along the approach to any interchange, in each direction of travel~~, and no more than one background sign panel shall be erected for each eligible motorist service~~.

(d) Within the urbanized area boundary of cities of 100,000 or greater population as designated by the United States Bureau of Census in the most recent decennial federal census, the total number of background sign panels at each interchange may vary based on the space allowance, but the total number shall not exceed four. Priority will be as follows: first, Gas and/or Food; second, Lodging; and third, Attraction and/or Camping.

(e) Background sign panels shall not be installed at any directional interchange. A directional interchange is an interchange of two Interstate highways, or any other freeway-to-freeway interchange having comparable geometric design features.

(f) Each background sign panel shall display no more than six (6) logo signs.

(g) Each background sign panel shall display the word message Gas, Food, Lodging, Camping, or Attraction, as needed, based on the type of motorist services that may be available at the interchange.

(h) The background sign panels shall be erected in the following order in relation to the direction of travel: first, Attraction and/or Camping; second, Lodging; third, Food; and fourth, Gas (to the extent that each type of motorist service may be available at an interchange). Where a motorist service type is displayed on more than one background sign panel, the background sign panels for that motorist service should follow one another in succession if space is available.

(i) At interchange approaches having a single exit, each background sign panel shall bear the type of motorist service followed by the exit number (or directional information if unnumbered) on a line above the logo signs.

(j) At interchange approaches having a double exit:

1. The top section of the background sign panel shall bear the type of motorist service and exit number (or directional information in unnumbered) on a line above the logo signs for the businesses accessible from the first exit

2. The lower section of the background sign panel shall bear the type of motorist service and exit number (or directional information in unnumbered) on a line above the logo signs for the businesses accessible from the second exit.

3. When a motorist service is to be signed at only one of the two exits, one section of the background sign panel may be omitted or a single exit interchange background sign panel may be employed.

(3) Logo Signs – Mainline

(a) An eligible business will have its logo signs installed at an interchange that provides it with the shortest eligibility distance.

(b) An eligible business may have logo signs installed at a second interchange, provided it meets all the requirements as set forth in these rules and the business does not prevent another eligible business from participating in the Logo Sign Program at that interchange.

(c) In the event that an eligible business provides more than one motorist service, it may be eligible to display a logo sign for each service it provides on the proper background sign panel at an interchange, provided the following conditions are met;

1. It meets all minimum criteria for the service,

2. It does not prevent participation by another business which offers a sole service and would otherwise qualify for placement on the background sign panel, and

3. Space is available on the background sign panel.

(d) The placement of individual logo signs on all background sign panels should typically be as follows, except as provided in part 4 below:

1. All businesses that are accessible via a left turn from the exit ramp terminus should be placed first;

2. All businesses that are accessible via a right turn from the exit ramp terminus should be placed second; and

3. The logo signs of all businesses should be placed according to eligibility distance from each direction of turn, starting with the logo sign of the business with the shortest eligibility distance and going to the logo sign of the business with the greatest eligibility distance.

4. The actual placement of logo signs on a background sign panel may vary from this typical order of placement to the extent that one or more businesses may remove their logo signs and the logo signs of new businesses take their place; provided, however, that the typical order of placement should be restored whenever the background sign panel is refurbished.

(e) Ordinarily, each background sign panel will display logo signs for each separate type of motorist service, with one background sign panel for Gas, one for Food, one for Lodging, and one for Camping and/or Attractions, with up to six (6) logo signs for each type of motorist service on each background sign panel (or combination of motorist services in the case of Camping and Attractions).

(f) However, to the extent that eligible businesses applying for a logo sign in each type (or combined type) of motorist service may be underrepresented or overrepresented at each interchange, the Department may elect to display more than one type of motorist

service on a single background sign panel and/or one type of motorist service on more than one background sign panel, subject to the following:

1. No single type of motorist service shall be represented on more than two (2) background sign panels, up to a maximum of twelve (12) logo signs for any single type of motorist service.

   (i) Priority shall be given to the placement of logo signs on the background sign panel ordinarily assigned to that motorist service, up to a maximum of six (6) logo signs.

   (ii) Additional logo signs for the overrepresented motorist service may be allowed to roll over onto a background sign panel that would ordinarily be assigned to a different motorist service, provided that the space allowed for the roll over logo signs shall be in a configuration allowing for two (2), three (3), four (4), or six (6) logo signs.

2. No more than three (3) types of motorist services shall be represented on any single background sign panel.

   (i) If three (3) types of motorist services are displayed on one background sign panel, each type of motorist service shall be limited to two (2) logo signs.

   (ii) If two (2) types of motorist services are represented on one background sign panel, each motorist service shall be limited to either three (3) logo signs for each type or four (4) for one type and two (2) for the other type.

3. If an eligible business in a type of motorist service that has been unrepresented or underrepresented on a background sign panel applies for a logo sign, it shall be given priority for placement on the background sign panel that would ordinarily be assigned to that type of motorist service.

   (i) One or more businesses with a "roll-over" logo sign may be removed at the end of their logo sign contract periods as necessary to make space for the eligible business in the type of motorist service that would ordinarily be assigned to that background sign panel.

   (ii) The "roll-over" businesses subject to removal shall be, first, any business that is only partially qualified, and then any business having the furthest eligibility distance from the interchange.

~~The background sign panels should be erected in the following order in relation to the direction of travel: first, attraction and/or camping; second, lodging; third, food; and fourth, gas.~~

~~A separate background sign panel shall be erected for each type of motorist service, except where no more than three approved businesses are available for each of two types of services. The Department in that case may elect to display a background sign panel for two types of services on the same background sign panel.~~

~~A business will have its logo signs installed at an interchange that provides it with the shortest eligibility distance.~~

~~A business may have logo signs installed at a second interchange, provided it meets all the requirements as set forth in these rules and the business does not prevent another eligible business from participating in the Logo Sign Program at that interchange.~~

(Rule 1680-03-02, continued)

~~The number of logo signs on the background sign panel shall be limited to six for each motorist service.~~

~~The placement of individual logo signs on all background sign panels will be as follows:~~

~~All businesses that are accessible via a left turn from the exit ramp terminus will be placed first.~~

~~All businesses that are accessible via a right turn from the exit ramp terminus will then be placed.~~

~~The logo signs of all businesses will be placed according to eligibility distance from each direction of turn, starting with the logo sign of the business with the shortest eligibility distance and going to the logo sign of the business with the greatest eligibility distance.~~

~~A business is eligible to participate in the Logo Sign Program provided that it offers at least one of the specific motorist services (gas, food, lodging, camping or attraction) and it meets the applicable minimum criteria set forth in Rule 1680-03-03-.05.~~

~~In the event that a business provides more than one motorist service, it may be eligible to display a logo sign for each service it provides on the proper background sign panel, provided the following conditions are met;~~

~~It meets all minimum criteria for the service,~~

~~It does not prevent participation by another business which offers a sole service and would otherwise qualify for placement on the background sign panel,~~

~~Space is available on the background sign panel.~~

~~Within the urbanized area boundary of cities of 100,000 or greater population as designated by the United States Bureau of Census in the most recent decennial federal census, the total number of boards at each individual interchange may vary based on the space allowance, but the total number shall not exceed four. Priority will be as follows: first, gas and/or food; second, lodging; and third, attraction and/or camping.~~

~~At interchange approaches having a single exit, each background sign panel shall bear the type of service followed by the exit number on a line above the logo signs.~~

~~On interchange approaches having a double exit, each background sign panel shall consist of two sections.~~

~~1. The top section shall bear the type of service and display the logo sign for the businesses accessible from the first exit.~~

~~The lower section shall bear the type of service and display the logo sign for the businesses accessible from the second exit.~~

~~2. The exit number shall be displayed on a line above the logo signs in each section.~~

~~3. When a motorist service is to be signed at only one of the two exits, one section of the background sign panel may be omitted or a single exit interchange background sign~~

~~panel may be employed.~~

(4) Background Sign Panels and Logo Signs at Exit Ramps

(a) Exit ramp background sign panels shall not be erected where the ramp terminus offers no options for turns. However, where no businesses are visible from the terminus, the Department's contractor may install trailblazer signs at a location determined by the Department and in conformance to specifications for trailblazer signs.

(b) All businesses displayed on a mainline background sign panel ~~will~~shall also be displayed on ~~the~~an exit ramp background sign panel~~. This only applies to interchanges that are eligible for exit ramp background sign panels.~~ if the businesses are not readily visible from the ramp terminus.

1. Exit ramp background sign panels shall consist of a motorist service legend and logo signs identical to, but smaller than, the logo signs displayed on the mainline background sign panel.

2. The arrangement of individual logo signs on an exit ramp background sign panel will be the same as the arrangement of logo signs as stipulated in ~~Rule~~subparagraph 1680-03-03-.04(3~~1~~)(c~~d~~)~~5~~ above.

3. There will be directional arrows and mileage to each business on the exit ramp background sign panels at single exit interchanges. (See Rule 1680-03-03-.13, Figure 2.)

~~Descriptive advertising words, phrases, or slogans shall not be allowed on any logo sign, except to indicate dates of operation of eligible campgrounds that open on a seasonal basis, to indicate that a business is "open 24 hours," or that a business offers "diesel" or "auto diesel fuel," or other as approved by the Department. If more than two (2) descriptive words, phrases, or slogans are requested, approval must be obtained from the Department.~~

~~The distance that a gas, food or lodging motorist service business can be located from the PPOI to qualify for a logo sign shall not exceed three (3) miles in either direction.~~

~~The distance that a camping or attraction motorist service business can be located from the PPOI to qualify for a logo sign shall not exceed fifteen (15) miles in either direction.~~

(5) Trailblazer Signs

(a) Specific service trailblazer signs shall be installed along crossroads where the route to the business requires a direction change, where it is questionable as to which roadway to follow, or where additional guidance is needed. Where it is not feasible or practical to install Specific Service trailblazer signs to such businesses, those businesses shall not be considered eligible for signing from the ramp and main roadway. A Specific Service trailblazer sign shall not be required at the point where the business is visible from the roadway and access is readily apparent.

1. Where the road on which the trailblazer sign is needed is a state highway, the qualifying business will furnish the contractor with the appropriate trailblazer signs. The contractor will erect and maintain all trailblazer signs.

2. Where the road on which the trailblazer sign is needed is a city or county road, it shall be the responsibility of the business to make arrangements with the appropriate local governmental agency allowing the contractor to erect and maintain the trailblazer sign(s).

(Rule 1680-03-02, continued)

(b) Trailblazer signs shall consist of a logo sign identical to but smaller than a mainline logo and a supplemental directional arrow and mileage sign. (See Rule 1680-03-03-.13, Figures 3 and 4, for sign specifications.)

(c) The location of other traffic control devices shall take precedence over the location of a Specific Service trailblazer sign.

(d) When used, each Specific Service trailblazer sign or sign assembly shall be limited to no more than four logo sign panels. The logo sign panels on Specific Service trailblazer signs shall be duplicates of those displayed on the Specific Service ramp signs.

(e) Appropriate legends, such as directional arrows or the word message NEXT RIGHT or SECOND RIGHT, shall be displayed with the logo sign panel to provide proper guidance. The directional legend and border shall be white and shall be displayed on a blue background.

~~Trailblazer signs may be installed to indicate the need for a turn when the crossroad terminates. In addition, trailblazer signs should be used to indicate whenever a turn is needed to reach an eligible business. All trailblazer signs will have a supplemental sign showing a directional arrow and mileage to the business.~~

~~Where the road on which the trailblazer sign is needed is a state highway, the qualifying business will furnish the contractor with the appropriate trailblazer signs. The contractor will erect and maintain all trailblazer signs.~~

~~Where the road on which the trailblazer sign is needed is a city or county road, it shall be the responsibility of the business to make arrangements with the appropriate local governmental agency allowing the contractor to erect and maintain the trailblazer sign(s).~~

~~Trailblazer signs shall consist of a logo sign identical to but smaller than a mainline logo and a supplemental directional arrow and mileage sign. (See rule 1680-03-03-.13, Figures 3 & 4 for sign specifications.)~~

~~Logo signs shall not be installed at any directional interchange. A directional interchange is an interchange of two Interstate highways, or any other freeway-to- freeway interchange having comparable geometric design features.~~

~~The applicants and business participants in the Logo Sign Program agree to hold harmless the State of Tennessee, the Department of Transportation, and its employees for any loss of business caused by any damage to or removal of background sign panels, logo signs or trailblazer signs.~~

~~(2) An interchange which was an eligible location for the Logo Sign Program as of March 9, 1989, shall continue to be an eligible location notwithstanding changes in the urbanized area boundary. An interchange which became an eligible location at a later date shall be unaffected by changes in the urbanized area boundary for the duration of the term of the contract between the Department and the contractor in effect at the time of any such change.~~

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed September 7, 1990; effective October 22, 1990. Amendment filed January 17, 1992; effective March 3, 1992. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.04 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.05 SERVICES PERMITTED.

(Rule 1680-03-02, continued)

(1) A business is eligible to participate in the Logo Sign Program provided that it offers at least one of the specific motorist services (Gas, Food, Lodging, Camping or Attraction) and it meets the applicable minimum criteria set forth in Rule 1680- 03-03-.05.

(~~1~~2) Eligible motorist service facilities shall comply with the laws concerning the provision of public accommodations without regard to race, religion, color, age, sex, or national origin, and the laws concerning the granting of licenses and approvals for motorist service facilities.

(~~2~~3) The types of motorist service facilities shall be limited to gas, food, lodging, camping or attraction. To qualify for the Logo Sign Program and to display a logo sign on a background sign panel, the following minimum criteria must be met~~:~~.

(a) Gas

To qualify for a "Gas" logo sign, a business shall:

1. Offer ~~V~~vehicle services, which shall include fuel, oil, air and water;

2. Provide ~~D~~drinking water suitable for public use and ~~two~~one or more clean public rest rooms, ~~with at least one for men and one for women,~~ which must be available during all hours the facility is open to the public;

3. Have ~~C~~continuous operation at least sixteen (16) hours per day~~,~~ and seven (7) days a week; and

4. Be ~~L~~located not more than three (3) miles from the PPOI and meet the requirements set forth in Rule 1680-03-03-.06.

(b) Food

To qualify for a "Food" logo sign, a business shall:

1. Have ~~A~~a valid permit as required by the Hotel, Food Service Establishment and Swimming Pool Inspection Act of 1985, ~~as stipulated~~codified in T.C.A. Title 68, Chapter 14, Part 3, and have all other licenses and approvals as required by local governmental bodies;

2. Have ~~C~~continuous operation~~,~~ at least six (6) days a week and opening not later than 7:00 a.m., serving breakfast, and closing no earlier than 8:00 p.m.; and provided that ~~A~~a business which is only open six (6) days a week must identify the day of closure on its logo~~,~~ (e.g., "Closed Sunday")~~,~~ with six inch letters located on the lower one third of the business logo which contrast in color to the color of the logo background~~.~~;

3. Provide ~~O~~on-premise seating for at least twenty-five (25) persons, or in the case of drive-in food establishments, provide service capacity for at least twenty-five (25) persons;

4. ~~Two (2)~~Provide one or more clean public rest rooms, ~~with at least one (1) for men and one (1) for women,~~ which must be available during all hours the facility is open to the public; and

5. Be ~~L~~located not more than three (3) miles from the PPOI and meet the requirements as set forth in Rule 1680-03-03-.06.

(Rule 1680-03-02, continued)

6. If space is available, a food service business shall not be excluded from participating in the Logo Sign Program because the business does not serve breakfast. Such a food service business that meets all other criteria shall be considered partially qualified, and it may occupy any available space on a Food background sign panel if doing so would not exclude a business that does serve breakfast.

7. Food service businesses qualified for a logo sign as of July 1, 2001, shall remain qualified thereafter and shall not be bumped by another food service business as long as all required fees are paid, unless the Department elects to award advertising space under a competitive selection process.~~A business that meets all criteria set forth above will be considered "fully qualified." A business that meets the distance criteria but not all of the other criteria will be considered "partially qualified." A fully qualified business shall have priority over a partially qualified business. If a business is approved for the space as a fully qualified business, but then changes to become only partially qualified, said business may have its contract revoked.~~

(c) Lodging

To qualify for a "Lodging" logo sign, a business shall:

1. Have ~~A~~all appropriate State and local licenses or approvals;

2. Provide ~~O~~off-~~-~~street parking;

3. Have ~~A~~a minimum of twenty (20) sleeping units;

4. Provide ~~A~~a private entrance and a rest room ~~which has~~with hot and cold running water and a tub or shower for each sleeping unit;

5. Have ~~C~~continuous operation twenty-four (24) hours a day~~,~~; and~~;~~

6. Be ~~L~~located not more than three (3) miles from the PPOI, and meet the requirements as set forth in Rule 1680-03-03-.06.

(d) Camping

To qualify for a "Camping" logo sign, a business shall:

1. Have ~~A~~all appropriate State and local licenses and approvals, including health permits;

2. Have ~~C~~continuous operation for at least six (6) months of the year~~.~~, and provided that:

   (i) The contract between the business and the contractor shall specify the seasonal opening and closing dates of operation for the campground, and the logo signs of tile business shall indicate the specific dates that the campground is open for operation~~.~~; and

   (ii) The business will be required to pay the total annual fee to the contractor regardless of the number of months of operation~~.~~;

3. ~~A campground shall consist of~~Provide a minimum of ten (10) individual

(Rule 1680-03-02, continued)

campsites, each having accommodations for potable water and electrical hook-ups for conventional travel trailers, tents and campers;

4. Provide ~~P~~parking spaces for each campsite;

5. ~~Each campsite shall h~~Have a minimum area of three hundred square feet (300 sq. ft.) ~~square feet~~ for each campsite;

6. Provide ~~A~~a sanitary disposal system for travel trailers and campers;

7. ~~Separate~~ Provide shower facilities ~~for men and women~~ with hot and cold running water and ~~two (2) or more~~ clean public rest rooms~~, one (1) for men and one (1) for women~~;

8. Provide ~~A~~a full-time attendant on duty or on call twenty-four (24) hours a day to maintain and manage campground services; and

9. Be ~~L~~located not more than fifteen (15) miles from the PPOI and meet the requirements as set forth in Rule 1680-03-03-.06.

(e) Attraction

To qualify for an "Attraction" logo sign, a business shall have the primary purpose of providing amusement, historical, cultural, or leisure activities of regional significance to the public, and in addition the business shall:

1. Provide ~~A~~adequate parking for the facility with a minimum of twenty (20) spaces;

2. Have ~~Y~~year-round operation and be open to the public at least five (5) days a week, including at least one day on the weekend, except as specifically provided in part 6 below;

3. Be ~~L~~located not more than fifteen (15) miles from the PPOI and meet the requirements as set forth in Rule 1680-03-03-.06;

4. Provide ~~Two (2)~~one or more clean public rest rooms, ~~with at least one (1) for men and one (1) for women,~~which must be available during all hours the facility is open to the public; and

5. Be ~~O~~open to members of the public of all age groups, and excluding businesses open only to adults~~; and~~;

~~6. Open to walk-ins. No appointments required.~~

~~7~~6. Categories of businesses eligible for an ~~a~~Attraction sign, subject to criteria established in parts 1 – 5 of this subparagraph (e), may include, but are not necessarily limited to, the following:

(i) Arenas or stadiums (must be a permanent facility with a seating capacity of at least 750; not subject to the requirement in part 2 above to be open five days per week)~~,~~;

(ii) Cultural centers (must be a permanent facility for the performing arts with a seating capacity of at least 750; not subject to the requirement in part 2 above to be open five days per week)~~,~~;

(Rule 1680-03-02, continued)

(iii) Amusement parks (must be a permanent facility that, at a minimum, offers food services, rides, and other entertainment)~~,~~;

(iv) Zoos or aquariums (must be a permanent facility for the exhibition of living creatures)~~,~~;

(v) Race tracks (must be a permanent facility for organized racing events with a seating capacity of at least 750; not subject to the requirement in part 2 above to be open five days per week)~~,~~;

(vi) Historical sites (must be a structure or site on the National Historic Register and open to the public for regularly scheduled tours and information)~~,~~;

(vii) Museums (must be a permanent facility for the exhibition of significant works of artistic, historic, or scientific value)~~,~~;

(viii) Arts or crafts (must be a permanent facility for the exhibition, demonstration, and instruction of and regarding local arts and crafts)~~,~~;

(ix) Wineries, ~~or~~ breweries, or distilleries (must be a permanent facility, licensed by the Tennessee Alcoholic Beverage Commission, that produces and distributes fermented and distilled or un-distilled alcoholic beverages and offers tours and tastings to visitors)~~,~~;

(x) Golf courses (must be a permanent facility open to the public that offers at least nine holes of play)~~,~~;

(xi) Recreational areas (must be a permanent facility such as a park, hiking trail, or sports facility that is open to the general public during regularly scheduled business hours, without any reservation requirement, for recreational and sporting activities, including without limitation golf driving ranges, archery ranges, shooting ranges, ski areas, miniature golf ranges, horseback riding stables, etc.)~~,~~; ~~and~~

(xii) Shopping~~,~~ ~~Outlet or Antique M~~malls (must have a minimum of fifty (50) businesses within a single comprehensive facility);

(xiii) Antique malls (must have a minimum of twenty (20) vendor booths within, and each accessible from the interior of, a single building facility containing at least 3,000 square feet);

(xiv) Flea markets (must have a minimum of fifty (50) vendor booths within, and each accessible from the interior of, a single building facility; not subject to the requirement in part 2 above to be open five days per week); and

(xv) Tours (must operate on a regular, daily schedule within or from a single permanent facility, and the tour must have the primary purpose to educate the public regarding matters of historic, cultural, or scientific interest along the tour route, or to exhibit manufacturing or other processes conducted within the facility, and not primarily for the purpose of soliciting or promoting commercial transactions).

7. Special categories of facilities eligible for Attraction signing under specific alternative minimum criteria include:

(Rule 1680-03-02, continued)

(i) Antique districts (must have at least four (4) antique retail shops located within easy walking distance from a single parking location; provided, however, that the minimum parking criteria for a single facility established in part 1 of this subsection (e) shall not apply to each antique retail shop so long as adequate public parking is readily available within the district, and that all other minimum criteria established in parts 2 – 5 of this subparagraph (e) shall apply to each antique retail shop within the district); and

(ii) Historic districts (must have at least four (4) historic sites, each of which must be listed on the National Historic Register and open to the public for regularly scheduled guided or self-guided tours, within easy walking distance from a single parking location, and there must be trailblazing signs directing visitors to a centrally located information center or self-service kiosk where information concerning the historic district and a map for any self-guided tours can be obtained; provided, that the minimum parking criteria for a single facility established in part 1 of this subsection (e) shall not apply to each historic site so long as adequate public parking is readily available within the district, and that all other minimum criteria established in parts 2 – 5 of this subparagraph (e) shall apply to each historic site within the district; and provided further, that no business included within the historic district shall be eligible for an individual logo sign).

8. A business that meets all criteria set forth above will be considered "fully qualified." A business that is open seasonally at least six (6) months out of the year but meets all other criteria set forth in parts 1 – 5 of this subparagraph (e) and is otherwise an eligible business or facility under part 6 or 7 ~~that meets the distance criteria and is open to walk-ins but does not meet all of the other criteria~~ will be considered "partially qualified." A fully qualified business shall have priority over a partially qualified business. If a business is approved for the space as a fully qualified business, but then changes to become only partially qualified, said business may have its contract revoked.

9. An attraction shall not be eligible to participate in the Logo Sign Program if a guide sign has been erected for the attraction in accordance with Chapter 1680-03-02, Manual on Uniform Traffic Control Devices - Supplemental Rules for Guide Signs on Freeways, Expressways and Conventional Highways, if such participation would prevent another business from participating in the Logo Sign Program.

Authority: *T.C.A. §§ 54-5-1101, ~~and~~ 54-5-1108, and 54-5-1110.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed January 17, 1992; effective March 3, 1992.Amendment filed May 20, 1997; effective September 28, 1997. Amendment filed February 27, 1998; effective June 26, 1998. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-9-1-.05 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.06 MEASUREMENTS.

~~(1)~~ For the purpose of determining which business in each category will receive priority for the Logo Sign Program, the following will apply;

(~~a~~1) The business having the shortest eligibility distance from the PPOI will have priority. In the event that two businesses have the same eligibility distance, the business with the shortest

(Rule 1680-03-02, continued)

priority distance will have preference. This process will continue in ascending order as the eligibility distance increases from the PPOI until all positions on the background sign panel are filled.

(~~b~~2) To qualify, the business must meet one of the following criteria-:

~~1.~~(a) Gas, food and lodging~~:~~:

~~(ii)~~1. The business shall be located on the crossroad within three (3) miles of the PPOI, and either the business or its on-premise sign shall be readily identifiable from the crossroad.

~~(ii)~~2. If the crossroad is less than three (3) miles in length and terminates with a thoroughfare, a business may qualify provided it is located on the thoroughfare and is three (3) miles or less from the PPOI and either the business or its on-premise sign is readily identifiable from the thoroughfare. (See Rule 1680-03-03-.13, Figure 9)

~~2.~~(b) Campgrounds and attractions:

~~(i)~~ A campground or attraction shall be located within fifteen (15) miles of the PPOI.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed January 17, 1992; effective March 3, 1992. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.06 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.07 APPLICATION PROCESS.

(1) Any business that wishes to participate in the Logo Sign Program shall complete and submit a signed application to the contractor.

(2) A business may qualify to provide more than one motorist service under the Logo Sign Program, provided it meets all the requirements of these rules. If a business wishes to have a separate logo sign for each motorist service it provides, the business must submit a separate signed application for each motorist service.

(3) If an application is approved, the contractor shall issue a "Notice of Eligibility." A "Notice of Eligibility" shall be issued regardless of the availability of space on the background sign panel for which the business has applied.

(4) The "Notice of Eligibility" will be kept on file by the contractor for three (3) years from the date it is issued.

(5) Should the contractor deny an application, the contractor shall provide by certified mail or hand delivery (and obtain a signed receipt) a "Notice of Non-Eligibility" to the business, outlining the facts that warranted the denial.

(6) A business may be bumped from a sign at the end of its existing contract. In order to bump a business, the new business must submit an application at least sixty (60) days prior to the contract end date for the business that will be bumped. A new business that has a shorter eligibility distance than a business with a current sign may bump that business from the sign. However, a new food or attraction business that is fully qualified but with a longer eligibility distance may bump a business that is partially qualified but with a shorter eligibility distance. All other criteria contained in these rules shall apply.

(Rule 1680-03-02, continued)

(7) The applicants and business participants in the Logo Sign Program shall agree to hold harmless the State of Tennessee, the Department of Transportation, and its employees for any loss of business caused by any damage to or removal of background sign panels, logo signs or trailblazer signs.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.07 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.08 SPACE AVAILABLE NOTIFICATION.

(1) When space is available on a background sign panel, the contractor will:

(a) Contact any establishment that is open for business at the interchange and has a shorter eligibility distance than a business with a current "Notice of Eligibility" on file with the contractor or a current participant of the Logo Sign Program. This establishment must be provided the opportunity to submit an application to participate in the Logo Sign Program; and,

(b) Approve or deny the establishment's application based upon the requirements of these rules; and,

(c) Issue a "Notice of Space Availability" to the business with the current shortest eligibility distance that hold a "Notice of Eligibility;" and,

(d) Make such inquiries, investigations and inspections as necessary to insure that the business continues to meet the eligibility requirements set out in these rules.

(2) The contractor will notify the business of the required number of mainline, exit ramp and trailblazer logo signs required.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.08 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.09 TERMINATION OF PARTICIPATION.

(1) The Department or the contractor may inspect a business at any time during its contract period to assure that the business continues to meet the eligibility requirements set out in SPECIFIC these rules.

(2) The agreement between the contractor and the business shall contain provisions that cover breach of contract by the business. The following concepts shall be included within the provisions:

(a) A business believed by the contractor to be breaching the contract, for any reason, shall be given a reasonable period of time to remedy the situation.

(b) Should the business fail to remedy the situation, its logo sign(s) shall be removed and the contract terminated with no proration of monies paid.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.09 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

(Rule 1680-03-02, continued)

1680-03-03-.10 LOGO SIGN COMPOSITION.

(1) ~~All logo signs (main, exit ramp and trailblazer) shall have a blue background and a silver-white border.~~ A logo shall be either an identification symbol/trademark or a word message. Each logo shall be placed on a separate logo sign attached to a background sign panel.

(2~~a~~) Symbols or trademarks shall be reproduced in the colors and shape consistent with customary use, and any integral legend shall be proportional in size.

(3~~b~~) Messages, symbols and trademarks which resemble any official traffic control device are prohibited.

(4~~c~~) Descriptive advertising words, phrases, or slogans shall not be allowed on any logo sign, except to indicate dates of operation of eligible camping or attractions businesses that are open on a seasonal basis, to indicate that a business is "open 24 hours," or that a business offers "diesel" or "auto diesel fuel," or other as approved by the Department. If more than two (2) descriptive words, phrases, or slogans are requested, approval must be obtained from the Department.~~Logo signs furnished to the contractor shall be constructed of aluminum, 0.080 inches thick, and conforming to American Society of Testing and Materials (ASTM)-B 209 Alloy 606 1 -T6 or 5052-1138.~~

~~(d) The logo sign blanks shall be flat and contain no visible lateral bow.~~

~~(2) The logo sign shall be fabricated from encapsulated lens reflective sheeting and shall meet Tennessee Standard Specification 916.06, material Type II. The process color used for screening the business logo on the encapsulated lens background shall be as recommended by the manufacturer of the reflective sheeting.~~

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Amendment filed January 17, 1992; effective March 3, 1992. Rule has been assigned a new control number from 1680-09-01-.10 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.11 ~~BUSINESS LOGO~~SIGN DIMENSIONS AND DETAILS.

(1) Background panels.

(a) All background sign panels and trailblazer background panels shall have a blue background, a white border, and white legends of upper-case letters, numbers, and arrows.

(b) All background sign panels and trailblazer background panels shall be fabricated from encapsulated lens or micro-prismatic reflective sheeting and shall meet the requirements for reflective sheeting in Tennessee Department of Transportation, Standard Specifications for Road and Bridge Construction, Section 916.06.

(2) Logo signs.

(a) Logo signs furnished to the contractor shall be constructed of aluminum, 0.080 inches thick, and conforming to American Society of Testing and Materials (ASTM)-B 209 Alloy 606 1 -T6 or 5052-1138.

(b) The logo sign shall be flat and contain no visible lateral bow.

(c) The logo sign shall be fabricated from encapsulated lens or micro-prismatic reflective

(Rule 1680-03-02, continued)

sheeting and shall meet the requirements for reflective sheeting in Tennessee Department of Transportation, Standard Specifications for Road and Bridge Construction, Section 916.06. The process color used for screening the business logo shall be as recommended by the manufacturer of the reflective sheeting.

(d) Mainline business logo signs for all types of services will be 48" x 36" in size, 0.080" in thickness, and will have a 3" border radius and a 1/4" border width.

(~~2~~e) Exit ramp business logo signs for all types of services will be 24" x 18" in size, 0.080" in thickness, and will have a 1 1/2" border radius and a 3/8" border width.

(~~3~~f) Trailblazer logo signs will be 24" x 18" in size, 0.080" in thickness, and will have a 1 1/2" border radius and a 3/8" border width.

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.11 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

1680-03-03-.12 BUSINESS LOGO SIGN MAINTENANCE.

(1) The contractor will perform all maintenance work on all background sign panels, trailblazer signs and sign supports that are a part of the Logo Sign Program.

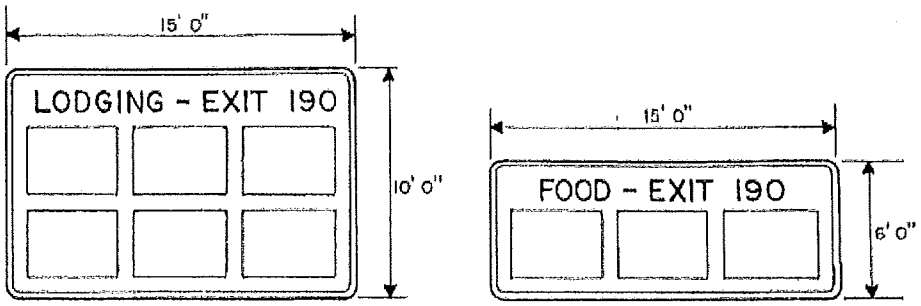
(2) When the logo sign of a business becomes damaged because of acts of vandalism, natural causes, or accidental damage, the business will provide, at its expense, a new logo sign to the contractor unless the damage was caused by the contractor or its agent. If the contractor or its agent damages the logo sign of a business, the contractor will be responsible for the cost of replacement.

(3) If in the opinion of the Department or the contractor, a logo sign of a business becomes unsightly, badly faded, or in a state of disrepair, the business shall provide at its expense a new or refurbished logo sign to the contractor upon request.

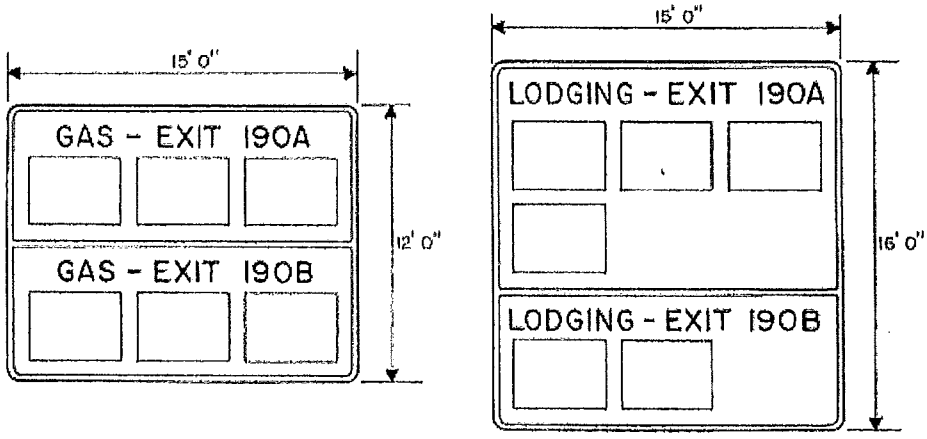
Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23, 1989; effective March 9, 1989. Rule has been assigned a new control number from 1680-09-01-.12 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

(Rule 1680-03-02, continued)

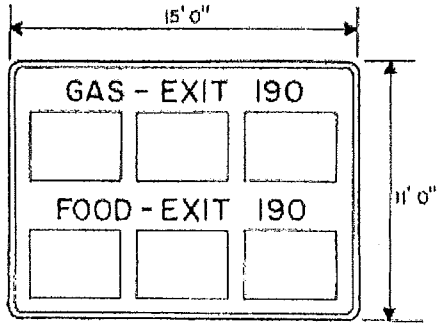
1680-03-03-.13 APPENDIX.



TYPICAL MAINLINE BACKGROUND SIGN PANEL DETAIL (SINGLE EXIT RAMP INTERCHANGE)



TYPICAL MAINLINE BACKGROUND SIGN PANEL DETAIL (DOUBLE EXIT RAMP INTERCHANGE)



TYPICAL COMBINATION MAINLINE BACKGROUND SIGN PANEL

FIGURE 1

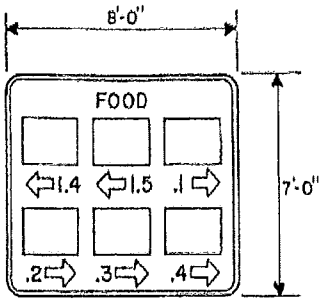


FIGURE 2: TYPICAL EXIT RAMP BACKGROUND SIGN PANEL DETAIL

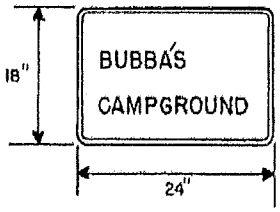


FIGURE 3: TYPICAL TRAILBLAZER SIGN DETAIL

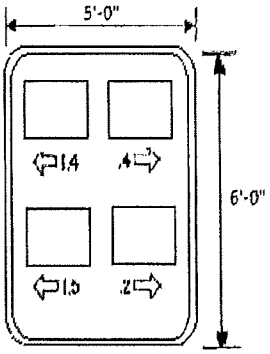


FIGURE 4: TYPICAL TRAILBLAZER BACKGROUND PANEL DETAIL

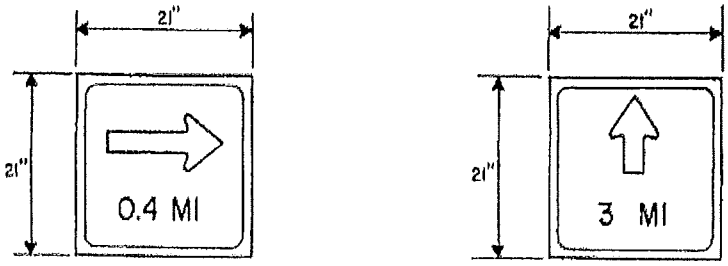


FIGURE 5: TYPICAL DIRECTION ARROW & MILEAGE DETAIL

(Rule 1680-03-03-.13, continued)

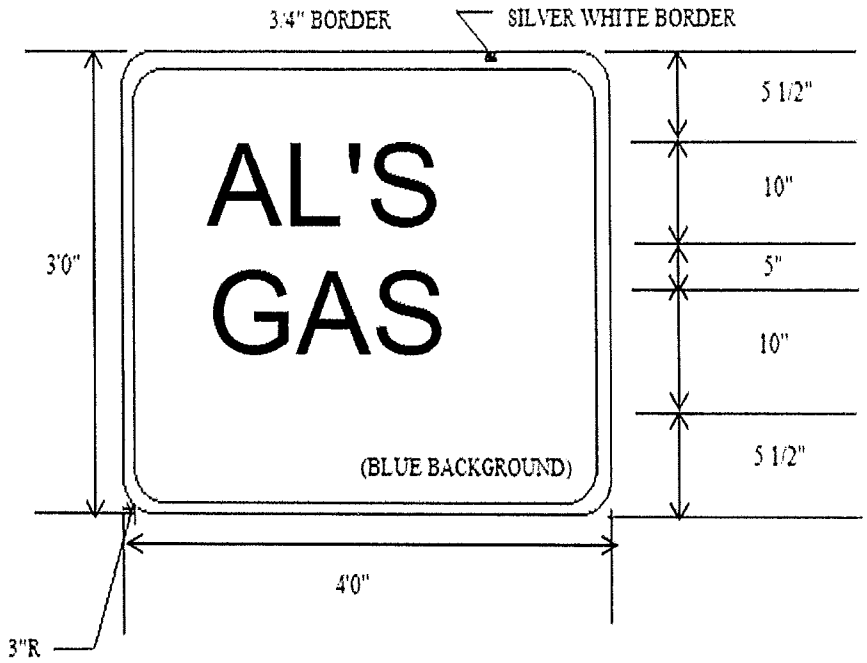


FIGURE 6: TYPICAL MAINLINE LOGO SIGN DETAIL
(FOR ALL MOTORIST SERVICES)

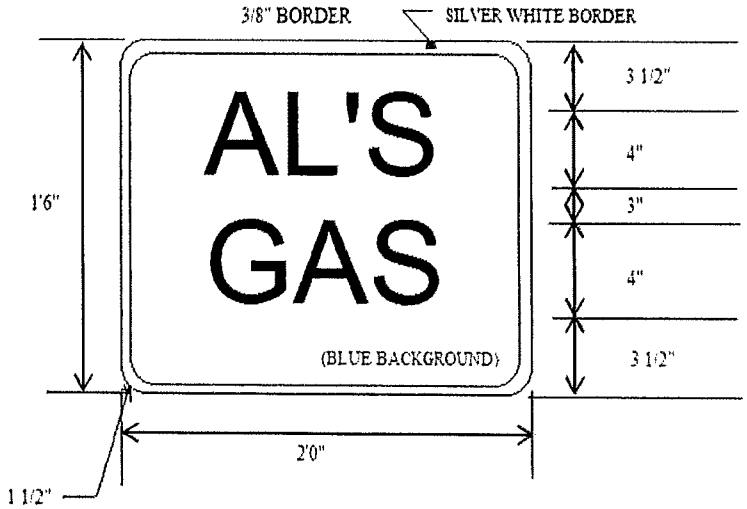


FIGURE 7: TYPICAL EXIT RAMP LOGO SIGN DETAIL
(FOR ALL MOTORIST SERVICES)

(Rule 1680-03-03-.13, continued)

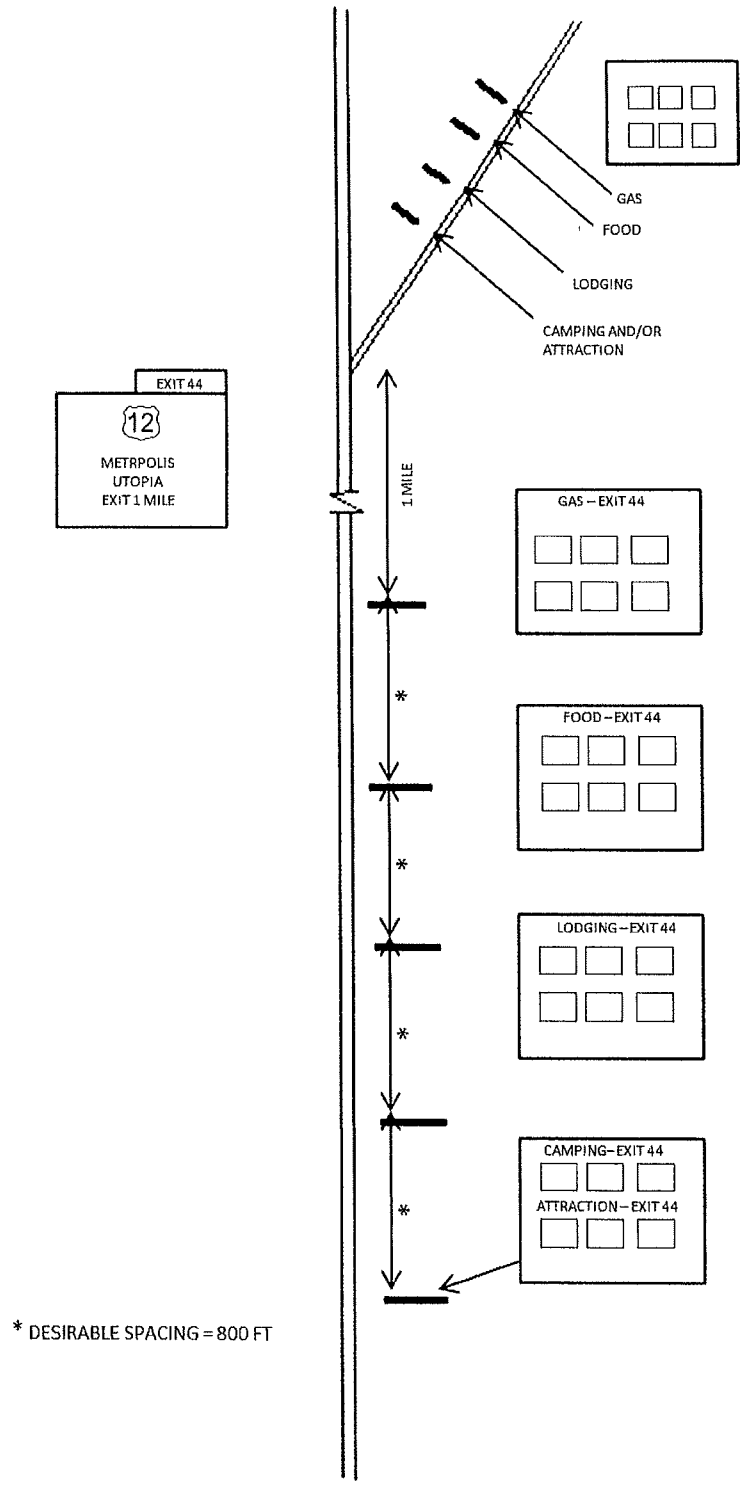


FIGURE 8: TYPICAL SIGN LOCATION DETAIL

(Rule 1680-03-03-.13, continued)

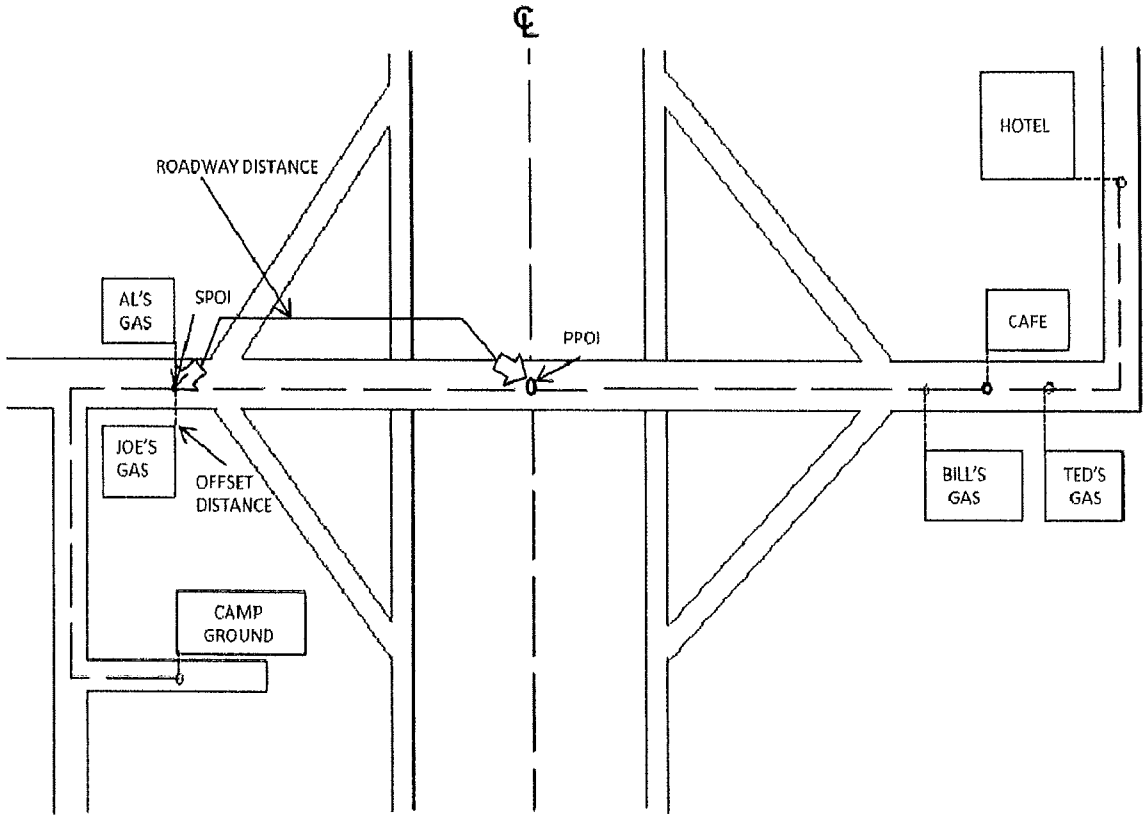


FIGURE 9

Authority: *T.C.A. § 54-5-1108.* ***Administrative History:*** *Original rule filed January 23,1989; effective March 9, 1989. Amendment filed January 11, 2002; effective May 31, 2002. Rule has been assigned a new control number from 1680-09-01-.13 filed and effective February 1, 2003. Repeal and new rule filed May 14, 2014; effective October 29, 2014.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Transportation (board/commission/ other authority) on 03/28/18, 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: 11/01/17

Rulemaking Hearing(s) Conducted on: (add more dates). 01/04/18

Date: March 28, 2018

Signature:

Name of Officer: John C. Schroer

Title of Officer: Commissioner

Subscribed and sworn to before me on: 3/28/18

Notary Public Signature: Angela P. Martin

My commission expires on: 1-6-2020

ANGELA P. MARTIN NOTARY PUBLIC AT LARGE DAVIDSON COUNTY, TENNESSEE

Agency/Board/Commission:

Rule Chapter Number(s):

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

5/11/2018
Date

2018 MAY 15 AM 11:46 SECRETARY OF STATE

Department of State Use Only

Filed with the Department of State on: 5/15/18

Effective on: 8/13/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Wildlife Resources Agency
DIVISION:	Biodiversity
SUBJECT:	Threatened and Endangered Species
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 70-8-104
EFFECTIVE DATES:	May 2, 2018, through June 30, 2019
FISCAL IMPACT:	The impact to state government revenues and expenditures is minimal as cost to contract surveys and to mitigate impacts is typically less than $5,000 as related to state listed species. There will be no increase in revenue from this rule.
STAFF RULE ABSTRACT:	This rulemaking hearing rule lists threatened, endangered, and in need of management species or subspecies indigenous to Tennessee. The only changes to previous regulations which were set out in Tennessee Wildlife Resources Agency proclamations 00-14 and 00-15 were changes in the species or subspecies listed.

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.

PUBLIC COMMENTS AND RESPONSES

Comment: No written or verbal comments were received by the Commission.
Response: N/A

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule;

This rule would have minimal impact on small business. The impact to small business would in most instances occur during construction projects when any of the following permits are required Aquatic Resources Alteration Permit, General Construction Permit, National Pollution Discharge Elimination System Permit, or Injection Well Permit; a 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers; or they are required to develop an Environmental Impact Statement or Environmental Assessment where impacts could occur to listed species. Any entity obtaining federal funds is also required to consult with state and federal wildlife agencies per the National Environmental Policy Act on species that could be impacted within the project area. Small business that would potentially be impacted would include construction, real estate, manufacturing, utilities, and mining. We estimate that less than 50 small businesses a year potentially could be impacted by this rule.

Small businesses that would directly benefit from this rule are consulting firms which are contracted by other business, local governments, or the state to complete surveys for In Need of Management, Threatened, or Endangered species that may occur within the boundaries of a project that could be impacted by that projects activities. We estimated that at least 15 small businesses annually could benefit from this rule.

(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;

This rule requires a skill set found in most wildlife consulting firms and carried out by a wildlife biologist. The skills include knowledge of species and subspecies habitats, surveying techniques for listed species, proper handling techniques of species in order to minimize stress, and the use of geographic information systems to map habitat. Also skills are needed to write necessary reports.

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

There will be minimal impact to small businesses and consumers. The cost of surveys and mitigations will typically be less than $5,000 and will likely only impact business during construction or other activities that could impact threatened, endangered, and in need of management species habitat or directly impact individuals; and when any of the following permits are required Aquatic Resources Alteration Permit, General Construction Permit, National Pollution Discharge Elimination System Permit, or Injection Well Permit; a 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers; or they are required to develop an Environmental Impact Statement or Environmental Assessment where impacts could occur to listed species. Any entity obtaining federal funds is also required to consult with state and federal wildlife agencies per the National Environmental Policy Act on species that could be impacted with in the project area

We expect minimal impact to consumers.

(4) A 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;

Due to the minimal cost associated with this rule we do not see any alternative methods that would reduce the burden on small businesses while still reducing impacts to those species listed in the rule.

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

The Federal Endangered Species Act of 1973 makes it unlawful for a person to take a listed animal without a permit. Take defined in the federal endangered species act is defined as to harass, harm, pursue, hunt, shoot wound, kill trap, capture, or collect or attempt to engage in any such activity. The act makes it unlawful to significantly modify habitat or degrade habitat where it actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. The federal law allows

landowners, citizens, corporations, and states take through section 10 permits. Current Tennessee T.C.A. makes it unlawful for take of state listed species. This rule like the federal section 10 permits will allow small business, corporations, local government to continue projects while working to minimize impacts to species listed in the rule.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Due to the number of different small businesses that may have impact on state listed in need of management, threatened, and endangered species it would be very difficult to exempt small business from all or part of the rule. Exempting small businesses would still mean that they would be required to meet federal endangered species act requirements in many parts of Tennessee. It would also be difficult to exempt some business due to both state and federal law requirements for taking into consideration listed species during the permitting process.

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)

Will passage of this rule have a projected financial impact on local governments?

The Commission is aware that the passage of this rule could have a small financial impact on local government.

Please describe the increase in expenditures or decrease in revenues:

The increase in expenditures is in relations to preforming surveys and mitigation of listed species in relation to those that may occur within a proposed construction projects footprint. It is not expected that there will be a decrease in revenues as this rule mainly effects projects during construction. Once a project is completed and efforts are made to reduce or mitigate impacts on listed species it is not expected that the entity will be further impacted by this rule.

Additional Information Required by Joint Government Operations Committee

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

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

The rule lists threatened, endangered, and in need of management species or subspecies indigenous to Tennessee. The only changes to previous regulations which were set out in Tennessee Wildlife Resources Agency proclamations 00-14 and 00-15 were changes in the species or subspecies listed.

(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. §70-8-104 Nongame species Promulgation of regulations prohibited acts (a) states that the executive director shall conduct investigation on nongame wildlife in order to determine management measures necessary for their continued ability to sustain themselves successfully. On the basis of this information the fish and wildlife commission shall issue regulations and development management programs to ensure the continued ability of nongame, endangered, or threatened wildlife. Such regulations shall set forth species or subspecies of nongame wildlife that the executive director deems in need of management. T.C.A. 70-8-105 Endangered or threatened species list on the basis of investigation on nongame wildlife in 70-8-104, and other scientific data and after consultation with other agencies and organizations the fish and wildlife commission shall by regulation propose a list of species or subspecies indigenous to the state that are determined to be endangered or threatened. The commission shall conduct a review of the state list no more than two years form effective date and every two years after. In the event the United States' List of Endangered Native fish and Wildlife is modified subsequent to 1974 the commission may accept such modification for the state. T.C.A. 70-8-107 Rule making authority, The fish and wildlife commission shall issue regulations as necessary to carry out the purposed of 70-8.

(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 rule will have a direct impact on any entity required to obtain Aquatic Resources Alteration Permit, General Construction Permit, National Pollution Discharge Elimination System Permit, or Injection Well Permit from TDEC, obtain a 404 Dredge and Fill Permit from the U.S. Army Corps of Engineers, or required to develop an Environmental Impact Statement or Environmental Assessment where impacts could occur to listed species. Any entity obtaining federal funds is also required to consult with state and federal wildlife agencies per the National Environmental Policy Act on species that could be impacted with in the project area. Due to both State and Federal law requiring consultation on listed species this rule would be supported by those entities affected as it clarifies protected species and dealing with impacts to those species and allows permitting to meet state and federal law. Tennessee Wildlife Resources Agency will be directly impacted by this rule as it is required by law to working with entities to mitigate impacts to listed species. TWRA urges the adoption of the rule as it defines listed species and allows for mitigation.

(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;

We are not aware of any opinions of the attorney general or any judicial ruling that directly relate to this 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;

The impact to state government revenues and expenditures is minimal as cost to contract surveys and to mitigate impacts is typically <$5,000 as related to state listed species. There will be no increase in revenue from this rule.

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

Andrea English, Assistant Chief of Biodiversity (Pandy.English@tn.gov); Brian Flock, Wildlife Diversity Coordinator, (brian.flock@tn.gov)

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

Chris Richardson, TWRA Special Assistant to the Director/Policy and Legislation, will explain the rule at the scheduled meeting of the Government Operations Committee.

(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

Chris Richardson, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, (615) 837-6016, Chris.Richardson@tn.gov

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

n/a

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Sequence Number: 02-02-18
Rule ID(s): 6089
File Date: 2/1/18
Effective Date: 5/2/18

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 Wildlife Resources Agency
Division: Biodiversity
Contact Person: Lisa Crawford
Address: PO Box 40747, Nashville, TN
Zip: 37204
Phone: 615-781-6606
Email: Lisa.Crawford@tn.gov

Revision Type (check all that apply):
___ Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
1660-01-32	Rules and Regulation for In Need of Management, Threatened, and Endangered Species
Rule Number	**Rule Title**
1660-01-32-.01	Adoption of Federal Endangered Species Act
1660-01-32-.02	Threatened and Endangered Species Lists and Rules
1660-01-32-.03	Wildlife In Need of Management List and Rules

New Rules

1660-01-32-.01, Adoption of Federal Endangered Species Act, is added as a new rule to read as follows:

(1) The Tennessee Wildlife Resources Agency hereby adopts by reference the species and subspecies protected by the Federal Endangered Species Act of 1973, as amended, 16 USCA, Ch. 35. A list of Tennessee's Federally threatened and endangered species under the Endangered Species Act may be found at 50 C.F.R. §17.11.

Authority: *T.C.A. §§70-1-206, 70-8-104, 70-8-106 and 70-8-107.* ***Administrative History:*** *Original rule filed _____; effective _____.*

1660-01-32-.02, Threatened and Endangered Species Lists and Rules, is added as a new rule to read as follows:

(1) The following species or subspecies are listed as state endangered.

(a) Crayfish

Common Name	**Scientific Name**
Big South Fork Crayfish	*Cambarus bouchardi*
Mountain Crayfish	*Cambarus conasaugaensis*
Conasauga Blue Burrower	*Cambarus cymatilis*
Valley Flame Crayfish	*Cambarus deweesae*
Chickamauga Crayfish	*Cambarus extraneus*
Obey Crayfish	*Cambarus obeyensis*
Pristine Crayfish	*Cambarus pristinus*
Speckled Crayfish	*Cambarus lentiginosus*
Hatchie Burrowing Crayfish	*Creaserinus hortoni*
Blood River Crayfish	*Faxonius burri*
Flint River Crayfish	*Faxonius cooperi*
Tennessee Cave Crayfish	*Orconectes incomptus*
Hardin Crayfish	*Faxonius wrighti*

(b) Fish

Common Name	**Scientific Name**
Lake Sturgeon	*Acipenser fulvescens*
Ashy Darter	*Etheostoma cinereum*
Crown Darter	*Etheostoma corona*
Barrens Darter	*Etheostoma forbesi*
Tuckasegee Darter	*Etheostoma gutselli*
Egg-mimic Darter	*Etheostoma pseudovulatum*
Barrens Topminnow	*Fundulus julisia*
Coosa Chub	*Macrhybopsis sp. 1*
Silverjaw minnow	*Notropis buccatus*

(c) Amphibians

Common Name	**Scientific Name**
Streamside Salamander	*Ambystoma barbouri*
Hellbender	*Cryptobranchus alleganiensis*

(d) Birds

Common Name	Scientific Name
Bachman's Sparrow	*Peucaea aestivalis*

(2) The following species or subspecies are listed as state threatened.

(a) Crayfish

Common Name	Scientific Name
Tennessee Bottlebrush Crayfish	*Barbicambarus simmonsi*
Hiwassee Crayfish	*Cambarus hiwasseensis*
Greensaddle Crayfish	*Cambarus manningi*
Cocoa Crayfish	*Cambarus stockeri*
Brawleys Fork Crayfish	*Cambarus williami*
Crescent Crayfish	*Faxonius taylori*

(b) Fish

Common Name	Scientific Name
Western Sand Darter	*Ammocrypta clara*
Blue sucker	*Cycleptus elongatus*
Coppercheek Darter	*Etheostoma aquali*
Holiday Darter	*Etheostoma brevirostrum*
Coldwater Darter	*Etheostoma ditrema*
Redlips Darter	*Etheostoma maydeni*
Striated Darter	*Etheostoma striatulum*
Trispot Darter	*Etheostoma trisella*
Saddled Madtom	*Noturus fasciatus*
Frecklebelly Madtom	*Noturus munitus*
Longhead Darter	*Percina macrocephala*
Sickle Darter	*Percina williamsi*

(c) Amphibians

Common Name	Scientific Name
Berry Cave Salamander	*Gyrinophilus gulolineatus*
Tennessee Cave Salamander	*Gyrinophilus palleucus*
Pale Salamander	*Gyrinophilus palleucus palleucus*
Big Mouth Cave Salamander	*Gyrinophilus palleucus necturoides*

(d) Reptiles

Common Name	Scientific Name
Alligator Snapping Turtle	*Macroclemys temminckii*
Northern Pine Snake	*Pituophis melanoleucus*
Western Pigmy Rattlesnake	*Sistrurus miliarius streckeri*

(e) Birds

Common Name	Scientific Name
Henslow's Sparrow	*Ammodramus henslowii*
Golden-winged Warbler	*Vermivora chrysoptera*

(f) Mammals

Common Name	Scientific Name
Little Brown Bat	*Myotis lucifugus*
Tri-colored Bat	*Perimyotis subflavus*

Authority: *T.C.A. §§70-1-206, 70-8-104, 70-8-106 and 70-8-107.* ***Administrative History:*** *Original rule filed _____; effective _____.*

New Rule

1660-01-32-.03, Wildlife In Need of Management List and Rules, is added as a new rule to read as follows:

(1) The following species or subspecies are listed as state wildlife in need of management

(a) Crayfish

Common Name	Scientific Name
Bottlebrush Crayfish	*Barbicambarus cornutus*
Short Mountain Crayfish	*Cambarus clivosus*
Prickly Cave Crayfish	*Cambarus hamulatus*
Spiny Scale Crayfish	*Cambarus jezerinaci*
Florence Crayfish	*Cambarus andersoni*
Alabama Crayfish	*Faxonius alabamensis*
Barren River Crayfish	*Faxonius barrenensis*
Cumberland Plateau Cave	*Orconectes barri*
Mammoth Cave Crayfish	*Orconectes pellucidus*

(b) Fish

Common Name	Scientific Name
Naked Sand Darter	*Ammocrypta beanii*
Scaly Sand Darter	*Ammocrypta vivax*
American Eel	*Anguilla rostrata*
Alligator Gar	*Atractosteus spatula*
Highfin Carpsucker	*Carpiodes velifer*
Tennessee Dace	*Chrosomus tennesseensis*
Rugby Dace	*Chrosomus sp 1*
Smoky Dace	*Clinostomus funduloides ssp. 1*
Emerald Darter	*Etheostoma baileyi*
Teardrop Darter	*Etheostoma barbouri*
Splendid Darter	*Etheostoma barrenense*
Orangefin Darter	*Etheostoma bellum*
Chickasaw Darter	*Etheostoma cervus*
Golden Darter	*Etheostoma denoncourti*
Redband Darter	*Etheostoma luteovinctum*
Smallscale Darter	*Etheostoma microlepidum*
Lollypop Darter	*Etheostoma neopterum*
Sooty Darter	*Etheostoma olivaceum*
Firebelly Darter	*Etheostoma pyrrhogaster*
Arrow Darter	*Etheostoma sagitta*
Tippecanoe Darter	*Etheostoma tippecanoe*
Tuscumbia Darter	*Etheostoma tuscumbia*
Wounded Darter	*Etheostoma vulneratum*
Golden Topminnow	*Fundulus chrysotus*
Flame Chub	*Hemitremia flammea*
Plains Minnow	*Hybognathus placitus*
Lined Chub	*Hybopsis lineapunctata*
Southern Brook Lamprey	*Ichthyomyzon gagei*
Silver Lamprey	*Ichthyomyzon unicuspis*
Sturgeon Chub	*Macrhybopsis gelida*
Sicklefin Chub	*Macrhybopsis meeki*
Rainbow Shiner	*Notropis chrosomus*
Bigmouth Shiner	*Notropis dorsalis*
Bedrock Shiner	*Notropis rupestris*
Piebald Madtom	*Noturus gladiator*
Tangerine Darter	*Percina aurantiaca*
Blotchside Logperch	*Percina burtoni*
Slenderhead Darter	*Percina phoxocephala*
Olive Darter	*Percina squamata*
Frecklebelly Darter	*Percina stictogaster*
Riffle Minnow	*Phenacobius catostomus*
Blackfin Sucker	*Thoburnia atripinnis*
Southern Cavefish	*Typhlichthys subterraneus*

(c) Amphibians

Common Name	Scientific Name
Cumberland Dusky Salamander	*Desmognathus abditus*
Seepage Salamander	*Desmognathus aeneus*
Black Mountain Salamander	*Desmognathus welteri*
Pygmy Salamander	*Desmognathus wrighti*
Junaluska Salamander	*Eurycea junaluska*
Four-toed Salamander	*Hemidactylium scutatum*
Wehrle's Salamander	*Plethodon wehrlei*
Weller's Salamander	*Plethodon welleri*

(d) Reptiles

Common Name	Scientific Name
Mississippi Green Water Snake	*Nerodia cyclopion*
Eastern Slender Glass Lizard	*Ophisaurus attenuatus longicaudus*
Coal Skink	*Plestiodon anthracinus*

(e) Birds

Common Name	Scientific Name
Golden Eagle	*Aquila chrysaetos*
Little Blue Heron	*Egretta caerulea*
Wood Thrush	Hylocichla mustelina
Least Bittern	*Ixobrychus exilis*
Loggerhead Shrike	*Lanius ludovicianus*
Swainson's Warbler	*Limnothlypis swainsonii*
Black-crowned Night-heron	*Nycticorax nycticorax*
King Rail	*Rallus elegans*
Cerulean Warbler	*Setophaga cerulea*
Bewick's Wren	*Thryomanes bewickii*

(f) Mammals

Common Name	Scientific Name
Star-nosed Mole	*Condylura cristata*
Rafinesque's Big-eared Bat	*Corynorhinus rafinesquii*
Southern Rock Vole	*Microtus chrotorrhinus carolinensis*
Eastern Small-footed Bat	*Myotis leibii*
Southern Appalachian Woodrat	*Neotoma floridana haematoreia*
Eastern Woodrat	*Neotoma floridana illinoensis*
Allegheny Woodrat	*Neotoma magister*
Hairy-tailed Mole	*Parascalops breweri*
Long-tailed Shrew	*Sorex dispar*
American Water Shrew	*Sorex palustris*
Southern Bog Lemming	*Synaptomys cooperi*

Authority: *T.C.A. §§70-1-206, 70-8-104, 70-8-106 and 70-8-107.* ***Administrative History:*** *Original rule filed* _____*; effective* _____.

* 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)
Chad Baker		✓			
Angie Box	✓				
Jeff Cook	✓				
Bill Cox		✓			
Dennis Gardner	✓				
Kurt Holbert	✓				
Connie King	✓				
Brian McLerrin	✓				
Tony Sanders	✓				
James Stroud	✓				
Bill Swan		✓			
Kent Woods	✓				
Jamie Woodson	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fish & Wildlife Commission on 12/08/2017 (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: *10/06/2017*

Rulemaking Hearing(s) Conducted on: (add more dates). *12/08/2017*

Date: 1-17-18

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

Subscribed and sworn to before me on: January 17, 2018

Notary Public Signature: Sheryl R. Williams

My commission expires on: ~~03-10-2019~~ 3-8-21

All rulemaking hearing rules provided for herein (Rule 1660-01-32, Rules and Regulation for In Need of Management, Threatened, and Endangered Species) 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

1/26/2018
Date

Department of State Use Only

Filed with the Department of State on: 2/1/18

Effective on: 5/2/18

Tre Hargett
Secretary of State

2018 FEB -1 AM 11:18
SECRETARY OF STATE
PUBLIC INFO

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 06/13/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/07/18

Rulemaking Hearing(s) Conducted on: (add more dates). 05/01/18

Date: June 13, 2018

Signature:

Name of Officer: Jai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: June 13, 2018

Notary Public Signature:

My commission expires on: 07/05/2021

JOYCE M. JACKSON STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Agency/Board/Commission:

Rule Chapter Number(s):

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

7/23/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/31/18

Effective on: 10/29/18

Tre Hargett
Secretary of State

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2018 JUL 31 AM 10:39
SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Agriculture
DIVISION:	
SUBJECT:	Noxious-Weed Seeds
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 43-10-114
EFFECTIVE DATES:	October 29, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule adds Palmer Amaranth to the list of declared noxious weeds list regulated under the department's agricultural and vegetable seed rules.

Public Hearing Comments

The Department of Agriculture held a public hearing on May 1, 2018. Jay Miller served as hearing officer for the Rulemaking Hearing concerning 0080-05-06 Seed. No questions or comments from the public were presented at the hearing.

JAI TEMPLETON
COMMISSIONER

TENNESSEE DEPARTMENT OF AGRICULTURE

DIVISION OF CONSUMER & INDUSTRY SERVICES

HAND DELIVERY

June 6, 2018

Department of State
Division of Publications
8th Floor Snodgrass/TN Tower
312 Rosa L. Parks
Nashville, Tennessee 37243

RE: Rulemaking Hearing May 1, 2018

I served as hearing officer for a Rulemaking Hearing on May 1, 2018, concerning 0080-05-06 Seed. The public presented no questions or comments during the hearing.

Sincerely,

Jason B. Miller, Esq. /s/
Tennessee Department of Agriculture
Division of Consumer & Industry Services

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) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

Seed sellers who sell, offer for sale, or distribute agricultural or vegetable seeds are subject to the proposed rule.

(2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 230 seed sellers, 39 of which are Tennessee firms, are expected to be subject to the proposed rule.

(3) Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:

The proposed rule change is not expected to increase administrative costs of affected firms.

(4) Statement of the probable effect on impacted small businesses and consumers:

This rule implements a zero tolerance restriction for Palmer Amaranth in agricultural or vegetable seeds sold or distributed in commerce. Palmer Amaranth, also known as Pigweed, is a fast-growing, highly-resistant weed threatening various crop industries in approximately 20 states. Its inclusion on the prohibited noxious-weed seed rule helps protect agricultural and vegetable seed production and their resulting crops in Tennessee.

(5) 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:

No less burdensome method for achieving this purpose is possible.

(6) Comparison of the proposed rule with any federal or state counterparts:

While the Federal Seed Act does not recognize Palmer Amaranth as a zero-tolerance noxious-weed seed, the Act does prohibit the transport of agricultural seeds that exceed noxious-weed seed tolerances of any state into which agricultural seeds are transported. Palmer Amaranth is currently restricted or prohibited in agricultural or vegetable seeds by Indiana, Iowa, Minnesota, and Ohio.

(7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from this rule may expose the state to greater risks associated with Palmer Amaranth in agricultural and vegetable seeds sold or distributed in commerce.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

No impact is expected 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 adds Palmer Amaranth to the list of declared noxious weeds list regulated under the department's agricultural and vegetable seed rules.

(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;

Pursuant to T.C.A. §43-10-114, it is the duty of the commissioner of agriculture to "[a]dopt a list of prohibited and restricted noxious weeds, conforming with the definitions stated in this part, and add or subtract from the list, from time to time, after a public hearing following due public notice."

(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;

Seed sellers who sell, offer for sale, or distribute agricultural or vegetable seeds are most directly affected by this rule. No public comments have been received urging adoption or rejection of this rule. No public comments have been received that would indicate the rules are not easily understood; unnecessary to the public health, safety, and welfare; arbitrary or unreasonable; or adverse to business or individuals.

(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;

There are no known attorney general opinions or court decisions in this state that directly relate 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;

The estimated effect on departmental revenues and expenditures resulting from this rule is minimal.

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

Keith Harrison, Assistant Commissioner, Tennessee Department of Agriculture

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

Keith Harrison, Assistant Commissioner, Tennessee Department of Agriculture

(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

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5152; keith.harrison@tn.gov

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

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Sequence Number: 07-19-18
Rule ID(s): 7216
File Date: 7/31/18
Effective Date: 10/29/18

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 Agriculture
Division:	Consumer & Industry Services
Contact Person:	Jay Miller
Address:	Post Office Box 40627, Nashville, Tennessee
Zip:	37204
Phone:	(615) 837-5341
Email:	jay.miller@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**
0080-05-06	Seed
Rule Number	**Rule Title**
0080-05-06-.07	Noxious-Weed Seeds

Amendments

Chapter 0080-05-06
Seed

Paragraph 0080-05-06-.07(1) is amended by deleting the paragraph in its entirety and substituting instead the following language so that, as amended, the paragraph shall read:

(1) Prohibited ~~N~~noxious-~~W~~weed seed shall include:

Balloonvine (Cardiospermum halicacabum)	None per pound
Canada thistle (Cirsium arvense)	None per pound
Crotalaria (Crotalaris spectabilis)	None per pound
Field Bindweed (Convolvulus arvensis)	None per pound
Hedge Bindweed (Convolvulus sepium)	None per pound
Itchgrass (Rottboelia exaltata)	None per pound
Johnsongrass (Sorghum halepense)	None per pound
Nutgrass (Cyperus rotundus ~~&~~and C. esculentus)	None per pound
Palmer Amaranth (Amaranthus palmeri)	None per pound
Sorghum Almum (Sorghum almum)	None per pound
Sicklepod (Cassia obtusifolia)	None per pound

Authority: T.C.A. §§ 4-3-203 and 43-10-114.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Insurance
SUBJECT:	Minimum Reserve Standards for Individual and Group Health Insurance Contracts
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 56-1-418, 56-1-901 et seq., and 56-2-301
EFFECTIVE DATES:	October 17, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking updates the minimum reserving standards for group and individual accident and health insurance policies. This update is a follow-up to a 2017 rule revision to this chapter that set health reserve requirements for policies issued after January 1, 2017, and claims reserves for claims incurred after January 1, 2017, to follow the NAIC Valuation Manual and NAIC Accounting Practices and Procedures Manual. The 2017 rulemaking did not modify the existing reserving requirements for pre-January 1, 2017, claims. This proposed rulemaking would expand the application of the NAIC Accounting Practices and Procedures Manual reserving requirements to include pre-January 1, 2017, claims. With this change, the legacy reserve requirements are no longer applicable and are thus being deleted from this rule chapter.

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 these Proposed Rules are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed rules are not anticipated to have a significant impact on small businesses. Tenn. Code Ann. §§ 56-1-418, 56-1-901 *et seq.*, 56-1-904, 56-1-906, 56-1-909 and 56-2-301 authorize the commissioner to promulgate rules establishing minimum reserve standards for health care claims. The proposed rules establish such reserve standards.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

(1) These rules only directly affect the reserving practices of insurance companies that underwrite accident and health insurance policies. Virtually all underwriters that retain risk for accident and health claims are typically not considered to be small businesses.

(2) The projected reporting, recordkeeping and other administrative costs associated with compliance with this proposed rule are not anticipated to increase from that which exists under the current rules these proposed rules amend.

(3) The effect on small businesses is minimal. The proposed amendment will positively affect consumers by providing for a more stable health insurance marketplace when insurers are required to comply with the most up-to-date reserve requirements.

(4) There are no alternative methods to make the proposed rule less costly, less intrusive or less burdensome. These rules allow insurers to adopt a consistent reserve standard for all health care claims.

(5) Only insurance companies retaining health risks are required to comply with this rule. Exempting any company from these proposed rules would place Tennessee residents at risk should their insurance carriers be permitted to carry less than adequate reserves.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

This rule will not 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;

This rulemaking updates the minimum reserving standards for group and individual accident and health insurance policies. This update is a follow-up to a 2017 rule revision to this chapter that set health reserve requirements for policies issued after January 1, 2017, and claims reserves for claims incurred after January 1, 2017, to follow the NAIC Valuation Manual and NAIC Accounting Practices and Procedures Manual. The 2017 rulemaking did not modify the existing reserving requirements for pre-January 1, 2017, claims. This proposed rulemaking would expand the application of the NAIC Accounting Practices and Procedures Manual reserving requirements to include pre-January 1, 2017, claims. With this change, the legacy reserve requirements are no longer applicable and are thus being deleted from this rule chapter.

(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. §§ 56-1-418, 56-1-901 *et seq.*, 56-1-904, 56-1-906, 56-1-909 and 56-2-301 authorize the Commissioner to promulgate rules establishing minimum reserve standards for health care claims. The proposed rules establish such reserve standards.

(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 rule will affect insurance companies selling accident and health insurance in the State of Tennessee. It is anticipated that those companies will urge 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 or the necessity to promulgate 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;

None

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

Michael Humphreys, Assistant Commissioner for Insurance; Rachel Jrade-Rice, Director of Insurance; Brian Hoffmeister, Director of Policy Analysis; Benjamin Whitehouse, Supervising Attorney & Assistant General Counsel for Insurance.

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

Benjamin Whitehouse, Supervising Attorney & 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; 615-741-2616; ben.whitehouse@tn.gov

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

None.

Department of State
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For Department of State Use Only

Sequence Number: 07-12-18
Rule ID(s): 7207
File Date: 7/19/18
Effective Date: 10/17/18

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 Commerce and Insurance
Division:	Insurance
Contact Person:	Benjamin Whitehouse, Assistant General Counsel for Insurance
Address:	Davy Crockett Tower, 8th Floor 500 James Robertson Parkway Nashville, Tennessee 37243
Phone:	615-741-2616
Email:	ben.whitehouse@tn.gov

Revision Type (check all that apply):
X 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**
0780-01-69	Minimum Reserve Standards for Individual and Group Health Insurance Contracts
Rule Number	**Rule Title**
0780-01-69-.01	Scope.
0780-01-69-.02	Calculation of Reserves.
0780-01-69-.03	Repealed
0780-01-69-.04	Repealed
0780-01-69-.05	Repealed
0780-01-69-.06	Repealed
0780-01-69-.07	Repealed
Appendix A	Repealed
Appendix B	Repealed
Appendix C	Repealed

0780-01-69
MINIMUM RESERVE STANDARDS FOR INDIVIDUAL AND GROUP HEALTH INSURANCE CONTRACTS

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0780-01-69-.02 ~~Claim Reserves~~Calculation of Reserves
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~~Appendix B Glossary of Technical Terms Used~~
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0780-01-69-.01 ~~INTRODUCTION.~~SCOPE.

~~(1) Scope.~~

(1~~a~~) These standards apply to all individual and group accident and health insurance coverages, except credit insurance, hereinafter "health insurance."

(2~~b~~) When an insurer determines that adequacy of its health insurance reserves requires reserves in excess of the minimum standards specified herein, such increased reserves shall be held and shall be considered the minimum reserves for that insurer.

(3~~c~~) With respect to any block of contracts, or with respect to an insurer's health business as a whole, a prospective gross premium valuation is the ultimate test of reserve adequacy as of a given valuation date. Such a gross premium valuation will take into account, for contracts in force, in a claims status, or in a continuation of benefits status on the valuation date, the present value as of the valuation date of: all expected benefits unpaid, all expected expenses unpaid, and all unearned or expected premiums, adjusted for future premium increases reasonably expected to be put into effect.

(4~~d~~) Such a gross premium valuation is to be performed whenever a significant doubt exists as to reserve adequacy with respect to any major block of contracts, or with respect to the insurer's health business as a whole. In the event inadequacy is found to exist, immediate loss recognition shall be made and the reserves restored to adequacy. Adequate reserves (inclusive of claim, premium and contract reserves, if any) shall be held with respect to all contracts, regardless of whether contract reserves are required for such contracts under these standards.

(5~~e~~) Whenever minimum reserves, as defined in these standards, exceed reserve requirements as determined by a prospective gross premium valuation, such minimum reserves remain the minimum requirement under these standards.

~~(2) Categories of Reserves.~~

~~The following sections set forth minimum standards for three categories of health insurance reserves:~~

~~0780-01-69-.02 Claim Reserves.~~
~~0780-01-69-.03 Premium Reserves~~
~~0780-01-69-.04 Contract Reserves~~

~~Adequacy of an insurer's health insurance reserves is to be determined on the basis of all three categories combined. However, these standards emphasize the importance of determining appropriate reserves for each of the three categories separately.~~

~~(3) Appendices.~~

~~These standards contain two appendices which are an integral part of the standards, and one additional "supplementary" appendix which is not part of the standards as such, but is included for explanatory and illustrative purposes only.~~

~~Appendix A. Specific minimum standards with respect to morbidity, mortality and interest, which apply to claim reserves according to year of incurral and to contract reserves according to year of issue.~~

~~Appendix B. Glossary of Technical Terms used.~~

~~Appendix C. (Supplementary) Waiver of Premium Reserves.~~

Authority: *T.C.A. §§ 56-1-418 and 56-2-301.*

~~0780-01-69-.02 CLAIM RESERVES.~~

~~(1) General.~~

~~(a) Claim reserves are required for all incurred but unpaid claims on all health insurance policies.~~

~~(b) Appropriate claim expense reserves are required with respect to the estimated expense of settlement of all incurred but unpaid claims.~~

~~(c) All such reserves for prior valuation years are to be tested for adequacy and reasonableness along the lines of claim runoff schedules in accordance with the statutory financial statement including consideration of any residual unpaid liability.~~

~~(2) Minimum Standards for Claim Reserves.~~

~~(a) Disability Income.~~

~~1. Interest. The maximum interest rate for claim reserves is specified in Appendix A.~~

~~2. Morbidity. Minimum standards with respect to morbidity are those specified in Appendix A, except that, at the option of the insurer:~~

~~(i) For claims with a duration from date of disablement of less than two years, reserves may be based on the insurer's experience, if such experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.~~

~~(ii) For group disability income claims with a duration from date of disablement of more than two (2) years but less than five (5) years, reserves may, with the approval of the commissioner, be based on the insurer's experience for which the insurer maintains underwriting and claim administration control. The request for such approval of a plan of modification to the reserve basis must include:~~

~~(I) An analysis of the credibility of the experience;~~

~~(II) A description of how all the insurer's experience is proposed to be used in setting reserves;~~

~~(III) A description and quantification of the margins to be included;~~

~~(IV) A summary of the financial impact that the proposed plan of modification would have had on the insurer's last filed annual statement;~~

~~(V) A copy of the approval of the proposed plan of modification by the commissioner of the state of domicile; and~~

~~(VI) Any other information deemed necessary by the commissioner.~~

~~3. Duration of Disablement. For contracts with an elimination period, the duration of disablement should be measured as dating from the time that benefits would have begun to accrue had there been no elimination period.~~

~~(b) All Other Benefits.~~

~~1. Interest. The maximum interest rate for claim reserves is specified in Appendix A.~~

~~2. Morbidity or Other Contingency. The reserve should be based on the insurer's experience, if the experience is considered credible, or upon other assumptions designed to place a sound value on the liabilities.~~

~~(3) Claim Reserve Methods Generally.~~

~~A generally accepted actuarial reserving method or other reasonable method, if, after a rulemaking hearing, the method is approved by the commissioner prior to the statement date, or a combination of methods may be used to estimate all claim liabilities. The methods used for estimating liabilities generally may be aggregate methods, or various reserve items may be separately valued. Approximations based on groupings and averages may also be employed. Adequacy of the claim reserves, however, shall be determined in the aggregate.~~

~~***Authority:*** *T.C.A. §§ 56-1-418 and 56-2-301.*~~

~~**0780-01-69-.03 PREMIUM RESERVES.**~~

~~(1) General.~~

~~(a) Unearned premium reserves are required for all contracts with respect to the period of coverage for which premiums, other than premiums paid in advance, have been paid beyond the date of valuation.~~

~~(b) If premiums due and unpaid are carried as an asset, the premiums must be treated as premiums in force, subject to unearned premium reserve determination. The value of unpaid commissions, premium taxes and the cost of collection associated with due and unpaid premiums shall be carried as an offsetting liability.~~

~~(c) The gross premiums paid in advance for a period of coverage commencing after the next premium due date which follows the date of valuation may be appropriately discounted to the valuation date and shall be held either as a separate liability or as an~~

~~addition to the unearned premium reserve which would otherwise be required as a minimum.~~

~~(2) Minimum Standards for Unearned Premium Reserves.~~

~~(a) The minimum unearned premium reserve with respect to a contract is the pro rata unearned modal premium that applies to the premium period beyond the valuation date, with the premium determined on the basis of:~~

~~1. The valuation net modal premium on the contract reserve basis applying to the contract; or~~

~~2. The gross modal premium for the contract if no contract reserve applies.~~

~~(b) However, in no event may the sum of the unearned premium and contract reserves for all contracts of the insurer subject to contract reserve requirements be less than the gross modal unearned premium reserve on all such contracts, as of the date of valuation. The reserve shall never be less than the expected claims for the period beyond the valuation date represented by the unearned premium reserve, to the extent not provided for elsewhere.~~

~~(3) Premium Reserve Methods Generally.~~

~~The insurer may employ suitable approximations and estimates; including, but not limited to groupings, averages and aggregate estimation; in computing premium reserves. Approximations or estimates should be tested periodically to determine their continuing adequacy and reliability.~~

~~***Authority:*** *T.C.A. §§ 56-1-418 and 56-2-301.*~~

~~**0780-01-69-.04 CONTRACT RESERVES.**~~

~~(1) General.~~

~~(a) Contract reserves are required, unless otherwise specified in § 0780-01-69-.04(1)(b), for:~~

~~1. All individual and group contracts with which level premiums are used; or~~

~~2. All individual and group contracts with respect to which, due to the gross premium pricing structure at issue, the value of the future benefits at any time exceeds the value of any appropriate future valuation net premiums at that time. The values specified in this subparagraph shall be determined on the basis specified in Paragraph (2) of this section.~~

~~(b) Contracts not requiring a contract reserve are:~~

~~1. Contracts that cannot be continued after one year from issue; or~~

~~2. Contracts already in force on the effective date of these standards for which no contract reserve was required under the immediately preceding standards.~~

~~(c) The contract reserve is in addition to claim reserves and premium reserves.~~

~~(d) The methods and procedures for contract reserves shall be consistent with those for claim reserves for a contract, or else appropriate adjustment shall be made when~~

~~necessary to assure provision for the aggregate liability. The definition of the date of incurral shall be the same in both determinations.~~

~~(2) Minimum Standards for Contract Reserves.~~

~~(a) Basis.~~

~~1. Morbidity or Other Contingency. Minimum standards with respect to morbidity are those set forth in Appendix A. Valuation net premiums used under each contract shall have a structure consistent with the gross premium structure at issue of the contract as this relates to advancing age of insured, contract duration and period for which gross premiums have been calculated.~~

~~Contracts for which tabular morbidity standards are not specified in Appendix A shall be valued using tables established for reserve purposes by a qualified actuary and acceptable to the commissioner. The morbidity tables shall contain a pattern of incurred claims cost that reflects the underlying morbidity and shall not be constructed for the primary purpose of minimizing reserves.~~

~~2. Interest. The maximum interest rate is specified in Appendix A.~~

~~3. Termination Rates. Termination rates used in the computation of reserves shall be on the basis of a mortality table as specified in Appendix A except as noted in the following items:~~

~~(i) Under contracts for which premium rates are not guaranteed, and where the effects of insurer underwriting are specifically used by policy duration in the valuation morbidity standard or for return of premium or other deferred cash benefits, total termination rates may be used at ages and durations where these exceed specified mortality table rates, but not in excess of the lesser of:~~

~~(I) Eighty percent (80%) of the total termination rate used in the calculation of the gross premiums, or~~

~~(II) Eight percent (8%).~~

~~(ii) For long-term care individual policies or group certificates issued after January 1, 1997, the contract reserve may be established on a basis of separate:~~

~~(I) Mortality (as specified in Appendix A); and~~

~~(II) Terminations other than mortality, where the terminations are not to exceed:~~

~~For policy years one (1) through four (4), the lesser of eighty percent (80%) of the voluntary lapse rate used in the calculation of gross premiums and eight percent (8%);~~

~~For policy years five (5) and later, the lesser of one hundred percent (100%) of the voluntary lapse rate used in the calculation of gross premiums and four percent (4%).~~

~~(iii) Where a morbidity standard specified in Appendix A is on an aggregate basis, the morbidity standard may be adjusted to reflect the effect of~~

~~insurer underwriting by policy duration. The adjustments must be appropriate to the underwriting and be acceptable to the commissioner.~~

~~(b) Reserve Method.~~

~~1. For insurance except long-term care and return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated on the two-year full preliminary term method; that is, under which the terminal reserve is zero at the first and also the second contract anniversary.~~

~~2. For long-term care insurance, the minimum reserve is the reserve calculated as follows:~~

~~(i) For individual policies and group certificates issued on or after January 1, 1997, reserves calculated on the one-year full preliminary term method.~~

~~3. (i) For return of premium or other deferred cash benefits, the minimum reserve is the reserve calculated as follows:~~

~~(I) On the one year preliminary term method if the benefits are provided at any time before the twentieth anniversary;~~

~~(II) On the two year preliminary term method if the benefits are only provided on or after the twentieth anniversary.~~

~~(ii) The preliminary term method may be applied only in relation to the date of issue of a contract. Reserve adjustments introduced later, as a result of rate increases, revisions in assumptions (e.g., projected inflation rates) or for other reasons, are to be applied immediately as of the effective date of adoption of the adjusted basis.~~

~~(c) Negative Reserves. Negative reserves on any benefit may be offset against positive reserves for other benefits in the same contract, but the total contract reserve with respect to all benefits combined may not be less than zero.~~

~~(d) Nonforfeiture Benefits for Long-Term Care Insurance. The contract reserve on a policy basis shall not be less than the net single premium for the nonforfeiture benefits at the appropriate policy duration, where the net single premium is computed according to the above specifications.~~

~~(3) Alternative Valuation Methods and Assumptions Generally.~~

~~Provided the contract reserve on all contracts to which an alternative method or basis is applied is not less in the aggregate than the amount determined according to the applicable standards specified above; an insurer may use any reasonable assumptions as to interest rates, termination and mortality rates, and rates of morbidity or other contingency. Also, subject to the preceding condition, the insurer may employ methods other than the methods stated above in determining a sound value of its liabilities under such contracts, including, but not limited to the following:~~

~~(a) The net level premium method;~~

~~(b) The one-year full preliminary term method;~~

~~(c) Prospective valuation on the basis of actual gross premiums with reasonable allowance for future expenses;~~

~~(d) The use of approximations such as those involving age groupings, groupings of several years of issue, average amounts of indemnity, grouping of similar contract forms;~~

~~(e) The computation of the reserve for one contract benefit as a percentage of, or by other relation to, the aggregate contract reserves exclusive of the benefit or benefits so valued; and~~

~~(f) The use of a composite annual claim cost for all or any combination of the benefits included in the contracts valued.~~

~~(4) Tests for Adequacy and Reasonableness of Contract Reserves.~~

~~(a) Annually, an appropriate review shall be made of the insurer's prospective contract liabilities on contracts valued by tabular reserves, to determine the continuing adequacy and reasonableness of the tabular reserves giving consideration to future gross premiums. The insurer shall make appropriate increments to such tabular reserves if such tests indicate that the basis of such reserves is no longer adequate; subject, however, to the minimum standards of Section 0780-01-69-.04(2).~~

~~(b) In the event a company has a contract or a group of related similar contracts, for which future gross premiums will be restricted by contract, insurance department regulations, or for other reasons, such that the future gross premiums reduced by expenses for administration, commissions, and taxes will be insufficient to cover future claims, the company shall establish contract reserves for such shortfall in the aggregate.~~

~~***Authority:*** *T.C.A. §§ 56-1-418 and 56-2-301.*~~

~~**0780-01-69-.05 REINSURANCE.**~~

~~Increases to, or credits against reserves carried, arising because of reinsurance assumed or reinsurance ceded, must be determined in a manner consistent with these minimum reserve standards and with all applicable provisions of the reinsurance contracts which affect the insurer's liabilities.~~

~~***Authority:*** *T.C.A. §§ 56-1-418 and 56-2-301.*~~

0780-01-69-.02~~6~~ CALCULATION OF RESERVES ~~AS OF JANUARY 1, 2017~~.

(1) For policies issued on or after January 1, 2017, the minimum reserve standards for individual and group accident and health policies shall be calculated in accordance with the National Association of Insurance Commissioners (NAIC) Valuation Manual in effect for the period at the time of the review of the adequacy of the minimum reserves. The commissioner may also employ other guidelines or procedures the commissioner deems appropriate.

(2) ~~Claim reserves~~Reserve standards for policies issued before January 1, 2017, including~~for~~ claims incurred before, on and after January 1, 2017, on these policies, shall follow the requirements in the NAIC Accounting Practices and Procedures Manual, Appendix A, A-010.

Authority: *T.C.A. §§ 56-1-418, 56-1-901, et seq., 56-1-904, 56-1-906, 56-1-909, and 56-2-301.*

~~**0780-01-69-.07 EFFECTIVE DATE.**~~

~~For the purpose of calculating the minimum reserve standards for individual and group accident and health policies issued before January 1, 2017, rule 0780-01-69-.01 through rule 0780-01-69-.05 shall~~

~~apply. For the purpose of calculating the minimum reserve standards for individual and group accident and health policies issued on or after January 1, 2017, rule 0780-01-69-.06 shall apply. For calculating claim reserves on policies issued before January 1, 2017 for claims incurred on or after January 1, 2017, rule 0780-01-69-.06 shall apply.~~

~~***Authority:*** *T.C.A. §§ 56-1-418, 56-1-901, et seq., 56-1-904, 56-1-906, 56-1-909, and 56-2-301.*~~

~~**Appendix A. Specific Standards for Morbidity, Interest and Mortality.**~~

~~I. Morbidity~~

~~A. Minimum morbidity standards for valuation of specified individual contract health insurance benefits are as follows:~~

~~(1) Disability Income Benefits Due to Accident or Sickness.~~

~~(a) Contract Reserves:~~

~~Contracts issued prior to January 1, 1997:~~

~~The same basis as that employed by the insurer as of January 1, 1997.~~

~~Contracts issued on or after January 1, 1997:~~

~~The 1985 Commissioners Individual Disability Tables A (85CIDA); or~~

~~The 1985 Commissioners Individual Disability Tables B (85CIDB).~~

~~Each insurer shall elect, with respect to all individual contracts issued in any one statement year, whether it will use Tables A or Tables B as the minimum standard. The insurer may, however, elect to use the other tables with respect to any subsequent statement year.~~

~~(b) Claim Reserves:~~

~~The minimum morbidity standard in effect for contract reserves on currently issued contracts, as of the date the claim is incurred.~~

~~(2) Hospital Benefits, Surgical Benefits and Maternity Benefits (Scheduled benefits or fixed time period benefits only).~~

~~(a) Contract Reserves:~~

~~Contracts issued on or after January 1, 1997:~~

~~The 1974 Medical Expense Tables, Table A, Transactions of the Society of Actuaries, Volume XXX, pg. 63. Refer to the paper (in the same volume, pg. 9) to which this table is appended, including its discussions, for methods of adjustment for benefits not directly valued in Table A: "Development of the 1974 Medical Expense Benefits," Houghton and Wolf.~~

~~(b) Claim Reserves.~~

~~No specific standard. See (5).~~

~~(3) Cancer Expense Benefits (Scheduled benefits or fixed time period benefits only).~~

~~(a) Contract Reserves:~~

~~Contracts issued on or after January 1, 1997:~~
~~The 1985 NAIC Cancer Claim Cost Tables.~~

~~(b) Claim Reserves.~~

~~No specific standard. See (5). However, the continuance data included with the 1985 NAIC Cancer Claim Cost Tables may be used to the extent it is appropriate.~~

~~(4) Accidental Death Benefits.~~

~~(a) Contract Reserves:~~

~~Contracts issued on or after January 1, 1997:~~
~~The 1959 Accidental Death Benefits Table.~~

~~(b) Claim Reserves.~~

~~Actual amount incurred.~~

~~(5) Other Individual Contract Benefits.~~

~~(a) Contract Reserves:~~

~~For all other individual contract benefits, morbidity assumptions are to be determined as provided in the reserve standards.~~

~~(b) Claim Reserves.~~

~~For all benefits other than disability, claim reserves are to be determined as provided in the standards.~~

~~B. Minimum morbidity standards for valuation of specified group contract health insurance benefits are as follows:~~

~~(1) Disability Income Benefits Due to Accident or Sickness.~~

~~(a) Contract Reserves:~~

~~Contracts issued prior to January 1, 1997:~~
~~The same basis, if any, as that employed by the insurer as of January 1, 1997.~~

~~Contracts issued on or after January 1, 1997:~~
~~The 1987 Commissioners Group Disability Income Table (87CGDT).~~

~~(b) Claim Reserves:~~

~~For claims incurred on or after January 1, 1997:~~

~~The 1987 Commissioners Group Disability Income Table (87CGDT);~~

~~For claims incurred prior to January 1, 1997:~~
~~Use of the 87CGDT is optional.~~

~~(2) Other Group Contract Benefits.~~

~~(a) Contract Reserves:~~

~~For all other group contract benefits, morbidity assumptions are to be determined as provided in the reserve standards.~~

~~(b) Claim Reserves.~~

~~For all benefits other than disability, claim reserves are to be determined as provided in the standards.~~

~~II. Interest~~

~~A. For contract reserves the maximum interest rate is the maximum rate permitted by T.C.A. § 56-1-403(c) in the valuation of whole life insurance issued on the same date as the health insurance contract.~~

~~B. For claim reserves on policies that require contract reserves, the maximum interest rate is the maximum rate permitted by T.C.A. § 56-1-403(c) in the valuation of whole life insurance issued on the same date as the claim incurral date.~~

~~C. For claim reserves on policies not requiring contract reserves, the maximum interest rate is the maximum rate permitted by T.C.A. § 56-1-403(c) in the valuation of single premium immediate annuities issued on the same date as the claim incurral date, reduced by one hundred basis points.~~

~~III. Mortality~~

~~A. Unless Subsection B applies, the mortality basis used for all policies except long-term care individual policies and group certificates and for long-term care individual policies or group certificates issued before January 1, 1997 shall be according to a table (but without use of selection factors) permitted by T.C.A. § 56-1-403(c) for the valuation of whole life insurance issued on the same date as the health insurance contract. For long-term care insurance individual policies or group certificates issued on or after January 1, 1997, the mortality basis used shall be the 1983 Group Annuity Mortality Table without projection.~~

~~B. Other mortality tables adopted by the NAIC and promulgated by the commissioner may be used in the calculation of the minimum reserves if appropriate for the type of benefits and if approved by the commissioner. The request for approval shall include the proposed mortality table and the reason that the standard specified in Subsection A is inappropriate.~~

~~**Appendix B. Glossary of Technical Terms Used.**~~

~~As used in this valuation standard, the following terms have the following meaning:~~

~~Annual Claim Cost. The net annual cost per unit of benefit before the addition of expenses, including claim settlement expenses, and a margin for profit or contingencies. For example, the annual claim cost for a $100 monthly disability benefit, for a maximum disability benefit period of one year, with an elimination period of one week, with respect to a male at age 35, in a certain occupation might be $12, while the gross premium for this benefit might be $18. The additional $6 would cover expenses and profit or contingencies.~~

~~Claims Accrued. That portion of claims incurred on or prior to the valuation date which result in liability of the insurer for the payment of benefits for medical services which have been rendered on or prior to the valuation date, and for the payment of benefits for days of hospitalization and days of disability which have occurred on or prior to the valuation date, which the insurer has not paid as of the valuation date, but for which it is liable, and will have to pay after the valuation date. This liability is sometimes referred to as a liability for "accrued" benefits. A claim reserve, which represents an estimate of this accrued claim liability, must be established.~~

~~Claims Reported. When an insurer has been informed that a claim has been incurred, if the date reported is on or prior to the valuation date, the claim is considered as a reported claim for annual statement purposes.~~

~~Claims Unaccrued. That portion of claims incurred on or prior to the valuation date which result in liability of the insurer for the payment of benefits for medical services expected to be rendered after the valuation date, and for benefits expected to be payable for days of hospitalization and days of disability occurring after the valuation date. This liability is sometimes referred to as a liability for unaccrued benefits. A claim reserve, which represents an estimate of the unaccrued claim payments expected to be made (which may or may not be discounted with interest), must be established.~~

~~Claims Unreported. When an insurer has not been informed, on or before the valuation date, concerning a claim that has been incurred on or prior to the valuation date, the claim is considered as an unreported claim for annual statement purposes.~~

~~Date of Disablement. The earliest date the insured is considered as being disabled under the definition of disability in the contract, based on a doctor's evaluation or other evidence. Normally this date will coincide with the start of any elimination period.~~

~~Elimination Period. A specified number of days, weeks, or months starting at the beginning of each period of loss, during which no benefits are payable.~~

~~Gross Premium. The amount of premium charged by the insurer. It includes the net premium (based on claim-cost) for the risk, together with any loading for expenses, profit or contingencies.~~

~~Group Insurance. The term group insurance includes blanket insurance and franchise insurance and any other forms of group insurance.~~

~~Level Premium. A premium calculated to remain unchanged throughout either the lifetime of the policy, or for some shorter projected period of years. The premium need not be guaranteed; in which case, although it is calculated to remain level, it may be changed if any of the assumptions on which it was based are revised at a later time.~~

~~Generally, the annual claim costs are expected to increase each year and the insurer, instead of charging premiums that correspondingly increase each year, charges a premium calculated to remain level for a period of years or for the lifetime of the contract. In this case the benefit portion of the premium is more than needed to provide for the cost of benefits during the earlier years of the policy and less than the actual cost in the later years. The building of a prospective contract reserve is a natural result of level premiums.~~

~~Long-Term Care Insurance. "Long-term care insurance", as defined in Title 56, Chapter 42 of the Tennessee Code, means any insurance policy or rider advertised, marketed, offered or designed to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense incurred, indemnity, prepaid or other basis, for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. "Long-term care insurance" includes group and individual policies or riders whether issued by insurers, fraternal benefit societies, nonprofit health, hospital, and medical service corporations, prepaid health plans, health maintenance organizations or any similar organization. "Long-term care insurance" does not include any insurance policy which is offered primarily to provide basic medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit health coverage.~~

~~Modal Premium. This refers to the premium paid on a contract based on a premium term which could be annual, semi-annual, quarterly, monthly, or weekly. Thus if the annual premium is $100 and if, instead, monthly premiums of $9 are paid then the modal premium is $9.~~

~~Negative Reserve. Normally the terminal reserve is a positive value. However, if the values of the benefits are decreasing with advancing age or duration it could be a negative value, called a negative reserve.~~

~~Preliminary Term Reserve Method. Under this method of valuation the valuation net premium for each year falling within the preliminary term period is exactly sufficient to cover the expected incurred claims of that year, so that the terminal reserves will be zero at the end of the year. As of the end of the preliminary term period, a new constant valuation net premium (or stream of changing valuation premiums) becomes applicable such that the present value of all such premiums is equal to the present value of all claims expected to be incurred following the end of the preliminary term period.~~

~~Present Value of Amounts Not Yet Due on Claims. The reserve for "claims unaccrued" (see definition), which may be discounted at interest.~~

~~Reserve. The term "reserve" is used to include all items of benefit liability, whether in the nature of incurred claim liability or in the nature of contract liability relating to future periods of coverage, and whether the liability is accrued or unaccrued.~~

~~An insurer under its contracts promises benefits which result in:~~

~~(a) Claims which have been incurred, that is, for which the insurer has become obligated to make payment, on or prior to the valuation date. On these claims, payments expected to be made after the valuation date for accrued and unaccrued benefits are liabilities of the insurer which should be provided for by establishing claim reserves; or~~

~~(b) Claims which are expected to be incurred after the valuation date. Any present liability of the insurer for these future claims should be provided for by the establishment of contract reserves and unearned premium reserves.~~

~~Terminal Reserve. This is the reserve at the end of a contract year, and is defined as the present value of benefits expected to be incurred after that contract year minus the present value of future valuation net premiums.~~

~~Unearned Premium Reserve. This reserve values that portion of the premium paid or due to the insurer which is applicable to the period of coverage extending beyond the valuation date. Thus if an annual premium of $120 was paid on November 1, $20 would be earned as of December 31 and the remaining $100 would be unearned. The unearned premium reserve could be on a gross basis as in this example, or on a valuation net premium basis.~~

~~Valuation Net Modal Premium. This is the modal fraction of the valuation net annual premium that corresponds to the gross modal premium in effect on any contract to which contract reserves apply. Thus if the mode of payment in effect is quarterly, the valuation net modal premium is the quarterly equivalent of the valuation net annual premium.~~

~~**Appendix C. Reserves for Waiver of Premium.**~~
~~(Supplementary explanatory material)~~

~~Waiver of premium reserves involve several special considerations. First, the disability valuation tables promulgated by the NAIC are based on exposures that include contracts on premium waiver as in-force contracts. Hence, contract reserves based on these tables are NOT reserves on "active lives" but rather reserves on contracts "in force." This is true for the 1964 CDT and for both the 1985 CIDA and CIDB tables.~~

~~Accordingly, tabular reserves using any of these tables should value reserves on the following basis:~~

~~Claim reserves should include reserves for premiums expected to be waived, valuing as a minimum the valuation net premium being waived.~~

~~Premium reserves should include contracts on premium waiver as in-force contracts, valuing as a minimum the unearned modal valuation net premium being waived.~~

~~Contract reserves should include recognition of the waiver of premium benefit in addition to other contract benefits provided for, valuing as a minimum the valuation net premium to be waived.~~

~~If an insurer is, instead, valuing reserves on what is truly an active life table, or if a specific valuation table is not being used but the insurer's gross premiums are calculated on a basis that includes in the projected exposure only those contracts for which premiums are being paid, then it may not be necessary to provide specifically for waiver of premium reserves. Any insurer using such a true "active life" basis should carefully consider, however, whether or not additional liability should be recognized on account of premiums waived during periods of disability or during claim continuation.~~

* 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)
N/A					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commissioner of the Department of Commerce and Insurance on 06/22/2018 (*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.

DENISE M. LEWIS
STATE OF TENNESSEE NOTARY PUBLIC
WILSON COUNTY, TENN.
My Commission Expires

Date: 6/22/18

Signature: Julie Mix McPeak

Name of Officer: Julie Mix McPeak

Title of Officer: Commissioner, Department of Commerce and Insurance

Subscribed and sworn to before me on: 6/22/18

Notary Public Signature: Denise M Lewis

My commission expires on: 1/15/20

Agency/Board/Commission: Tennessee Department of Commerce & Insurance

Rule Chapter Number(s): 0780-01-69

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

Herbert H. Slatery III
Attorney General and Reporter

7/17/2018
Date

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PUBLIC CHAPTERS

Filed with the Department of State on: 7/19/18

Effective on: 10/17/18

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Regulatory Boards, Tennessee Board of Architectural and Engineering Examiners
SUBJECT:	Rules of Professional Conduct
STATUTORY AUTHORITY:	None
EFFECTIVE DATES:	October 23, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The amendments to Rule 0120-02-.08 allow an index sheet to be used for digitally generated sealing requirements that fall under T.C.A. § 62-2-306(b). The amendment to the rule specifies index sheet requirements for registrants to be in compliance with the seal rules of the Board. The amendment will allow for quicker signing and sealing for registered architects, engineers, and landscape architects, which will save time in reviewing plans. This amendment will be an industry-wide solution to a growing issue due to the expanding nature of electronic pdf files of plans being transferred from business to business.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

The amendments to Rule 0120-02-.08 would affect small businesses which employ practicing engineers, architects, or landscape architects as these small businesses all are required to follow the Seals requirements of the board. Currently, there are around 1,800 registered Architecture firms, around 4,100 registered Engineering firms, and around 200 registered Landscape Architecture Firms; the majority of these would be considered a small business in Tennessee and thus would benefit from these rule amendments.

(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.

There is no projected reporting, recordkeeping, or other administrative cost associated with the amendments to Rule 0120-02-.08.

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

The probable effect on impacted small businesses and consumers for the amendment to Rule 0120-02-.08 is ease of communication, faster sealing process, and better business procedures. The sealing amendments will help small businesses comply with the sealing requirements for larger projects that are worked on by several engineers.

(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 Board believes that these changes are not burdensome, intrusive or costly and – as such – there do not appear to be any alternatives that would reasonably be expected to be less burdensome.

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

These rules do not have any federal or state counterparts.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption from these rules would not be expected to be beneficial for small businesses, as uniformity among the profession is important to maintain consistency and quality of the work performed by licensed engineers, architects, and landscape architects. All expected effects would be positive for 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rule changes are not expected to impact 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 amendments to Rule 0120-02-.08 allow an index sheet to be used for digitally generated sealing requirements that fall under T.C.A. § 62-2-306(b). The amendment to the rule specifies index sheet requirements for registrants to be in compliance with the seal rules of the Board. The amendment will allow for quicker signing and sealing for registered architects, engineers, and landscape architects, which will save time in reviewing plans. This amendment will be an industry-wide solution to a growing issue due to the expanding nature of electronic pdf files of plans being transferred from business to business.

(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;

There is no known state or federal law mandating the promulgation of these rules.

(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;

Amendments to Rule 0120-02-.08 will directly affect any engineer, architect, or landscape architect when utilizing index sheets under the provisions of T.C.A. § 62-2-306(b) in conjunction with digitally generated seals and signatures. The Board and the Tennessee Department of Transportation urge 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 or the necessity to promulgate the rule;

There are no known opinions of the Attorney General and Reporter or any judicial ruling that directly relates to these rules.

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

This rule is not estimated to have a probable increase or decrease in state and local government revenue and expenditures.

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

Roxana Gumucio, Interim Executive Director
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
(615) 532-7081
Roxana.Gumucio@tn.gov

Elizabeth Goldstein, Assistant General Counsel
500 James Robertson Parkway
Davy Crockett Tower, 5th Floor
Nashville, TN 37243
(615) 741-3072

Elizabeth.Goldstein@tn.gov

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

Roxana Gumucio, Interim Executive Director
Elizabeth Goldstein, Assistant 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

Roxana Gumucio, Interim Executive Director
500 James Robertson Parkway
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

There is no known additional relevant information.

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Nashville, TN 37243
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Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 07-14-18
Rule ID(s): 7208
File Date: 7/25/18
Effective Date: 10/23/18

Proposed Rule(s) FILING FORM

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee Board of Architectural and Engineering Examiners
Division:	Division of Regulatory Boards, Department of Commerce and Insurance
Contact Person:	Elizabeth Goldstein
Address:	500 James Robertson Parkway
Zip:	37243
Phone:	(615) 532-6304
Email:	elizabeth.goldstein@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

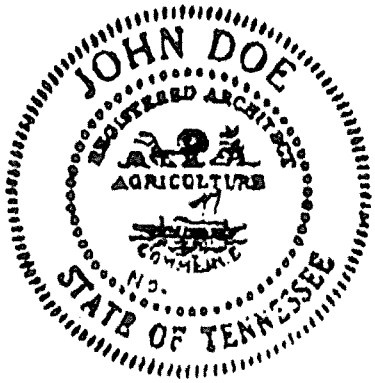
Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0120-02	Rules of Professional Conduct
Rule Number	**Rule Title**
0120-02-.08	Seals

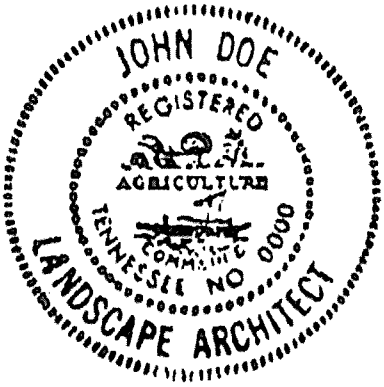
(1) The design of the registrant's seal required by T.C.A. § 62-2-306, shall be as follows:

(a) Engineer:

(b) Architect:



(c) Landscape Architect:



(2) The registrant shall stamp with the registrant's seal the following documents:

(a) All original sheets of any bound or unbound set of working drawings or plans; original sheets shall include tracings or other reproducible sheets;

(b) The original cover or index page(s) identifying all specification pages covered; and

(c) The original cover or index page(s) for design calculations or reports that are submitted for review.

(d) When an engineer must seal, sign and date engineering specifications, drawings, plans, or calculations for digitally generated seals and signatures under the provisions of T.C.A. § 62-2-306 (b), an index sheet for engineering specifications and calculations may be used. The index sheet must be signed, sealed and dated by those professional engineers in responsible charge of the production and preparation of each section of the engineering specifications or calculations, with sufficient information on each index sheet to identify every portion of the specifications or calculations for which each professional engineer is responsible. In addition, the index sheet shall include at a minimum:

1. The name and license number of each engineer in responsible charge of the production of any portion of the calculations or specifications; and

2. Identification of the project.

(3) The registrant shall superimpose his signature (not a rubber stamp) and date of signature across the face and beyond the circumference of the seal on documents listed above.

(4) When multiple registrants contribute to a project, each registrant shall sign and seal the portions of the project for which that registered consultant is responsible. When multiple registrants in responsible charge provide content on the same document, all such registrants should seal the document, and, if there is any question, a description of the areas of responsibility should be included. All registrants in responsible charge who work on a set of specifications are required to seal either the cover page, except as specified in 2(d) above, of the specifications, drawings, or plans or the cover page(s) for the section(s) of the specifications they produce.

(5) (a) No registrant shall affix his or her seal or signature to sketches, working drawings, specifications or other documents developed by others not under the registrant's responsible charge and not subject to the authority of that registrant in critical professional judgments.

(b) In circumstances where a registrant can no longer provide services on a project (such as death, retirement, disability, contract termination, etc.), a successor registrant may perform work on a set of plans originally prepared by another registrant. If the plans are incomplete (are at a stage prior to submittal to a reviewing official), the successor registrant may not seal the set of drawings prepared by the original registrant; rather, the successor registrant must take all steps necessary to ensure that the drawings were prepared under his or her responsible charge before sealing them. If the plans are complete and have been submitted to a reviewing official, the successor registrant may prepare and seal addenda sheets or document and seal changes to the original sheets if revisions are necessary.

(6) (a) Responsible Charge. Plans, specifications, drawings, reports or other documents will be deemed to have been prepared under the responsible charge of a registrant only when:

1. The client requesting preparation of such plans, specifications, drawings, reports or other documents makes the request directly to the registrant, or to the registrant's employee at the time initial client contact is made, so long as the registrant has the right to control and direct the employee in the material details of how the work is to be performed;

2. The registrant supervises and is involved in the preparation of the plans, specifications, drawings, reports or other documents and has input into and full knowledge of their preparation prior to their completion;

3. The registrant reviews the final plans, specifications, drawings, reports or other documents;

4. The registrant has the authority to, and does, make any necessary and appropriate changes to the final plans, specifications, drawings, reports or other documents; and

5. Contributions of information or predrawn detail items or detail units that are incidental to and intended to be integrated into a registrant's technical submissions are from trusted sources (including, but not limited to, manufacturers, installers, consultants, owners, or contractors), are subject to appropriate review, and are then coordinated and integrated into the design by the registrant.

(b) Except as provided by Rule 0120-02-.08(5)(b), any changes made to the final plans, specifications, drawings, reports or other documents after final revision and sealing by the registrant are prohibited by any person other than the registrant, including but not limited to owners/clients, contractors, subcontractors, other design professionals, or any of their agents, employees or assigns.

(c) Mere review of work prepared by another person, even if that person is the registrant's employee, does not constitute responsible charge unless the registrant has met the criteria set out above.

(d) The intent of the definition of responsible charge may be met if all provisions of the definition are met using remote electronic or other communication means.

(7) No registrant shall affix his seal or signature to documents having titles or identities excluding the registrant's name unless:

(a) Such documents were indeed developed by the registrant or under the registrant's responsible charge; and

(b) The registrant has exercised full authority to determine their development.

(8) (a) Subject to the requirements of this rule, rubber-stamp, embossed, transparent self-adhesive or electronically generated seals may be used. Such stamps or seals shall not include the registrant's signature or date of signature.

(b) Subject to the requirements of this rule, the registrant may affix an electronically generated signature and date of signature to documents. When used, electronic signatures and dates of signature shall be placed either across the face and beyond the circumference of the seal or adjacent to the seal. Documents that are signed using a digital signature must have an electronic authentication process attached to or logically associated with the electronic document. The digital signature must be:

1. Unique to the individual using it;

2. Capable of verification;

3. Under the sole control of the individual using it; and

4. Linked to a document in such a manner that the digital signature is invalidated if any data in the document is changed.

(9) All working or partially completed plans, or any drawings that are not construction documents, shall be designated "preliminary – not for construction," "for review only," "draft," or other designation clearly indicating that the drawings are not complete.

Authority: T.C.A. §§ 62-2-203(c), 62-2-306, 62-2-306(d), and 62-2-307(f).

* 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)
Susan K. Ballard, RID				X	
Frank W. Wagster, RA	X				
Ricky Bursi, PE	X				
Robert Campbell, Jr. PE	X				
R. Blair Parker, RLA	X				
Richard D. Thompson, RA	X				
Brian Tibbs, RA	X				
Kathryn S. Ware, PE	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board on December 7, 2017 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: June 19, 2018

Signature: [signature]

Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel

AMANDA DEAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires MAY 6, 2019

Subscribed and sworn to before me on: June 19, 2018

Notary Public Signature: Amanda Dean

My commission expires on: May 6, 2019

Agency/Board/Commission: Rules of the Tennessee Board of Architectural and Engineering Examiners

Rule Chapter Number(s): 0120-02

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

7/17/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/25/18

Effective on: 10/23/18

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Regulatory Boards; State Board of Accountancy
SUBJECT:	Board of Accountancy, Rules of Professional Conduct
STATUTORY AUTHORITY:	The promulgation of this rule is not mandated by any federal or state law or regulation. T.C.A. § 62-1-105(e) authorizes the Board to adopt rules to enforce the Tennessee Accountancy Act of 1998.
EFFECTIVE DATES:	October 3, 2018 through June 30, 2019
FISCAL IMPACT:	The fiscal impact of these rules is nominal.
STAFF RULE ABSTRACT:	Amendments to Rule 0020-03-.15 expand and redefine the types of Firm Names that are acceptable by the Tennessee State Board of Accountancy ("Board"). Particularly, the amendments expand the definition of "misleading" as it refers to Firm Names.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Amendments to Rule 0020-03-.15 expand and redefine the types of Firm Names that are acceptable by the Tennessee State Board of Accountancy ("Board"). The Board governs over 2,000 registered firms. While a vast majority of those firms are small businesses, they will neither bear a cost of nor directly benefit from the proposed amendment to Rule 0020-03-.15 because the proposed amendments merely redefine the types of Firm Names that are available for CPAs.

(2) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record.

The proposed amendments to Rule 0020-03-.15 will not impose any additional reporting, recordkeeping, nor other administrative costs required for compliance. All CPA firms, without exception, must comply with the Board's Firm Name requirements. The proposed amendments simply prescribe the types of Firm Names that may be submitted for approval.

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

The proposed amendments to Rule 0020-03-.15 were drafted in response to confusion among licensees regarding Firm Names. The proposed amendments will likely reduce confusion among licensees about Firm Names because the amendments better define what types of names will be accepted by the Board. Previously, the Rule was vague and weighed heavy on the discretion of the Board. Consumers will also be better protected because the proposed amendments encourage licensees to name their firms under consistent and streamlined restrictions.

Consumers and small businesses will likely benefit because the proposed amendments to Rule 0020-03-.15 clarify what types of Firm Names will be accepted by the Board. Accordingly, the proposed amendments are not projected to have any negative effect on small businesses and consumers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

The Board avers that the proposed amendments to Rule 0020-03-.15 are not burdensome, intrusive, or costly to small businesses.

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

There are no known federal or state counterparts to this rule.

(6) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Licensees should be held to the same Firm Name requirements. If licensees working for small businesses were exempted from the Firm Name requirements, it would likely create an unfair advantage for small businesses and confuse consumers.

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 proposed rules will not impact 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;

Amendments to Rule 0020-03-.15 expand and redefine the types of Firm Names that are acceptable by the Tennessee State Board of Accountancy ("Board"). Particularly, the amendments expand the definition of "misleading" as it refers to Firm Names.

(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;

There are no known federal laws or regulations mandating promulgation of this rule. T.C.A. 62-1-105(e) authorizes the Board to adopt rules to enforce the Tennessee Accountancy Act of 1998.

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The proposed amendments to Rule 0020-03-.15 will impact all licensed CPAs who wish to establish a CPA firm in Tennessee. Their positions, however, are unknown to the Board.

(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;

No Attorney General opinion or judicial ruling directly relates to the promulgation of these proposed amendments.

(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 fiscal impact of these rules is nominal.

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

Wendy Garvin,
Executive Director of the Tennessee State Board of Accountancy

Anthony Glandorf,
Chief Counsel

Elizabeth Goldstein,
Assistant General Counsel

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

Wendy Garvin,
Executive Director of the Tennessee State Board of Accountancy

Anthony Glandorf,
Chief Counsel

Elizabeth Goldstein,
Assistant 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

Wendy Garvin,
500 James Robertson Parkway,
Nashville, Tennessee 37243,
(615) 741-2550,
wendy.garvin@tn.gov

Anthony Glandorf,
500 James Robertson Parkway,
Nashville, Tennessee 37243,
(615) 741-3072,
Anthony.Glandorf@tn.gov

Elizabeth Goldstein,
500 James Robertson Parkway,
Nashville, Tennessee 37243,
(615) 741-3072,
Elizabeth.Goldstein@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: 07-05-18
Rule ID(s): 7197
File Date: 7/5/18
Effective Date: 10/3/18

Proposed Rule(s) FILING FORM

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission:	Tennessee State Board of Accountancy
Division:	Division of Regulatory Boards, Department of Commerce & Insurance
Contact Person:	Elizabeth Goldstein
Address:	500 James Robertson Parkway, Nashville, Tennessee
Zip:	37243
Phone:	615-741-3072
Email:	Elizabeth.Goldstein@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**
0020-03	Board of Accountancy, Rules of Professional Conduct
Rule Number	**Rule Title**
0020-03-.15	Firms

Tennessee State Board of Accountancy
0020-03 Board of Accountancy, Rules of Professional Conduct
Amendments

Rule 0020-03-.15 Firms is amended by deleting the rule in its entirety and substituting instead the following, so that as amended, the rule shall read:

.

~~(1) A CPA or PA firm name is misleading under § 62-1-113(i) if, among other things, its name:~~

~~(a) Implies the existence of a corporation when the firm is not a corporation;~~

~~(b) Implies the existence of a partnership when the firm is not a partnership;~~

~~(c) Is similar to or the same as existing fictitious names within the State of Tennessee;~~

~~(d) Tends to mislead regarding the nature of the business or the affiliation of the trade name user with another business entity;~~

~~(e) Contains more than one (1) fictitious name;~~

~~(f) Includes the name of an individual whose license has been suspended or revoked by the Board;~~

~~(g) Includes the name of a person who is neither a present nor a past partner, member or shareholder of the firm; or~~

~~(h) Includes the name of a person who is not a CPA, if the title "CPAs" is included in the firm name.~~

~~(2) A fictitious CPA or PA firm name (that is, one not consisting of the names or initials of one or more present or former partners, members or shareholders) may not be used by a CPA firm unless such name has been registered with and approved by the Board, and it is not false or misleading.~~

~~(3) The Board may disapprove of the use of any fictitious name that falls within one (1) of the prohibitions listed in paragraph (1) of this rule or if it determines after notice and hearing that the trade name is deceptive.~~

~~(4) A certified public accountant or public accountant may practice under his/her own name or that of inactive or deceased partners or shareholders who were certified public accountants or public accountants. A partner or shareholder surviving the death or withdrawal (unless (1)(f) applies) of all other partners or shareholders may continue to practice under the partnership or professional association name for up to two (2) years after becoming a sole practitioner.~~

~~(5) When a firm name violation is determined to exist, the firm shall have sixty (60) days after notification by the Board to come into compliance with all applicable rules and statutes.~~

(1) A CPA or PA firm name must be registered with and approved by the Board.

(2) The Board shall not approve a CPA or PA firm name that is misleading.

(3) Reasons that a firm name may be considered misleading include, but are not limited to:

(a) Containing any representation that would likely cause a reasonable person to misunderstand or be confused about the form of the legal entity of the firm in regards to ownership or organization, which includes but is not limited to:

i. Implying the existence of a corporation when the firm is not a corporation, such as through the use of the words "corporation," "incorporated," "Ltd," "professional corporation," or an abbreviation thereof as part of the firm name if the firm is not incorporated or is not a professional corporation;

ii. Implying the existence of a partnership when there is not a partnership, such as by use of the terms "partnership" or "limited liability partnership" or the abbreviation "LLP" if the firm is not such an entity;

iii. Including the name of an individual who is not a CPA if the title "CPAs" is included in the firm name;

iv. Including information about or indicating an association with persons who are not members of the firm, except as permitted pursuant to T.C.A. § 62-1-113(i); or

v. Including the terms "& Company," "& Associate(s)," or "Group," if the firm does not include, in addition to the named partner, shareholder, owner, or member, at least one other unnamed partner, shareholder, owner, member, or staff employee;

(b) Containing any representation that would likely cause a reasonable person to have a false or unjustified expectation of favorable results, or capabilities, through the use of a false or unjustified statement of fact as to any material matter;

(c) Claiming or implying the ability to influence a regulatory body or official;

(d) Including the name of an owner whose license has been revoked by the Board for disciplinary reasons, whereby the licensee has been prohibited from practicing public accountancy or prohibited from using the title CPA; or

(e) The firm name is similar to or the same as an existing CPA firm name within the State of Tennessee.

(4) The following types of CPA firm names are not in and of themselves misleading and are permissible so long as they do not violate any other provisions:

(a) A firm name that includes the names of one or more former or present owners;

(b) A firm name that excludes the names of one or more former or present owners;

(c) A firm name that uses the "CPA" title as part of the firm name when all named individuals are owners of the firm who hold such title or are former owners who held such title at the time they ceased to be owners of the firm;

(d) A firm name that includes the name of a non-CPA owner if the "CPA" title is not a part of the firm name; or

(e) A firm name that contains an acronym if all of the words that create the acronym meet all of the other requirements of Rule 0020-03.-15.

(5) The Board may approve the use of a firm name if it contains a word or words other than the name or names of current or former partners, including those with a nontraditional spelling of a word, so long as the name:

(a) Does not harm or mislead the public;

(b) Does not compromise the health, safety, or welfare of the public; and

(c) Does not conflict with any of the other requirements of Rule 0020-03-.15.

(6) A Network Firm as defined in the AICPA Code of Professional Conduct (Code) in effect July 1, 2011, may use a common brand name, or share common initials, as part of the firm name.

(7) A Network Firm as defined in the AICPA Code of Professional Conduct (Code) in effect July 1, 2011, may use the Network name as the firm's name, provided it also shares one or more of the following with other firms in the Network:

(a) Common control, as defined by generally accepted accounting principles in the United States, among the firms through ownership, management, or other means;

(b) Profits or cost, excluding costs of operating the association, cost of developing audit methodologies, manuals and training courses, and other costs that are immaterial to the firm;

(c) Common business strategy that involves ongoing collaboration amongst the firms whereby the firms are responsible for implementing the association's strategy and are held accountable for performance pursuant to that strategy;

(d) Significant professional resources; or

(e) Common quality control policies and procedures that participating firms are required to implement and that are monitored by the association.

(8) A partner or shareholder surviving the death or withdrawal of all other partners or shareholders may continue to practice under the partnership or professional association name for up to two (2) years after becoming a sole practitioner, unless the partner or shareholder is subject to Rule 0020-03-.15(3)(d).

(9) When a firm name violation is determined to exist, the firm shall have sixty (60) calendar days after receiving notification by the Board to come into compliance with all applicable rules and statutes.

Authority: *T.C.A. §§ 62-1-105, 62-1-108, 62-1-111, and 62-1-113.*

* 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)
Casey M. Stuart, CPA	X				
Stephen M. Eldridge, CPA	X				
Janet Booker-Davis, CPA	X				
Larry Elmore, CPA		X			
Kevin N. Monroe, CPA	X				
Gay Moon, CPA	X				
John G. "Gabe" Roberts, Esq.	X				
Pamela Church, CPA	X				
William "Trey" H. Watkins, III, CPA	X				
Judy Wetherbee				X	
Jack A. Bonner, Jr., CPA.	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee State Board of Accountancy on January 18, 2018, 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: June 6, 2018

Signature: [signature]

Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel

AMANDA DEAN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires MAY 6, 2019

Subscribed and sworn to before me on: June 6, 2018

Notary Public Signature: Amanda Dean

My commission expires on: May 6, 2019

Rules of the Tennessee State Board of Accountancy

Rule 0020-03-.15 Firms

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

6/25/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/5/18

Effective on: 10/3/18

Tre Hargett
Secretary of State

RECEIVED
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SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: University of Tennessee

DIVISION:

SUBJECT: Student Code of Conduct

STATUTORY AUTHORITY: Public Chapter 980 (2018)

EFFECTIVE DATES: July 30, 2018 through January 26, 2019

FISCAL IMPACT: None

STAFF RULE ABSTRACT: Public Chapter 980 requires revisions to the student code of conduct for The University of Tennessee, Knoxville.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended;

and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

(4) Ensure that in a case involving sexual assault, dating violence, domestic violence, or stalking, the University shall provide the accused student/respondent with notice of the role of advisors (e.g., attorneys) in the student conduct process, including the extent to which they are allowed to advise or represent the student in an investigation or hearing.

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://publications.tnsosfiles.com/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;

Public Chapter 980 requires revisions to the student code of conduct for The University of Tennessee, Knoxville.

The purposes of the revisions are to:

(1) Clarify that e-mail is an official method of official method of communication used by the University about student conduct matters;

(2) Ensure that the student conduct process is carried out in a manner that is free from conflicts of interest consistent with due process of law and in cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, must include protections for the accused student/respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303;

(3) Ensure that in cases of sexual assault, dating violence, domestic violation, or stalking, at least seventy-two (72) hours prior to a hearing, the University shall provide the accused student/respondent with notice of the time, place, and date of the hearing; the name of each witness the University expects to present at the hearing and those the University may present if the need arises; notice of the right to request a copy of the University's investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment; and

(4) Ensure that in a case involving sexual assault, dating violence, domestic violence, or stalking, the University shall provide the accused student/respondent with notice of the role of advisors (e.g., attorneys) in the student conduct process, including the extent to which they are allowed to advise or represent the student in an investigation or hearing.

(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;

Public Chapter 980 (2018)

(C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Students of The University of Tennessee are most directly affected by this rule. The student member of the UT Board of Trustees voted to approve the rule. No person requested to address the Board of Trustees during the part of the meeting set aside for public comment. The Board of Trustees requests 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 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;

Betsy Smith
Director, Office of Student Conduct and Community Standards
The University of Tennessee, Knoxville

Matthew Scoggins
General Counsel
The University of Tennessee

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

Betsy Smith
Director, Office of Student Conduct and Community Standards
The University of Tennessee, Knoxville

Matthew Scoggins
General Counsel
The University of Tennessee

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Betsy Smith
Director, Office of Student Conduct and Community Standards
The University of Tennessee, Knoxville
412 Student Services Building
Knoxville, TN 37996-0245

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

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

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For Department of State Use Only

Sequence Number: 07-18-18
Rule ID(s): 7215
File Date: 7/30/18
Last Effective Day: 1/26/19

Emergency Rule Filing Form

Emergency rules are effective from date of filing, unless otherwise stated in the rule, for a period of up to 180 days.

Agency/Board/Commission: The University of Tennessee (Knoxville)
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):
X Amendment
___ New
___ Repeal

Statement of Necessity:
The University of Tennessee seeks to amend its student conduct rules to comply with Public Chapter 980, the Student Due Process Protection Act. Public Chapter 980 took effect on May 21, 2018 for the purpose of promulgating rules. For all other cases, Public Chapter 980 takes effect on July 1, 2018. Section 14 of Public Chapter 980 states: "Public institutions of higher education may implement this part by promulgating emergency rules pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5."

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 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-.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-.13	Retention, Disclosure, and Expungement of Student Disciplinary Records

RULES
OF
THE UNIVERSITY OF TENNESSEE
(KNOXVILLE)

CHAPTER 1720-04-03
STUDENT CODE OF CONDUCT

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

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.

(4) 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~~Conflicts of Interest.

(a) The student conduct process must be carried out in a manner that is free from conflicts of interest consistent with due process of law.

(b) 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.

(c) In cases involving allegations of sexual assault, dating violence, domestic violence, or stalking, the student conduct process must include protections for the Respondent analogous to, and no less protective than, the conflict of interest provisions of Tennessee Code Annotated § 4-5-303. Notwithstanding the preceding sentence: (1) an attorney for the University is allowed to provide legal advice to multiple University employees who serve in different roles in the

process of disciplining a student; and (2) the University is allowed to provide the Complainant with equivalent rights as the Respondent during the student conduct process.

~~(3)~~(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.

~~(4)~~(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.

~~(5)~~(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), including information about the role of an Advisor; (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.

~~(6)~~(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 proposed by SCCS. 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 i~~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~~proposed Resolution Agreement 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 may be resolved through an alternative resolution ~~process~~. An alternative resolution is a resolution that is reached through a process and/or by a sanction or restriction not described in the Code. 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. In cases involving sexual misconduct, relationship violence, stalking, or retaliation, SCCS will consult with the Title IX Coordinator in making that determination. Examples of alternative resolution processes that may be proposed by SCCS include but are not limited to mediation, facilitated dialogue, conflict coaching, and restorative justice. ~~An~~The process of trying to reach an alternative resolution ~~process~~ is ~~a~~ voluntary ~~process~~ (i.e., neither the Respondent nor a Complainant is required to participate)~~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)~~(b) 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 through an alternative resolution. To be valid, an Alternative Resolution Agreement shall in all cases be signed by SCCS and, 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. Prior to the execution of an Alternative Resolution Agreement, if a Complainant has not participated with SCCS in the discussion of an alternative resolution, then SCCS will provide the Complainant with an opportunity to provide a timely objection to the proposed alternative resolution. In appropriate cases, SCCS may request the Complainant to sign an Alternative Resolution Agreement and determine that the Alternative Resolution Agreement is not effective without the Complainant's signature. 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 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, either through a final order, settlement, or otherwise, 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; (7) notice of the right to request a copy of SCCS' investigative file, redacted in accordance with the Family Educational Rights and Privacy Act of 1974, (20 U.S.C. § 1232g), and the federal regulations implementing that statute, as amended; and (8) notice of the right to request copies of all documents, copies of all electronically stored information, and access to tangible evidence that the University has in its possession, custody, or control and may use to support claims or defenses, unless the use would be solely for impeachment.

(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).

(j) 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 generally also receive disciplinary probation and ~~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) Deferred Suspension for Student Organizations. A deferred suspension is a designated period of time during which a student organization, while continuing to be active, is given an opportunity to demonstrate the ability to abide by the Standards of Conduct. A student organization may be placed on deferred suspension for serious misconduct or in the case of repeated misconduct. If the student organization is found responsible for any additional violation(s) of the Standards of Conduct while the student organization is on deferred suspension, then the sanction of revocation or suspension of University registration will be the minimum sanction that will be imposed in a Formal Hearing on the subsequent misconduct. Student organizations who are placed on deferred suspension generally also receive disciplinary probation and developmental sanctions.

~~(j)~~(k) 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.

(a) 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, subject to Section .13(2)(b), 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 and in some circumstances will be required by state or federal law to disclose disciplinary records (e.g., subpoena, judicial order)..

(b) While a student is still enrolled in the University but applying for post-graduation employment or graduate school, 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 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).

~~(2)~~(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 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).

~~(3)~~(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 an ~~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.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Commissioner Candace McQueen				X	
Commissioner Jai Templeton	X				
Dr. Joe DiPietro	X				
Charles C. Anderson, Jr.	X				
Shannon Brown				X	
George E. Cates	X				
Dr. Terrance G. Cooper	X				
Spruell Driver, Jr.	X				
Dr. William E. Evans				X	

SS-7040 (September 2017) RDA 1693

John N. Foy	X				
Crawford Gallimore	X			X	
Vicky B. Gregg	X				
Raja J. Jubran	X				
Mike Krause (non-voting)				X	
Brad A. Lampley	X				
Dr. Beauvais Lyons (non-voting)					
Andrew P. McBride	X				
Sharon J. Pryse	X				
David A. Shepard	X				
John D. Tickle	X				
Charles Weber (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 an emergency rule(s), lawfully promulgated and adopted.

Date: July 5, 2018

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: General Counsel

LYNETTE RUSSELL STATE OF TENNESSEE NOTARY PUBLIC KNOX COUNTY

Subscribed and sworn to before me on: 7-5-18

Notary Public Signature: Lynette Russell

My commission expires on: 12-4-18

Agency/Board/Commission: The University of Tennessee (Knoxville)

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

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

Herbert H. Slatery III
Attorney General and Reporter

7/25/2018
Date

Agency/Board/Commission: The University of Tennessee (Knoxville)

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

Department of State Use Only

Filed with the Department of State on: 7/30/18

Effective for: 180 *days

Effective through: 1/26/19

** Emergency rule(s) may be effective for up to 180 days from the date of filing.*

Tre Hargett
Secretary of State

RECEIVED
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SECRETARY OF STATE
PUBLIC ACTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Agriculture
DIVISION:	
SUBJECT:	Industrial Hemp
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 43-26-103
EFFECTIVE DATES:	October 29, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule clarifies requirements of the department's industrial hemp pilot program and amends fee schedules of industrial hemp licenses pursuant to legislative amendments to Tenn. Code Ann. §§ 43-1-701, et seq.

Public Hearing Comments

The department of agriculture held a public hearing on April 24, 2018. Jay Miller served as hearing officer for the rulemaking hearing, regarding chapters 0080-01-03 Civil Penalties and 0080-06-28 Industrial Hemp. Oral comments from the hearing and written comments from constituents are summarized below along with the department's response.

Comment:

Joe Kirkpatrick of Gallatin and Will Tarleton of Nashville, both on behalf of the Tennessee Hemp Industries Association, submitted their suggestions to edit or remove various provisions from the rule related to movement permits, sampling and inspections, distribution and possession, and violations. However, upon further review of the rule, Mr. Kirkpatrick and Mr. Tarleton withdrew their comments and voiced instead their support for the rule as written.

Response:

The department appreciates Mr. Kirkpatrick's and Mr. Tarleton's suggestions and diligent review of the rule. The department continually strives for good communication with all of its stakeholders regarding regulatory requirements and appreciates industry's support for this rule.

Comment:

Darlene Gunther of Tennessee State University commented that alignment of the hemp license application period would be better suited to occur at the very end and beginning of the calendar year so as to accommodate demands on growers during the season and to allow for education and outreach with industry immediately preceding a license period.

Response:

The department appreciates Ms. Gunther's comment and finds it well-taken that license application periods should align with down periods for industry in order to ease administrative burdens of licensees. The department has amended the rule accordingly to provide for a license application period from November 15 – February 15 of each year.

Comment:

Darlene Gunther of Tennessee State University commented that specific record keeping requirements for farmers' research should be identified in the rule.

Response:

The department appreciates Ms. Gunther's comment. Research record keeping requirements are distributed to licensees on required agronomic report forms at the beginning of each license year. The department elected this method as the most cost-effective manner for informing growers of research record requirements. To prescribe those research requirements in rule would prove costly where research objectives may change from year to year and the rule writing process would have to be invoked just to keep the rules current with the goals of the industrial hemp pilot program. For these reasons the department declines to amend the rule as suggested.

Comment:

Judy Jones of Pigeon Forge commented that time frames for the department to return sampling results to licensees should be as short as possible and should be definitively stated in the rule. Ms. Jones suggested that state inspectors be available six days per week, nine hours per day, including state and federal holidays, to gather

field samples of licensees and that inspectors be equipped as necessary to test industrial hemp samples in the field for THC levels.

Response:

The department appreciates Ms. Jones' comment and agrees that short timelines between sample and test results are important in order to lessen the regulatory burdens on industry's opportunity for harvest and distribution of crops. As such, the turnaround time for departmental sampling and testing is a key component of the industrial hemp program. The program currently accounts for approximately 20% of field staff resources, 35% of office staff resources, and 85% of laboratory resources allocated for the plant certification section. With this level of commitment, the department currently achieves a turnaround time for THC test results within approximately five business days of sampling. The department considers this staffing level to be reasonable and appropriate. The department is not aware of any equipment available in the market for on-site testing of THC levels in industrial hemp. Additionally, committing resources as suggested would result in disproportionate increases to industrial hemp license fees, which are the only revenue source for conduct of this program pursuant to Tenn. Code Ann. §43-26-103. For these reasons the department declines to amend the rule as suggested.

Comment:

Judy Jones of Pigeon Forge commented that in the event an industrial hemp sample tests higher than 0.3% THC, the rule should require additional testing of at least 20% of the sample lot before regulatory action is taken and should allow for violative seed to be forwarded to university licensees for additional research.

Response:

The department appreciates Ms. Jones' comment. The department makes every effort to design sampling protocols that are reasonable and reliable representations of the lot sampled. The department is confident in those procedures. To require additional testing simply because a sample failed necessarily implicates a weakness in the original testing protocol and brings into doubt the results of all other licensees' samples tested under the original protocol. Ultimately, if a sample fails for high THC levels, the department deems the failure conclusive evidence that at least one plant in the lot is marijuana and not industrial hemp, and for protection of the department's hemp program and all of its participants, the department will take all reasonable action to exclude the marijuana plant. Additionally, and unfortunately, seed or plants that test higher than 0.3% THC are not industrial hemp under state law; are not within the jurisdiction of the department to research; and are not within the federal Farm Bill that allows the department to implement its industrial hemp pilot program. Consequently, further research of high level THC material is not within the gambit of the department's program and cannot be ordered by the department for use by any hemp licensee. For these reasons the department declines to amend the rule as suggested.

Comment:

Judy Jones of Pigeon Forge commented that the rule should allow for transfer of industrial hemp licenses from person to person and location to location.

Response:

The department appreciates Ms. Jones' comment. The department's rules and state law consistently require that licenses issued by the department—across multiple regulatory programs—not be transferable from person to person and/or from location to location. This measure is taken as a safeguard to identify quickly parties who are responsible for violative actions at a licensed establishment. The measure is also in place as a protection against rising administrative costs in processing, inspecting, and licensing new persons or facilities. Specifically as to the industrial hemp program, the department shares with other regulatory and law enforcement officials the names and locations of its industrial hemp program licensees. The department shares this information at the beginning of each license year in effort to prevent accidental actions against licensees by other agencies that are not aware of the growers' or processors' license status. If the department permitted mid-year transfer of licenses, it would unnecessarily complicate communications with other agencies regarding who was and was not an industrial hemp

licensee and could thwart the goals of that inter-agency communication. Nonetheless, the rule does allow for a license's transfer from location to location in extraordinary circumstances, e.g. flood, fire, etc., and the Department has amended the rule to make this provision clearer.

Comment:

Judy Jones of Pigeon Forge commented that the rule should include greater clarity regarding the department's discretionary authority and criteria used in selecting industrial hemp pilot program participants.

Response:

The department appreciates Ms. Jones' comment and agrees that equal protection of citizens in applying for an industrial hemp license is a crucial function of the department. However, that concern is a legal matter regarding constitutionality of the rule. Consequently, in lieu of revision, the department defers to the Attorney General's review of this rule for legality and constitutionality in accordance with Tenn. Code Ann. §4-5-211.

Comment:

Judy Jones of Pigeon Forge commented that the rule should permit licensees to change authorized reporting agents for communication with the department regarding licensed activity.

Response:

The department appreciates Ms. Jones' comment and diligent review of the rule. As written, the rule does not prohibit changes to a licensee's authorized reporting agent. The rule only limits licensees to one authorized reporting agent at a time.

Comment:

Judy Jones of Pigeon Forge commented that the rule should provide for a "grandfather" clause to exempt prior hemp grower licensees from the rule's prohibition of traditional growers within a ten mile radius of certified seed growers. Ms. Jones maintains that the ten mile radius requirement effectively gives certified seed growers the authority to deny applicants for a traditional grower license and that if the radius requirement was kept, the burden should fall to the certified seed grower to select a growing area outside the radius from all other growers.

Response:

The department appreciates Ms. Jones' comment and agrees that access to industrial hemp licenses and opportunities should be as ample and transparent as possible. However, the department declines to institute a "grandfather" clause for this or any of its regulatory programs because to do so may unnecessarily run afoul of equal protection concerns highlighted by Ms. Jones' prior comments. The department's rules must apply equally and equitably among all of its constituents. The department shares Ms. Jones' concern for how the program can be devised to protect both traditional growers and certified seed growers fairly. The ten mile radius requirement is designed to encourage development of certified seed in Tennessee for the future convenience and economy of all Tennessee hemp growers so that seed need not be imported internationally or from distant sister states. It is the department's hope that among Tennessee's 42,000 square mile area, the program's 170 participants may find enough room that all may co-exist within this license structure. However, and to the extent this provision of the rule poses a conflict, the department and not the certified seed grower retains ultimate authority to accept or deny all grower licenses. The department may also revise this portion of the rule in the future once certified seed is more readily available within the state or if this provision becomes manipulated to deny open access to licenses. For these reasons the department declines to revise the rule as suggested. However, the department has amended the rule to reflect that the ten mile radius provision also applies to dueling certified seed applicants, who may not be licensed within ten miles of each other without both growers' consent.

Comment:

Judy Jones of Pigeon Forge commented that the restrictions of one license per person per location should apply equally to traditional growers and certified seed growers.

Response:

The department appreciates Ms. Jones' comment. Under this rule, certified seed growers are afforded multiple locations per license where traditional growers are not. This provision is designed to encourage development of certified seed in Tennessee for the future convenience and economy of all Tennessee hemp growers. As a balance to this provision, certified seed growers are automatically required to pay the highest level license fee for their license regardless of acreage, whereas traditional grower license fees are proportionately reduced for lesser acreages of growing areas. For these reasons, the department declines to revise the rule as suggested.

Comment:

Judy Jones of Pigeon Forge commented that where this rule changes the start of the industrial hemp license year from April to March, existing licensees should be given a license fee credit for portions of the license year that will overlap in the first license period following promulgation of this rule.

Response:

The department appreciates Ms. Jones' comment. The industrial hemp program and its licenses, unlike all other departmental licenses, are not recurring or renewable on an ongoing basis. Rather, hemp licenses as part of the department's pilot research program are distinct individual license periods. Consequently, the hemp license fee is not subject to late renewal requirements like other licenses and each period's fee operates independently of the next license cycle. For this reason, a license fee credit is not appropriate for current license holders, and the department declines to revise the rule as suggested.

Comment:

Judy Jones of Pigeon Forge commented that the department should not retain authority to exclude plant material from the department's industrial hemp pilot program.

Response:

The department appreciates Ms. Jones' comment. The department retains authority over what materials are accepted into this program largely to exclude any material that tests high for THC levels or that is acquired or moved in violation of the rule. The department also retains authority over this program's research material because the federal Farm Bill that authorizes this program's existence requires the department and not the individual grower be responsible for research that is conducted. For these reasons, the department declines to amend its authority in the rule as suggested.

Comment:

Joe Kirkpatrick of Gallatin, on behalf of the Tennessee Hemp Industries Association, urged adoption of this rule.

Response:

The department appreciates Mr. Kirkpatrick's and industry's support for this rule.

Comment:

Under direct question from the department to members of the public in attendance, no member voiced a concern that the rule was unnecessary to protect the public health, safety, or welfare; no member voiced a concern that the rule was arbitrary or unreasonable; and no member voiced a concern that the rule would adversely or unnecessarily impact business or individuals.

Response:

The department appreciates all comments made in this rulemaking process and is encouraged by public support for this rule.

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) Type or types of small business subject to the proposed rule that would bear the cost of and/or directly benefit from the proposed rule:

Businesses subject to the proposed rule include those firms engaged in the cultivation, processing, distribution, or sale of industrial hemp or hemp products.

(2) Identification and estimate of the number of small businesses subject to the proposed rule:

Approximately 170 industrial hemp growers and processors are licensed by the department. Thousands of retail outlets, vendors, growers, and processors in this and other states are potentially implicated or affected by portions of this rule.

(3) 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:

Firms are no longer required to provide as much information to the department during the application process, e.g. proof of authorization to do business in Tennessee, and are no longer required to obtain movement permits for movement of nonviable industrial hemp. Firms are required to provide more information for acquisition of seed in accordance with registration of landrace varieties mandated under T.C.A. §43-26-103. However, on balance, reporting, recordkeeping and other administrative costs are expected to be minimally impacted by this rule.

(4) Statement of the probable effect on impacted small businesses and consumers:

This rule clarifies requirements for acquisition, processing, distribution, and sale of nonviable and viable industrial hemp more thoroughly and succinctly than existing regulations. The department expects this rule will provide greater understanding and ultimately greater opportunity for growth, processing, and marketing of industrial hemp in Tennessee.

(5) 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:

No less burdensome methods for achieving this purpose are possible. This rule is promulgated largely at the encouragement of industry for clarification of regulatory requirements.

(6) Comparison of the proposed rule with any federal or state counterparts:

Federal law does not recognize industrial hemp as an exception from the Controlled Substances Act definition of marihuana, see 21 U.S.C.A. §801, et seq. However, federal law under the 2014 Farm Bill carves out a legal definition for industrial hemp as Cannabis sativa L. with THC levels equal to or less than 0.3%, see 7 U.S.C.A. §5940, and permits its research by universities and state departments of agriculture regarding the plant's growth, cultivation, or marketing. Numerous states including Tennessee have designed industrial hemp pilot programs for this research within the federal framework. This rule is consistent with existing state programs.

(7) Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Exemption of small businesses from this rule is not possible where growers and processors must be part of the department's industrial hemp pilot program in order to research industrial hemp.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

No impact is expected 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 clarifies requirements of the department's industrial hemp pilot program and amends fee schedules of industrial hemp licenses pursuant to legislative amendments to Tenn. Code Ann. §§ 43-1-701, et seq.

(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;

Federal Controlled Substances Act criminalizes possession of marijuana. 21 U.S.C.A. §801, et seq. 2014 Farm Bill creates legal definition for industrial hemp as cannabis with low level THC and permits its research by universities and state departments of agriculture. 7 U.S.C.A. §5940. T.C.A. §43-26-103 mandates promulgation of rules for establishment of industrial hemp licenses and fees necessary to sustain a hemp program on an ongoing basis.

(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;

Businesses most directly affected by this rule are firms engaged in the cultivation, processing, distribution, or sale of industrial hemp or hemp products. The Tennessee Hemp Industries Association 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 or the necessity to promulgate the rule;

No attorney general opinions in this state relate to this rule or its necessity. Various federal cases relate to the legality of industrial hemp, e.g. *U.S. v. White Plume*, 447 F.3d 1067 (8th Cir. 2006) (industrial hemp is subject to regulation by federal Controlled Substances Act); *Hemp Industries Ass'n v. Drug Enforcement Admin.*, 357 F.3d 1012 (9th Cir. 2004) (DEA cannot regulate naturally-occurring THC not contained within or derived from marijuana, i.e. non-psychoactive hemp products); *New Hampshire Council, Inc. v. Marshall*, 203 F.3d 1 (1st Cir. 2000) (industrial hemp is marijuana within definition of federal drug statute).

(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 estimated increase in departmental revenues or expenditures resulting from this rule is minimal.

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

David Waddell, Administrative Director, Tennessee Department of Agriculture, Division of Consumer & Industry Services

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

David Waddell, Administrative Director, Tennessee Department of Agriculture, Division of Consumer & Industry Services

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

436 Hogan Road, Nashville, Tennessee 37220; (615) 837-5331; david.waddell@tn.gov

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

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Sequence Number: 07-20-18
Rule ID(s): 7217-7218
File Date: 7/31/18
Effective Date: 10/29/18

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 Agriculture
Division: Consumer & Industry Services
Contact Person: Jay Miller
Address: Post Office Box 40627, Nashville, Tennessee
Zip: 37204
Phone: (615) 837-5341
Email: jay.miller@tn.gov

Revision Type (check all that apply):
x Amendment
x New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0080-01-03	Civil Penalties
Rule Number	**Rule Title**
0080-01-03-.01	Civil Penalties

Chapter Number	**Chapter Title**
0080-06-28	Industrial Hemp
Rule Number	**Rule Title**
0080-06-28-.01	Scope
0080-06-28-.02	Definitions
0080-06-28-.03	License Application and Fees
~~0080-06-28-.04~~	~~Acquisition of Seed and Propagules~~
~~0080-06-28-.05~~	~~Crop Distribution, Destruction, and Return~~
0080-06-28-.06	Movement Permits
0080-06-28-.07	Sampling and Inspections
0080-06-28-.08	Agronomic Reports
0080-06-28-.09	Violations

Chapter 0080-06-28
Industrial Hemp

0080-06-28-.06 Movement Permits.

(1) All movement of industrial hemp must comply with acquisition and distribution requirements of this chapter. Out-of-state movement of industrial hemp may occur only by lawful passage through states that have authorized the possession and distribution of industrial hemp.

(2) Any person may move nonviable industrial hemp or hemp products without a movement permit.

(3) Only licensees may move viable industrial hemp or hemp products. Licensees shall not move viable industrial hemp without a valid movement permit issued by the department.

(4) When required by this rule, industrial hemp movement permits are required per vehicle per day the vehicle is used to move industrial hemp or hemp products. Movement permits authorize only the movement that occurs within the state. To receive a movement permit, the licensee shall submit a movement permit request on forms provided by the department, which may require:

(a) The industrial hemp license number for which movement is requested;

(b) Origin and destination of movement;

(c) Date and time of intended movement;

(d) Description of industrial hemp parts or hemp products to be moved;

(e) Weight, volume, or number of units of material to be moved;

(f) Names of individuals moving the material; and,

(g) Make, model, color, and license plate number of vehicle(s) to be used in moving the material.

(5) Requests for movement permits must be submitted to the department at least three business days prior to movement.

(6) The department may deny any application for a movement permit that is not completed in accordance with this rule.

(7) Each cannabis plant or plant product moved not in conformity with this rule shall constitute a separate violation of this chapter.

Authority: T.C.A. §§ 4-3-203 and 43-26-103.

0080-06-28-.07 Sampling and Inspections.

(1) Scope of inspections. The department may enter during normal business hours any location licensed by the department, for purposes of inspecting any cannabis plant, record, or other material as necessary for the efficient enforcement of the Act and this chapter. Inspections of processors under this chapter are limited to sampling of cannabis plants or plant products and observation of record keeping requirements; the inspections do not evaluate or endorse in any manner the chemical or physical processes used by the processor or the safety of those processes in the workplace.

(2) Sampling. The department may conduct sampling of any cannabis plant or other material at a location licensed by the department. A sample collected according to uniform protocols approved by the commissioner shall be deemed representative of the location, growing area, or lesser lot from which the

sample was obtained. After the department obtains a sample, licensees shall not move any cannabis plant or plant product from the area represented by the sample until the department determines the sample tests no higher than 0.3% THC on a dry mass basis.

(3) Test results exceeding 0.3% THC. Any sample test result higher than 0.3% THC concentration on a dry mass basis shall be conclusive evidence that one or more cannabis plants or plant products from the area represented by the sample contain a THC concentration in excess of that allowed under the Act and shall be grounds for issuance of stop movement and destruction orders for any plants or materials within the area represented by the sample.

(4) Destruction of any plants or plant products under this rule shall be performed in accordance with a directive from the department, which may include destruction by any means necessary for reasonable assurance that all cannabis plants exceeding allowable limits of THC concentration are destroyed, e.g. by removal and incineration, field burning, deep burial, or other means authorized by the department. Any licensee aggrieved by an order issued under this chapter may petition the department for review of the order under the Uniform Administrative Procedures Act. Petitions for review of the order must be submitted to the department in writing within ten days of the order being issued. If no petition is filed with the department within the ten day period, the department's order shall become final and will not be subject to review. For purposes of any hearing under this chapter, any cannabis plant grown or processed by a licensee under the department's industrial hemp pilot program shall be considered property of the department for researching the growth, cultivation, and marketability of industrial hemp and not a legal right, duty, or privilege of the licensee.

(5) Laboratory analysis costs. Licensees shall pay a Tier 4 laboratory analysis fee under T.C.A. §43-1-703(f) for each sample collected by the department.

Authority: T.C.A. §§ 4-3-203 and 43-26-103.

0080-06-28-.08 Agronomic Reports.

(1) Prior to the end of each licensure year or upon reasonable notice from the department, each non-university licensee shall submit a completed agronomic report on forms provided by the department. Reports may require information on various points of research interest and shall include description of any known commercial distributions of industrial hemp or hemp products.

(2) University licensees are not required to submit an agronomic report.

Authority: T.C.A. §§ 4-3-203 and 43-26-103.

0080-06-28-.09 Violations.

(1) Industrial hemp shall be considered marijuana when distributed or possessed by any person not authorized under the Act or this chapter.

(2) In addition to other requirements of this chapter, licensees shall:

(a) Upon request by the department, provide full and accurate information regarding the person's cultivation or processing of industrial hemp;

(b) Comply with any order issued by the department regarding cultivation, processing, distribution, research, or destruction of industrial hemp;

(c) Pay all fees associated with licensure, participation in the department's industrial hemp pilot program, and costs arising out of procurement, distribution, sampling, or destruction of cannabis plants or plant products;

(d) Pay all required fees within the time prescribed by the Act or this chapter. If time for payment of costs and fees is not prescribed by the Act or this chapter, licensees shall pay such fees upon reasonable notice issued by the department; and,

(e) Participants in the department's industrial hemp pilot program shall conduct themselves in a professional manner befitting a representative of the department.

(3) In addition to other requirements of this chapter, licensees shall not:

(a) Knowingly provide any false, misleading, or incorrect information regarding the person's cultivation or processing of cannabis plants;

(b) Cultivate, process, move, or distribute cannabis plants other than industrial hemp;

(c) Interfere with an authorized representative of the department in the performance of his duties;

(d) Market or represent industrial hemp or hemp products to be marijuana or any illicit substance in any form;

(e) Violate any quarantine, stop movement order, or destruction order issued by the department;

(f) Violate any memorandum of understanding to which the licensee is a party;

(g) Violate any applicable seed or use agreement;

(h) Move industrial hemp in conflict with any movement permit issued by the department; or,

(i) Cultivate or process industrial hemp in an area not licensed by the department.

(4) A person is responsible for violations of the Act or this chapter when committed by either the person or his agent.

(5) Each violation of the Act or this chapter is grounds for issuance of stop movement or destruction orders against any cannabis plant held by the violator or his agent; denial or revocation of any license issued under this chapter; actions for injunction; and imposition of civil penalties or criminal charges against the violator.

Authority: T.C.A. §§ 4-3-203 and 43-26-103.

Amendments

Chapter 0080-01-03
Civil Penalties

Subparagraph 0080-01-03-.01(1)(a) is amended by deleting the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

(a) Plant Pest Act.

1. T.C.A. §43-6-106. Minimum penalty $0. Maximum penalty $500.

2. T.C.A. §43-6-109. Minimum penalty $0. Maximum penalty $500.

3. T.C.A. §43-6-110. Minimum penalty $0. Maximum penalty $500.

4. T.C.A. §43-6-112. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-06-01-.03. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-06-01-.04. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-06-01-.~~06~~05. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-06-01-.~~08~~07. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-06-01-.14. Minimum penalty $0. Maximum penalty $500.

~~9.~~10. Tenn. Comp. R. & Regs. 0080-06-03-.01. Minimum penalty $0. Maximum penalty $500.

~~10.~~11. Tenn. Comp. R. & Regs. 0080-06-03-.02. Minimum penalty $0. Maximum penalty $500.

~~11.~~12. Tenn. Comp. R. & Regs. 0080-06-03-.03. Minimum penalty $0. Maximum penalty $500.

~~12.~~13. Tenn. Comp. R. & Regs. 0080-06-03-.04. Minimum penalty $0. Maximum penalty $500.

~~13.~~14. Tenn. Comp. R. & Regs. 0080-06-03-.05. Minimum penalty $0. Maximum penalty $500.

~~14.~~15. Tenn. Comp. R. & Regs. 0080-06-03-.06. Minimum penalty $0. Maximum penalty $500.

~~15.~~16. Tenn. Comp. R. & Regs. 0080-06-03-.07. Minimum penalty $0. Maximum penalty $500.

~~16.~~17. Tenn. Comp. R. & Regs. 0080-06-03-.08. Minimum penalty $0. Maximum penalty $500.

~~17. Tenn. Comp. R. & Regs. 0080-06-03-.09 Minimum penalty $0. Maximum penalty $500.~~

18. Tenn. Comp. R. & Regs. 0080-06-04-.01. Minimum penalty $0. Maximum penalty $500.

19. ~~Tenn. Comp. R. & Regs. 0080-06-04-.02. Minimum penalty $0. Maximum penalty $500.~~

~~20.~~ Tenn. Comp. R. & Regs. 0080-06-04-.03. Minimum penalty $0. Maximum penalty $500.

~~21.~~20. Tenn. Comp. R. & Regs. 0080-06-04-.04. Minimum penalty $0. Maximum penalty $500.

~~22.~~21. Tenn. Comp. R. & Regs. 0080-06-06-.04. Minimum penalty $0. Maximum penalty $500.

~~23.~~22. Tenn. Comp. R. & Regs. 0080-06-06-.05. Minimum penalty $0. Maximum penalty $500.

~~24. Tenn. Comp. R. & Regs. 0080-06-06-.06. Minimum penalty $0. Maximum penalty $500.~~

23. Tenn. Comp. R. & Regs. 0080-06-07-.04. Minimum penalty $0. Maximum penalty $500.

24. Tenn. Comp. R. & Regs. 0080-06-07-.07. Minimum penalty $0. Maximum penalty $500.

25. ~~Tenn. Comp. R. & Regs. 0080-06-10-.01. Minimum penalty $0. Maximum penalty $500.~~

~~26.~~ Tenn. Comp. R. & Regs. 0080-06-10-.05. Minimum penalty $0. Maximum penalty $500.

~~27.~~26. Tenn. Comp. R. & Regs. 0080-06-10-.07. Minimum penalty $0. Maximum penalty $500.

~~28.~~27. Tenn. Comp. R. & Regs. 0080-06-10-.09. Minimum penalty $0. Maximum penalty $500.

~~29. Tenn. Comp. R. & Regs. 0080-06-11-.01. Minimum penalty $0. Maximum penalty $500.~~

~~30.~~28. Tenn. Comp. R. & Regs. 0080-06-11-.06. Minimum penalty $0. Maximum penalty $500.

~~31. Tenn. Comp. R. & Regs. 0080-06-11-.07. Minimum penalty $0. Maximum penalty $500.~~

~~32.~~29. Tenn. Comp. R. & Regs. 0080-06-11-.11. Minimum penalty $0. Maximum penalty $500.

~~33.~~30. Tenn. Comp. R. & Regs. 0080-06-11-.12. Minimum penalty $0. Maximum penalty $500.

~~34.~~31. Tenn. Comp. R. & Regs. 0080-06-12-.04. Minimum penalty $0. Maximum penalty $500.

~~35.~~32. Tenn. Comp. R. & Regs. 0080-06-12-.05. Minimum penalty $0. Maximum penalty $500.

~~36.~~33. Tenn. Comp. R. & Regs. 0080-06-17-.02. Minimum penalty $0. Maximum penalty $500.

~~37.~~34. Tenn. Comp. R. & Regs. 0080-06-17-.03. Minimum penalty $0. Maximum penalty $500.

~~38.~~35. Tenn. Comp. R. & Regs. 0080-06-17-.04. Minimum penalty $0. Maximum penalty $500.

~~39.~~36. Tenn. Comp. R. & Regs. 0080-06-17-.05. Minimum penalty $0. Maximum penalty $500.

~~40.~~37. Tenn. Comp. R. & Regs. 0080-06-17-.06. Minimum penalty $0. Maximum penalty $500.

~~41.~~38. Tenn. Comp. R. & Regs. 0080-06-17-.07. Minimum penalty $0. Maximum penalty $500.

~~42.~~39. Tenn. Comp. R. & Regs. 0080-06-17-.08. Minimum penalty $0. Maximum penalty $500.

~~43.~~40. Tenn. Comp. R. & Regs. 0080-06-17-.09. Minimum penalty $0. Maximum penalty $500.

~~44.~~41. Tenn. Comp. R. & Regs. 0080-06-17-.10. Minimum penalty $0. Maximum penalty $500.

~~45.~~42. Tenn. Comp. R. & Regs. 0080-06-17-.11. Minimum penalty $0. Maximum penalty $500.

~~46.~~43. Tenn. Comp. R. & Regs. 0080-06-17-.12. Minimum penalty $0. Maximum penalty $500.

~~47.~~44. Tenn. Comp. R. & Regs. 0080-06-17-.13. Minimum penalty $0. Maximum penalty $500.

~~48. Tenn. Comp. R. & Regs. 0080-06-19-.01. Minimum penalty $0. Maximum penalty $500.~~

~~49.~~45. Tenn. Comp. R. & Regs. 0080-06-19-.05. Minimum penalty $0. Maximum penalty $500.

~~50.~~46. Tenn. Comp. R. & Regs. 0080-06-19-.06. Minimum penalty $0. Maximum penalty $500.

~~51.~~47. Tenn. Comp. R. & Regs. 0080-06-19-.08. Minimum penalty $0. Maximum penalty $500.

~~52.~~48. Tenn. Comp. R. & Regs. 0080-06-19-.09. Minimum penalty $0. Maximum penalty $500.

49. Tenn. Comp. R. & Regs. 0080-06-19-.11. Minimum penalty $0. Maximum penalty $500.

~~53. Tenn. Comp. R. & Regs. 0080-06-20-.01. Minimum penalty $0. Maximum penalty $500.~~

~~54.~~50. Tenn. Comp. R. & Regs. 0080-06-20-.05. Minimum penalty $0. Maximum penalty $500.

~~55.~~51. Tenn. Comp. R. & Regs. 0080-06-20-.06. Minimum penalty $0. Maximum penalty $500.

~~56.~~52. Tenn. Comp. R. & Regs. 0080-06-20-.08. Minimum penalty $0. Maximum penalty $500.

~~57.~~53. Tenn. Comp. R. & Regs. 0080-06-20-.09. Minimum penalty $0. Maximum penalty $500.

54. Tenn. Comp. R. & Regs. 0080-06-20-.11. Minimum penalty $0. Maximum penalty $500.

~~58.~~55. Tenn. Comp. R. & Regs. 0080-06-20-.12. Minimum penalty $0. Maximum penalty $500.

~~59. Tenn. Comp. R. & Regs. 0080-06-23-.01. Minimum penalty $0. Maximum penalty $500.~~

~~60. Tenn. Comp. R. & Regs. 0080-06-23-.05. Minimum penalty $0. Maximum penalty $500.~~

~~61. Tenn. Comp. R. & Regs. 0080-06-23-.06. Minimum penalty $0. Maximum penalty $500.~~

~~62. Tenn. Comp. R. & Regs. 0080-06-23-.09. Minimum penalty $0. Maximum penalty $500.~~

~~63. Tenn. Comp. R. & Regs. 0080-06-23-.10. Minimum penalty $0. Maximum penalty $500.~~

~~64. Tenn. Comp. R. & Regs. 0080-06-23-.11. Minimum penalty $0. Maximum penalty $500.~~

~~65.~~56. Tenn. Comp. R. & Regs. 0080-06-24-.02. Minimum penalty $0. Maximum penalty $500.

~~66.~~57. Tenn. Comp. R. & Regs. 0080-06-24-.03. Minimum penalty $0. Maximum penalty $500.

~~67. Tenn. Comp. R. & Regs. 0080-06-26-.01 Minimum penalty $0. Maximum penalty $500.~~

~~68.~~58. Tenn. Comp. R. & Regs. 0080-06-26-.03. Minimum penalty $0. Maximum penalty $500.

~~69.~~59. Tenn. Comp. R. & Regs. 0080-06-26-.05. Minimum penalty $0. Maximum penalty $500.

60. Tenn. Comp. R. & Regs. 0080-06-26-.07. Minimum penalty $0. Maximum penalty $500.

~~70.~~61. Tenn. Comp. R. & Regs. 0080-06-26-.08. Minimum penalty $0. Maximum penalty $500.

~~71.~~62. Tenn. Comp. R. & Regs. 0080-06-26-.09. Minimum penalty $0. Maximum penalty $500.

~~72.~~63. Tenn. Comp. R. & Regs. 0080-06-26-.11. Minimum penalty $0. Maximum penalty $500.

Authority: T.C.A. §§ 4-3-203 and 4-3-204.

Subparagraph 0080-01-03-.01(1)(c) is amended by deleting the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

(c) Eradication of the Cotton Boll Weevil.

1. ~~T.C.A. §43-6-404. Minimum penalty $0. Maximum penalty $500.~~

~~2.~~ T.C.A. §43-6-405. Minimum penalty $0. Maximum penalty $500.

~~3.~~2. T.C.A. §43-6-410. Minimum penalty $0. Maximum penalty $500.

~~4.~~3. T.C.A. §43-6-426. Minimum penalty $0. Maximum penalty $500.

~~5.~~4. Tenn. Comp. R. & Regs. 0080-06-22-.07. Minimum penalty $0. Maximum penalty $500.

~~6.~~5. Tenn. Comp. R. & Regs. 0080-06-22-.08. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-06-22-.09. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-06-22-.10. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-06-22-.11. Minimum penalty $0. Maximum penalty $500.

9. Tenn. Comp. R. & Regs. 0080-06-22-.12. Minimum penalty $0. Maximum penalty $500.

10. Tenn. Comp. R. & Regs. 0080-06-22-.14. Minimum penalty $0. Maximum penalty $500.

Authority: T.C.A. §§ 4-3-203 and 4-3-204.

Subparagraph 0080-01-03-.01(1)(j) is amended by deleting the subparagraph in its entirety and substituting instead the following language so that, as amended, the subparagraph shall read:

(j) Tennessee Right to Farm Act.

1. T.C.A. §43-26-103. Minimum penalty $0. Maximum penalty $500.

2. ~~Tenn. Comp. R. & Regs. 0080-06-28-.02. Minimum penalty $0. Maximum penalty $500.~~

~~3.~~ Tenn. Comp. R. & Regs. 0080-06-28-.03. Minimum penalty $0. Maximum penalty $500.

~~4.~~3. Tenn. Comp. R. & Regs. 0080-06-28-.04. Minimum penalty $0. Maximum penalty $500.

~~5.~~4. Tenn. Comp. R. & Regs. 0080-06-28-.05. Minimum penalty $0. Maximum penalty $500.

5. Tenn. Comp. R. & Regs. 0080-06-28-.06. Minimum penalty $0. Maximum penalty $500.

6. Tenn. Comp. R. & Regs. 0080-06-28-.07. Minimum penalty $0. Maximum penalty $500.

7. Tenn. Comp. R. & Regs. 0080-06-28-.08. Minimum penalty $0. Maximum penalty $500.

8. Tenn. Comp. R. & Regs. 0080-06-28-.09. Minimum penalty $0. Maximum penalty $500.

Authority: T.C.A. §§ 4-3-203 and 4-3-204.

Chapter 0080-06-28
Industrial Hemp

Rule 0080-06-28-.01 Definitions is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.01 ~~Definitions~~Scope.

(1) ~~"Act" means Tennessee Public Acts of 2014, Chapter 916.~~This chapter applies to any person who cultivates, processes, or distributes industrial hemp.

(2) ~~"Applicant" means a person that is an individual residing in Tennessee or an institution of higher education as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. §1001), a sole proprietorship, partnership, association, corporation, limited-liability corporation, limited partnership, or any other business entity having any:~~All distribution of industrial hemp and industrial hemp products in commerce are permissible to the extent of the department's authority under the Act and are conducted for the purpose of researching the marketability of industrial hemp through the department's industrial hemp pilot program. This research initiative includes the distribution of any industrial hemp cultivated or processed by a person licensed under this chapter and the distribution in this state of any industrial hemp or hemp product lawfully cultivated or processed under the jurisdiction of a foreign state.

~~(a) Place of business permanently located within this state;~~

~~(b) Employees permanently assigned to work stations or areas located within this state; or~~

~~(c) Tangible assets permanently located within this state.~~

(3) ~~"Commissioner" means the Commissioner of Agriculture and any employee of the Department of Agriculture associated with the Industrial Hemp Regulatory Program.~~Neither the Act nor this chapter

exempt any person from enforcement of other regulations applicable to particular uses of industrial hemp, including but not limited to food safety regulations for food products and feed regulations for commercial feed products.

(4) ~~"Sample" means parts taken as representative of the combined total number of plants in the growing area.~~Persons licensed under this chapter shall be responsible for operations conducted under their license until either the applicable license expires or the department receives written notification from the licensee desiring to terminate the license. The department shall not refund fees for early termination of any license issued under this chapter.

(5) ~~"Department" means the Tennessee Department of Agriculture.~~Licenses issued under this chapter are not transferable from person to person.

(6) ~~"Growing Area" means the land area on which industrial hemp is grown.~~Licenses issued under this chapter are not transferable from location to location without prior written authorization from the department. Once a license is issued for a particular growing area, the department shall not authorize changes to increase or relocate the growing area absent extraordinary circumstances.

Authority: T.C.A. §§ 4-3-203 and 43-26-103.

Rule 0080-06-28-.02 Licensing is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.02 ~~Licensing~~Definitions.

(1) ~~Each applicant for an industrial-hemp license shall submit a signed, complete, accurate, and legible application form provided by the Commissioner by April 1 of the year in which the applicant plants to grow industrial hemp, which includes the following:~~Terms in this chapter share those meanings of terms set forth in the Tennessee Right to Farm Act, T.C.A. §43-26-101, et seq.

~~(a) the applicant's name, mailing address, and phone number in Tennessee and, if applicable, their electronic-mail address;~~

~~(b) if the applicant is an individual or partnership, the date of birth of the individual or parnters;~~

~~(c) if the applicant is any business entity other than an individual, partnership, or institution of higher learning, documentation that the entity is authorized to do business in Tennessee;~~

~~(d) the cultivated variety that will be sown;~~

~~(e) the source and amount of certified seed to be used;~~

~~(f) the number of acres to be cultivated for seed, viable grain, industrial products, or any combination thereof;~~

~~(g) the Global Positioning System coordinates in decimal degrees from the central most point of the growing area to be cultivated and a map showing the location of the growing area in terms of its address or legal description;~~

~~(h) a statement that the applicant is the owner of the growing area to be used for the cultivation or a statement, signed by the owner of the growing area, indicating that he has consented to that use;~~

~~(k) if the applicant is cultivating for certified seed, evidence of membership in the Tennessee Crop Improvement Association;~~

~~(l) the address of the place in Tennessee where the applicant will keep the records, books, electronic data, or other documents that are required by these regulations;~~

~~(m) the name and address of each place where the industrial hemp is to be stored, sold, or provided, indicating for each place the form of the industrial hemp; and~~

~~(n) the applicant's acknowledgment and agreement to the following terms and conditions:~~

~~1. Any information obtained by the Department may be publicly disclosed and provided to law-enforcement agencies without further notice to the applicant or licensee.~~

~~2. The licensee agrees to allow any inspection and sampling that the Department deems necessary.~~

~~3. The licensee agrees to pay for any sampling and analysis costs that the Department deems necessary.~~

~~4. The licensee agrees to submit all required reports by the applicable due dates specified by the Commissioner.~~

~~5. The applicant, any partners, directors, or members have not been convicted of any felony related to the possession, production, sale, or distribution of a controlled substance in any form in this or any other country.~~

(2) ~~An application shall be signed by the applicant or, in the case of a corporation, cooperative, or partnership, one of its officers, directors, or partners, as the case may be, and indicate that all information and documents submitted in support of the application are correct and complete to the best of his knowledge.~~When used in this chapter, unless the context requires otherwise:

(a) Act means the Tennessee Right to Farm Act, compiled at T.C.A. §43-26-101, et seq.;

(b) Cannabis plant means any plant or any part of a plant of the genera Cannabis and includes industrial hemp;

(c) Certified seed, grown from certified seed, or words of similar import mean:

1. Grown from industrial hemp seed certified by a certifying agency as defined in T.C.A. §43-10-103; or,

2. Grown from a lineage of mother plants that originated by growth from seed certified by a certifying agency as defined in T.C.A. §43-10-103;

(d) Commerce or words of similar import mean involving payment for an item or payment for services incident to production of the item;

(e) Growing area means any contiguous land area for the growth of industrial hemp. Bifurcation of a growing area by roads, thoroughfares, fencing or the like shall not render the area non-contiguous under this definition;

(f) Landrace varieties, seed or propagules derived from landrace varieties, or words of similar import mean any plant material grown from an industrial hemp variety found within the continental United States that is not traceable to growth from certified seed;

(g) License or words of similar import mean a valid license or registration issued under this chapter;

(h) Mother plant means an industrial hemp plant from which propagules are cultivated;

(i) Move, distribute, transport, or words of similar import mean to relocate in any manner an item from one real property to another;

(j) Nonviable means unable to regenerate, reproduce, or survive;

(k) Person means an individual, partnership, corporation, or any other form of legal entity;

(l) Process industrial hemp means to treat or transform harvested industrial hemp from its natural state for distribution in commerce;

(m) Propagule means any viable plant material cultivated from a mother plant;

(n) Sample or sampling means any cannabis plant or other material taken by the department from a location licensed for the cultivation or processing of industrial hemp;

(o) Stop movement order means a written directive issued by the department to prohibit or limit the movement of plants or plant parts;

(p) THC means delta-9 tetrahydrocannabinol; and,

(q) University means an institution of higher education as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C.A. §1001), located within the state that offers one or more baccalaureate or post-graduate level programs of study in agricultural sciences.

~~(3) Any application for a license received after April 1, or that is not complete by April 1, will be denied.~~

~~(4) In addition to the application form, each applicant for a license shall submit the fee set by the Commissioner. If the fee does not accompany the application, the application for a license will be deemed incomplete.~~

~~(5) The annual license fee for production of industrial hemp shall be $250 plus $2.00/acre.~~

~~(6) All licenses shall be valid for one year from the date of issuance.~~

~~(7) Any licensee that wishes to alter the growing areas on which the licensee will conduct industrial-hemp cultivation shall, before altering the area, submit to the Department an updated address, Global Positioning System location, and map specifying the proposed alterations.~~

Authority: T.C.A. §§ 4-3-203 and 43-26-103.

Rule 0080-06-28-.03 Reports is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.03 ~~Reports~~License Application and Fees.

(1) ~~At least seven days prior to harvest, each industrial-hemp licensee shall file a report with the Commissioner that includes documentation that the licensee has entered into a purchase agreement with an industrial-hemp processor. If the licensee has not entered into such an agreement, the licensee shall include a statement of intended disposition of its industrial-hemp crop.~~All persons to whom these rules apply shall obtain a license in accordance with this chapter prior to conducting any activity for which a license is required.

(2) ~~Licensees must report any subsequent changes to the purchase agreement or disposition statement to the Commissioner within ten days of the change.~~To be eligible for a license, an applicant must either be selected by the department for participation in the department's industrial hemp pilot program or be a university conducting agricultural or academic research.

(a) Non-university applicants may obtain licensure for participation in the department's industrial hemp pilot program. The department may select or limit in its discretion all participants in the program for the improvement or design of agricultural research related to industrial hemp and its growth, cultivation, or marketability. The department shall not select for participation in this program any person who has been convicted of a felony drug-related offense within the previous ten years. Non-university applicants in the industrial hemp pilot program shall sign a memorandum of understanding with the department regarding the parameters and manner of

research conducted within the program.

(b) A university applicant shall submit with its application a statement of research goals and parameters related to its cultivation or processing of industrial hemp and proof of its status as an institution of higher education as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C.A. §1001). University applicants are not required to sign a memorandum of understanding with the department.

(3) ~~Two business days prior to the movement of the industrial hemp grain or plant material from the permitted location, the licensee shall submit to the Commissioner an application for movement permit. The application shall include the mode and location to which the product is to be transported. An inspection of the product may occur prior to movement.~~Application for any license under this chapter shall be made on forms provided by the department, which shall be completed in full and may include:

(a) Name of the applicant;

(b) Date of birth of any applicant who is an individual or a partner in a general partnership;

(c) Proof of one of the following for any applicant that is not an individual or a partner in a general partnership:

1. Applicant's registration in its state of incorporation; or,

2. Applicant's business license issued by a local governmental authority;

(d) Contact information for applicant, to include name of person legally responsible for applicant's operations, telephone number, email address, and address of the principal place of business;

(e) Address of any location to be licensed for growth of industrial hemp and description of all growing areas at the location, including total number of growing acres and Global Positioning System (GPS) coordinates from the areas' central most points;

(f) Address of any location to be registered for fixed processing of industrial hemp;

(g) Vehicle identification number of any facility to be registered for mobile processing of industrial hemp;

(h) Address of any location where the applicant intends to store industrial hemp or hemp products;

(i) Intended disposition of any industrial hemp cultivated or processed under the license;

(j) A statement signed by an owner of the real property or facility submitted for licensure, indicating the owner's consent for its use to cultivate or process industrial hemp;

(k) A statement signed by an owner of the real property or facility submitted for licensure, indicating the owner's consent for the department to enter those premises as necessary for departmental inspection, sampling, and enforcement of the Act and this chapter;

(l) Quantity, form, and location of any viable industrial hemp carried over as inventory from a prior licensure year; and,

(m) Other information as required by the department.

(4) An applicant may identify up to one authorized reporting agent for each license. Authorized reporting agents and licensees shall be the only persons authorized to report information or data to the department regarding a license, to request sampling or sampling results, to receive movement permits, and to otherwise communicate with the department regarding the license or licensed activity. A licensee shall be responsible for all activity conducted by an authorized reporting agent with respect to the license. To authorize a reporting agent, the applicant must include the reporting agent's name, telephone number, and email address in application records.

(5) Licensees shall notify the department of any changes to the information or contents of an application within 30 days after the change takes place.

(6) Applicants for licensure shall include with their application payment of an annual license fee as appropriate for the following categories of licenses.

(a) Industrial Hemp Grower License. An industrial hemp grower license is required per person for each physical address where the person cultivates industrial hemp. There is no limit to the number of growing areas a licensee may cultivate at a licensed address. No grower license shall be issued for a growing area within ten miles of a certified seed license growing area without the certified seed licensee's consent. The annual fee for an industrial hemp grower license is assessed under T.C.A. §43-1-703(f) and is determined according to the total size of growing area(s) at the licensed address as follows:

1. Less than 5 acres: Tier 6 fee;

2. 5 acres to 20 acres: Tier 7 fee;

3. More than 20 acres: Tier 8 fee.

(b) Industrial Hemp Certified Seed License. An industrial hemp certified seed license is required for any person who cultivates industrial hemp for certified seed. There is no limit to the number of locations or growing areas a licensee may cultivate for certified seed, provided that the growing areas are identified at the time of application for the license including address, size, and GPS coordinates from the areas' central most points. No certified seed license shall be issued for a growing area within ten miles of another certified seed license growing area without the consent of both certified seed licensees. An applicant for a certified seed license must submit evidence of membership with the Tennessee Crop Improvement Association. The fee for an industrial hemp certified seed license is a Tier 8 annual fee under T.C.A. §43-1-703(f).

(c) Industrial Hemp Processor Registration. Any person who processes industrial hemp for distribution in commerce shall annually register with the department each processing facility where the person processes industrial hemp. There is no fee for a processor registration; however, exemption from fee requirements shall not exempt any person from other regulations applicable to the cultivation, processing, possession, or distribution of industrial hemp, including but not limited to requirements regarding record keeping and availability for inspection.

(d) University License. A university license may be issued to qualified university applicants in lieu of any license or registration otherwise required under this chapter. There is no annual fee for a university license.

(7) Applicants for licensure shall submit an application and the appropriate annual license fee to the department between November 15 and February 15 of each year. All licenses issued under this chapter shall be valid from the following March 1 through February 28 (February 29 in leap years). Licenses issued under this chapter shall not renew automatically, and therefore are not subject to late renewal charges. If payment of the appropriate annual license fee is not received by the department by February 15, the application for a license shall be deemed incomplete and denied.

(8) The department may deny any application for licensure that is not completed in accordance with this rule.

Authority: T.C.A. §§ 4-3-203 and 43-26-103.

Rule 0080-06-28-.04 Inspections is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.04 ~~Inspections~~Acquisition of Seed and Propagules.

(1) ~~All licensees are subject to sampling of their industrial-hemp crop to verify that the THC concentration does not exceed 0.3% on dry-mass basis~~Acquisition.

(a) Each licensee shall be responsible for acquisition and transport of seed or propagules used for growth of industrial hemp. Prior to acquisition of propagating material, the licensee shall submit on forms provided by the department a seed acquisition request, which may require:

1. A copy of the industrial hemp license for which the propagating material is requested;

2. The scientific or common name for the variety requested;

3. The name, address, telephone number, and email address of the person providing the requested material;

4. Evidence that the source of the variety is:

(i) A university;

(ii) A state department of agriculture authorized to conduct an industrial hemp pilot program. If the source is a pilot program participant in this or another state, a copy of that participant's industrial hemp license is sufficient to fulfill this requirement; or,

(iii) A lawful vendor of industrial hemp in the jurisdiction where it is distributed;

5. The form of material to be acquired (e.g. seed, seedlings, cuttings, etc.);

6. The quantity in pounds of seed or number of propagules to be acquired;

7. Test results from an ISO-accredited or state department of agriculture approved, third-party laboratory certifying that material from the variety has been shown to contain no more than 0.3% THC on a dry mass basis; and,

8. Evidence that the licensee is authorized to propagate industrial hemp from the material, if applicable.

(b) Completion of a seed acquisition request for a landrace variety shall fulfill its registration requirement under the Act.

(c) Prior to cultivation by any licensee, all propagating material acquired through the department's controlled substance registration or acquired for growth by non-university licensees shall first be inventoried by the department at: Tennessee Department of Agriculture, Industrial Hemp Pilot Program, 436 Hogan Road, Nashville, Tennessee 37220.

(d) Acquisition of all industrial hemp shall comply with movement requirements of this chapter.

(2) ~~During the inspection, the licensee or authorized representative shall be present at the growing area. The licensee or authorized representative shall provide the Department's inspector with complete and unrestricted access to all industrial-hemp plants and seeds whether growing or harvested, all land, buildings, and other structures used for the cultivation and storage of industrial hemp, and all documents and records pertaining to the licensee's industrial-hemp business~~Costs. Licensees shall pay all costs incurred for acquisition and delivery of any seed or propagules, including but not limited to costs for procurement, taxes, shipping, and customs brokerage. These costs may be incurred in the sole discretion of the department and are payable by licensees to the department or the department's designee upon reasonable notice. Failure to pay these costs in accordance with a departmental directive shall be grounds for cancellation of any seed or propagule procurement order and revocation of any license issued under this chapter.

(3) ~~Sampling of industrial-hemp plants will occur in the following manner:~~Pilot program design. The department may select or limit any propagating material used in the industrial hemp pilot program for

compliance with this chapter or for the improvement or design of agricultural research related to industrial hemp and its growth, cultivation, or marketability.

~~(a) Samples of each variety of industrial hemp may be sampled from the growing areas at the Department's discretion.~~

~~(b) Quantitative laboratory determination of the THC concentration on a dry-mass basis will be performed according to protocols approved by the Commissioner.~~

~~(c) A sample test result greater than 0.3% THC will be considered conclusive evidence that at least one cannabis plant or part of a plant in the growing area contains a THC concentration over the limit allowed for industrial hemp and that the licensee of that growing area is therefore not in compliance with the Act. Upon receipt of such a test result, the Commissioner may summarily suspend and revoke the registration of an industrial-hemp licensee in accordance with T.C.A. §4-5-320. The Commissioner shall furnish to the licensee a portion of the violative sample if the licensee requests it within thirty days of notification.~~

~~(d) Test results from an institution of higher education may, at the Commissioner's discretion, be accepted in lieu of Department sampling.~~

(4) ~~Fees~~Use agreements. Licensees shall not use or possess seed or propagules unless expressly authorized by and in conformity with any applicable use agreement with the mother plant's seed breeder.

~~(a) Licensees shall pay a charge of $35 dollars per hour per inspector for actual drive time, mileage, inspection, and sampling time.~~

~~(b) Licensees shall reimburse the Department for all laboratory-analysis costs incurred.~~

(5) Each cannabis plant cultivated from material acquired not in conformance with this rule shall constitute a separate violation of this chapter.

Authority: T.C.A. §§ 4-3-203 and 43-26-103.

Rule 0080-06-28-.05 Violations is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read:

0080-06-28-.05 ~~Violations~~Crop Distribution, Destruction, and Return.

~~In addition to any other violations of T.C.A. § 43-26-103 or this Chapter, the following acts and omissions by any licensee or authorized representative thereof constitute violations for which civil penalties up to $500 and disciplinary sanctions, including revocation of a registration, may be imposed by the Commissioner in accordance with T.C.A. §§ 4-3-204 and 4-5-320:~~

(1) ~~Refusal or failure by a licensee or authorized representative to fully cooperate and assist the Department with the inspection process~~Distribution.

(a) Nonviable. Any person—with or without a license issued under this chapter—may distribute or store nonviable industrial hemp or hemp products if the industrial hemp was grown or processed by a person licensed under this chapter or the industrial hemp was acquired from a person in a foreign jurisdiction where distribution of the material or product was lawful.

(b) Viable. Only the department and licensees may distribute viable industrial hemp material.

1. Unlicensed possession of viable industrial hemp material is prohibited and shall be considered possession of marijuana under the Act.

2. Licensees may distribute viable industrial hemp material only to persons licensed under this chapter, out-of-state universities, or out-of-state departments of agriculture

authorized to conduct industrial hemp pilot programs in their states.

3. Prior to shipment of viable industrial hemp material out-of-state, the material must first be inventoried by the department at: Tennessee Department of Agriculture, Industrial Hemp Pilot Program, 436 Hogan Road, Nashville, Tennessee 37220.

(c) Distribution of all industrial hemp and hemp products shall comply with movement requirements of this chapter.

(2) ~~Failure to provide any information required or requested by the Commissioner for purposes of T.C.A. § 43-26-103 or this Chapter~~Destruction. Cannabis plants found to be in violation of the Act or this chapter shall be destroyed in accordance with a departmental directive or destruction order.

(3) ~~Providing false, misleading, or incorrect information pertaining to the licensee's cultivation of industrial hemp to the Commissioner by any means, including but not limited to information provided in any application form, report, record or inspection required or maintained for purposes of T.C.A. § 43-26-103 or the Chapter~~Return. The department may return to its sender any industrial hemp in the department's possession that was requested for shipment or distribution to an ineligible person or that was not approved for use in the industrial hemp pilot program. The department may destroy any industrial hemp that is not retrieved by its intended recipient or return sender in a timely manner.

(4) ~~Failure to submit any required report in accordance with Tenn. Comp. R. & Regs. 0080-06-28-.03~~Costs. Licensees shall pay all costs incurred for distribution, delivery, destruction or return of any cannabis plant or plant product. These costs may be incurred in the sole discretion of the department and are payable by licensees to the department or the department's designee upon reasonable notice. Failure to pay these costs in accordance with a departmental directive shall be grounds for revocation of any license issued under this chapter.

~~(5) Growing industrial hemp that when tested is shown to have a THC concentration greater than 0.3% on a dry-mass basis.~~

~~(6) Failure to pay fees assessed by the Commissioner for inspection or laboratory-analysis costs.~~

Authority: T.C.A. §§ 4-3-203 and 43-26-103.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Agriculture (board/commission/ other authority) on 05/22/2018 (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: 02/26/18

Rulemaking Hearing(s) Conducted on: (add more dates). 04/24/18

Date: May 22, 2018

Signature: [signature]

Name of Officer: Jai Templeton

Title of Officer: Commissioner

Subscribed and sworn to before me on: May 22, 2018

Notary Public Signature: Joyce M. Jackson

My commission expires on: 07/05/2021

JOYCE M. JACKSON STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

180

Agency/Board/Commission:

Rule Chapter Number(s):

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

7/23/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/31/18

Effective on: 10/29/18

Tre Hargett
Secretary of State

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SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Underground Storage Tanks
SUBJECT:	Underground Storage Tank Program
STATUTORY AUTHORITY:	The federal amendments to 40 C.F.R. Parts 280 and 281 were promulgated under the authority of $$ 2002, 9001,9002,9003,9004,9005,9006,9007,9010, and 9012 of the Resource Conservation and Recovery Act. The amendments to Chapter 0400-18-01 are made under the authority of Tennessee Code Annotated, Sections 68-215-101 et seq.
EFFECTIVE DATES:	October 13, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	On July 15, 2015, the Environmental Protection Agency (EPA) made certain revisions to the federal 1988 underground storage tank (UST) regulations and to the 1988 state program approval (SPA) regulations. These changes established federal requirements that are similar to key portions of the Energy Policy Act of 2005. Tennessee currently has state program approval, but to maintain that approval the Tennessee Petroleum Underground Storage Tanks regulations must be no less stringent than the federal regulations. Several years ago, the Underground Storage Tanks and Solid Waste Disposal Control Board amended the state rules to contain many of the new federal rules but not all, and therefore, the state rules require additional amendments in order to support continuing state program approval. These additional changes include: - Monthly walkthrough inspections; - Periodic testing of spill and overfill equipment for calibration and tightness; and - Regulation of airport hydrant systems.

This rulemaking proposes to add one amendment to the state rules not included in the federal regulations but believed to be critical to protecting the Petroleum Underground Storage Tank Fund and reflective of Tennessee Code Annotated, Section 68-215-103.

- A clarification that an "other responsible party" may be responsible for a suspected and/or confirmed release and that the responsible party may or may not be an owner or operator of the petroleum UST system. Other responsible parties include:

- The owner or operator of the petroleum site;

- The owner or operator of the tank that caused the contamination;

- Any person who intentionally caused the petroleum release; and

- Any person not directly associated with the operation of the tank or site whose negligence caused the release.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

1. TFCA does not want the proposed rulemaking package to become effective earlier than October 13, 2018, with a compliance date that is no earlier than October 13, 2021.

   Response: The Board agrees to request that the Secretary of State delay the effective date of these amendments until October 13, 2018.

2. TFCA is concerned that there may be a delay or changes to the federal requirements by the new Administration. Tennessee should be prepared for this eventuality. Therefore, TFCA recommends the following statement be added to the rules: "These rules are intended to be consistent with and no more stringent than the federal rules regulating underground storage tanks set forth at 40 C.F.R. § 280-281. The rules will take effect no earlier than October 13, 2018. To the extent that there are any pending rule revisions, delays, or court challenges under the federal rules prior to these rules taking effect, the effective date of these rules shall be extended until such date as the pending federal rules become effective".

   Response: The Board will keep up-to-date on any final federal actions regarding the federal regulations and will, at that time, evaluate the need for an amendment to these rules. Therefore, the Board declines to modify the rules to include the commenter's recommended statement. The revised federal UST regulations contained in 40 C.F.R. §§ 280 and 281 became effective October 13, 2015, providing affected entities sufficient time to prepare for the requirements.

3. TFCA requests the addition of the following sentence: "Reference to industry standards under this [Chapter] shall not impose any additional regulatory requirements not included under 40 CFR Part 280 of the UST regulations unless otherwise specified by the UST/SWDC Board."

   Response: The rules currently do not reference industry standards as contemplated by the commenter.

4. The definition of "responsible party" is in Tenn. Code Ann. § 68-215-103(17) and TFCA maintains that rulemaking should not be used to expand or change statute and recommends deleting the following from the definition:

   > "Any person whose intentional actions directly cause the release of petroleum at a petroleum site; or any person other than an employee, officer, director, principal, or shareholder of the owner or operator of the underground storage tank system or of the owner of the petroleum site, whose negligent actions directly cause the release of petroleum at a petroleum site."

   Response: The Board finds the definition of "responsible party" contained in Rule 0400-18-01-.01(4) mirrors the statutory definition of responsible party referenced. The Board added the definition of "responsible party" to the rules to be consistent with Tenn. Code Ann. § 68-215-103(17).

5. TFCA members do not own airport hydrant systems, nor does the association represent any entity that owns airport systems, so the association is not taking a position on the specifics of regulation of those tanks. However, we do not have a clear picture of which tanks systems, or how many systems, or what the tank storage capacity of airport tank hydrant systems will be admitted to the fund.

   We are quite concerned about what risk these systems might represent to the fund. Before rules are changed to admit airport hydrant systems to the fund, TFCA strongly urges TDEC to require the UST/SWDC Board to engage in a detailed analysis of the risk factor involved, including the number of systems eligible, what the fuel capacity is, and the past release history of the systems. As that has not been done to date, this rule should make clear that the rule does not allow any new tank systems previously ineligible for the fund to be admitted. Separate rulemaking should be engaged to admit any new class of tanks after a risk analysis is reviewed and approved by the board. TFCA opposes adding any new classification of tanks or tank systems to the fund without a risk analysis review by the board.

   Response: The Board does not find there is sufficient justification to modify the rulemaking package in accordance with the comment. The Board finds Rule 0400-18-01-.09(3)(c) is protective of the UST fund

by requiring a division inspection and a site check prior to allowing these systems into the fund, and the fund maximums will be the same as for all other USTs. Further, the majority of the tanks listed in Rule 0400-18-01-.17 are owned by the federal government and do not have access to the UST fund.

6. TFCA does not agree with the changes to the definitions of Class A and Class B Operator in Rule 0400-18-01-.01(4) from "any person" to "the individual". Some companies have multiple persons registered as Class A and B operators. "Any person" is clearer that this is allowable. What is the purpose of deleting "on site"? TFCA requests an explanation of the purpose of this change.

   Response: The Board finds that the revisions to the definitions of Class A and Class B Operator in Rule 0400-18-01-.01(4) were made to mirror the federal language, however, the Board finds clarification to address the commenter's concern regarding multiple persons having Class A and B Operator training is warranted. Accordingly, the word "individual" has been changed to "individual(s)" in the definitions of Class A and Class B Operator in Rule 0400-18-01-.01(4).

7. TFCA recommends the definition of "corrosion expert" in Rule 0400-18-01-.01(4) be revised by deleting the second sentence and to make the definition conform to the federal definition of "corrosion expert."

   Response: The Board finds the definition of "corrosion expert" in Rule 0400-18-01-.01(4) should be revised. The second sentence of the definition of corrosion expert contained in Rule 0400-18-01-.01(4) has been modified as follows: "Such a person shall submit documentation for review by the Division that the person has accreditation or certification as a corrosion protection specialist or a cathodic protection specialist by the National Association of Corrosion Engineers (NACE)."

8. In Rule 0400-18-01-.01(4) in the second sentence of the corrosion expert definition, add "or equivalent" to cover the any future title changes.

   Response: The Board finds that the change is justified and the definition has been modified as follows: "(CP 4 Level)" has been deleted and "Such a person shall submit documentation for review by the Division that they have accreditation or certification as a corrosion protection specialist or a cathodic protection specialist by the National Association of Corrosion Engineers (NACE) or equivalent title."

9. In the definition of containment sump, change the "and" to "or" between leaks and spills. (I am thinking that some containment is intended to catch leaks and other to catch spills, not all are intended to catch both. If I am right on that these would be excluded from the definition.)

   Response: The Board finds the definition of containment sump contained in Rule 0400-18-01-.01(4) mirrors the federal language.

10. Dispensers and dispenser systems are already regulated by the Tennessee Department of Agriculture and the Tennessee State Fire Marshall's office and local Fire Marshall's office. TFCA recommends that the definitions of "dispenser" and "dispenser system" specify that it is not the intention of the rules to cross regulate areas and equipment already regulated by another state agency.

    Response: The Board finds the suggested revisions to the definitions of "dispenser" and "dispenser system" contained in Rule 0400-18-01-.01(4) are not justified. The requirements of Chapter 0400-18-01 applicable to dispensers and dispenser systems are for the protection of human health and the environment and are not identical to the requirements placed on them by the Tennessee Department of Agriculture, the Tennessee State Fire Marshal's Office, or local Fire Marshal's Office. The Board understands that the Division does not have the intention to cross regulate equipment in the same way that it is regulated by another state agency.

11. TFCA recommends adding a definition of "form" to allow tank owners to submit their own forms provided the forms contain the correct information and is substantially similar to that provided by the Division and provided the use of a specific form is not mandated by the federal rules.

    Response: The Board finds adding a definition of "form" to Rule 0400-18-01-.01(4) is not justified. The Board acknowledges it is the Division's practice to accept alternative formats provided all of the required information is submitted. The rules, as amended, will not impact this practice.

12. TFCA recommends that the definition of "guidance" be amended to include a review and approval by the Board in order to become guidance referenced by the rules. TFCA maintains that any guidance referenced may not expand or change the underlying rule, or defer to broader definitions when specific definitions exist. TFCA further recommends that the rules disallow any guidance that: (a) imposes any substantive compliance obligations on a tank owner or operator, or other responsible party, not already expressed in the rules, (b) attempts to expand or change the scope of any of these rules, (c) is unduly burdensome, or (d) imposes an expense on, or causes an expense to be incurred by, a tank owner or operator, or other responsible party, that is disproportionate to the environmental risk. TFCA claims that there have been instances where a "reinterpretation" by guidance or memorandum has significantly changed the intent and scope of a rule and that only the Board has the authority to change or expand the intent and scope of a rule through the rulemaking process.

Response: The Board agrees to look at the definition of guidance at a future date and consider whether this definition should be revised as part of a future rulemaking. The Board acknowledges and expects the Division to adhere to TDEC's published process on the development and implementation of policies and guidance found at https://www.tn.gov/environment/about-tdec/policy-and-guidance-documents0.html.

13. TFCA recommends the deletion of the definition of "petroleum marketing firms," since there is not comparable federal definition and the definition is not used in the state rules.

Response: The Board finds the phrase "petroleum marketing firm" is not used in the rules, therefore the definition of "petroleum marketing firm" contained in Rule 0400-18-01-.01(4) should be and has been deleted.

14. TFCA requests the definition of "unmanned facility" be changed to "unattended facilities."

Response: The Board finds changing the phrase "unmanned facility" to "unattended facility" in Rule 0400-18-01-.01(4) is justified for clarification purposes and the rules have been appropriately modified.

15. TFCA believes the amendment to subparagraph (1)(b) of Rule 0400-18-01-.02 is redundant and already covered in other sections and definitions.

Response: The Board has revised Rule 0400-18-01-.02(1)(b) as follows:

> "All underground storage tank systems shall be installed in accordance with the manufacturer's installation instructions."

16. TFCA points out that the federal regulations do not eliminate ball floats in overfill equipment provided another form of overfill protection is used as the primary method of protection and recommends the rules be revised to include them. TFCA further requests that the rules clarify that the intent is to test the primary method, not the secondary method, since many tank owners use ball floats as a secondary method of overfill prevention combined with a primary method such as automatic shutoff devices or auditory alarms that allow for manual shutoff by the delivery driver.

Response: The Board finds Rule 0400-18-01-.02, as written, allows flow restrictors to be used for reasons other than meeting the overfill prevention requirement so long as the flow restrictor does not interfere with the operation of the overfill prevention equipment being used. The Board also finds that the rule as written requires only the primary method of overfill must be tested.

17. TFCA requests the removal of the new part (3)(b)5 of Rule 0400-18-01-02.

Response: The Board finds part (3)(b)5 of Rule 0400-18-01-.02 should be and has been deleted and the remainder of the subparagraph renumbered.

18. TFCA recommends amending item (3)(c)1(ii)(II) of Rule 0400-18-01-.02 to include Petroleum Marketers Association of America.

Response: The Board finds the language of item (3)(c)1(ii)(II) of Rule 0400-18-01-.02 stating "nationally recognized association" includes the Petroleum Marketers Association of America and no change to this rule is justified.

19. TFCA believes item (IV) of Rule 0400-18-01-.02(3)(c)1(ii) is duplicative and an unnecessary expansion of this rule and should be deleted. TFCA further requests this phrase "Requirements determined by the division to be no less protective of human health and the environment" be deleted wherever it appears in the rules.

Response: The Board finds item (IV) of Rule 0400-18-01-.02(3)(c)1(ii) is not duplicative or an unnecessary expansion of the rule. The Board finds the above quoted phrase will not be deleted from the Rules as this language is present in both the UST Act and the federal regulations.

20. TFCA wants an explanation of how and why subpart (4)(a)3(iv) of Rule 0400-18-01-.02 is more stringent than the federal rule.

Response: The Board finds that Rule 0400-18-01-.02(4)(a)3(iv) mirrors the federal rule and is not more stringent.

21. Define structural failure under repairs under Rule 0400-18-01-.02(7).

Response: The Board finds that adding a definition of structural failure under Rule 0400-18-01-.02(7) is not justified.

22. TFCA requests part (4)(c)1 of Rule 0400-18-01-.02 is revised by either deleting the phrase "in accordance with equipment manufacturer's specifications" or replacing that same phrase with "in accordance with corrosion specialist design."

Response: The Board finds that in order to clarify Rule 0400-18-01-.02(4)(c)(1), part (4)(c)1 of the rule is revised as follows: "All corrosion protection systems shall be operated and maintained in accordance with corrosion expert's design ..."

23. TFCA requests deleting "underground ancillary equipment that routinely contains petroleum and is in contact with the ground" from part (4)(c)1 of Rule 0400-18-01-.02 to be in compliance with federal rule. It is unfair to tank owners that have installed sumps. Tank owners should not be penalized for water in the sump.

Response: The Board finds that in order to clarify Rule 0400-18-01-.02(4)(c)(1), part (4)(c)1 of the rule is revised as follows: "All corrosion protection systems shall be operated and maintained in accordance with corrosion expert's design to continuously provide corrosion protection to the metal components of that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground."

24. TFCA requests clarification of part (4)(c)6 of Rule 0400-18-01-.02 because it lacks clarity. Specifically, clarify the phrase "unless directed to do otherwise by the Division".

Response: The Board agrees and the rule has been modified by deleting the phrase and clarifying as follows:

(I) The UST system shall be permanently closed; or

(II) Owners and/or operators shall submit a written request to the division justifying why the UST system should not be permanently closed. If the Division determines that the circumstances warrant further investigation, the Division will send a written response requiring the owner and/or operator to:

I. Tightness test the tanks and/or lines in accordance with subparagraphs (3)(b) and (4)(b) of Rule 0400-18-01-.04;

II. Test the impressed current corrosion protection system and have it recertified by a NACE Certified corrosion expert;

III. Submit document to the Division verifying that all UST systems are in current compliance with release detection requirements in Rule 0400-18-01-.04 and release prevention requirements in Rule 040018-01-.02; and

IV. Pay any outstanding tank fees and late penalties.

If the Division approves the request, the tanks and/or lines shall be tightness tested in accordance with subparagraphs (3)(b) and (4)(b) of Rule 0400-18-01-.04 no later than six months, but no sooner than three months, following the certification by the NACE Certified corrosion expert.

25. TFCA requests the following changes to subparagraph (5)(b) of Rule 0400-18-01-.02:
- Change the language in case the EPA comes up with additional compatibility flexibility in the future. Future EPA compatibility flexibility would be permitted under TN regulations with this language. EPA would only loosen compatibility requirements in future guidance rather than make it more stringent.
- Delete 3 which currently states "in accordance with guidance provided by the division;"
- Add a new 3 stating "Any option determined by the EPA Office of Underground Storage Tanks to be no less protective of human health and the environment than the options listed in parts 1 through 3 of this subparagraph"
- Revise 4 to state "Any other option...."

Response: The Board finds the suggested revisions to Rule 0400-18-01-.02(5)(b) are not justified. The federal regulation states another option determined by the implementing agency to be no less protective of human health and the environment. Further, the Board cannot delegate its rulemaking duties by including language that incorporates future revisions to the federal UST rules. If there is an action taken on the federal level, the Division will respond at that time.

26. TFCA recommends deleting Rule 0400-18-01-.02(5)(b)(4) – duplicative of "guidance".

Response: The Board finds the suggested revision to Rule 0400-18-01-.02(5)(b)4 is not duplicative of the definition of "guidance" contained in Rule 0400-18-01-.01(4). The federal rules allow states to have another option determined by the implementing agency to be no less protective of human health and the environment.

27. TFCA believes the Petroleum Marketers' Association of America (PMAA) was able to add the language "connecting equipment" to the federal rule so that simply changing the dispenser would not trigger installation of new under dispenser containment requirements. Unless you are changing out all connecting equipment, adding under dispenser containment would be very costly. TFCA wants to clarify that Rule 0400-18-01-.02(6)(e) matches the federal regulation.

Response: The Board finds that Rule 0400-18-01-.02(6)(e) mirrors the comparable federal regulation. If only the dispenser is replaced rather than the dispenser and the connecting equipment, the Board interprets Rule 0400-18-01-.02(6)(e) as not requiring installation of new under dispenser containment requirements.

28. TFCA suggests that Rule 0400-18-01-.02(7)(d)1 be reworded for clarity, to explicitly state the intent that repaired tanks that are in compliance with monitoring rules do not have to conduct a tightness test after repairs.

Response: The Board has clarified Rule 0400-18-01-.02(7)(d)1 as follows and renumbered the remaining paragraph:

(d) Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions or in accordance with guidance provided by the Division within 30 days following the date of completion of the repair.

(e) All other repairs to tanks and/or piping shall be tightness tested in accordance with subparagraphs (3)(b) and (4)(b) of Rule 0400-18-01-.04 within 30 days following the date of the completion of the repair except as provided in part 1 or 2 of this subparagraph:

1. The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in subparagraphs (3)(c) through (e) of Rule 0400-18-01-.04; however, on or after January 1, 2009, the monitoring methods in parts (3)(c)1 and (3)(d)2 of Rule 0400-18-01-.04 shall no longer meet the requirements of this rule; or

2. Another test method is used, provided that prior to use in the State of Tennessee that method is determined by the division to be no less protective of human health and the environment than the method listed in part 1 of this subparagraph.

29. Please explain the manner in which Rule 0400-18-01-.02(7)(d)1 (as modified in response to comment 28 as Rule 0400-18-01-.02(7)(e)1) differs from the federal regulations and provide information for the rational for the difference.

Response: The Board finds that the comparable federal regulation allows for release detection methods that the Board does not permit in Tennessee.

30. TFCA is concerned that the state rules will be more stringent than the federal regulations in regards to the walk through inspection in Rule 0400-18-01-.02(8).

Response: The Board finds that Rule 0400-18-01-.02(8) mirrors the comparable federal regulation and is no more stringent.

31. The commenter is unclear about whether the Rule 0400-18-01-.02(8)(a)1 option for walkthrough inspections is an ongoing requirement or one that is met by a one-time inspection. Similarly, it is somewhat ambiguous as to the frequency required by the other two options as well.

Response: The Board finds that Rule 0400-18-01-.02(8)(a)1 mirrors the comparable federal regulation and is no more stringent. Some walkthrough requirements are monthly and other requirements are annual. These requirements are explained in subparts (i) and (ii) of Rule 0400-18-01-.02(8)(a)1. Therefore, no change is needed.

32. Revise Rule 0400-18-01-.03(1)(a)1 by changing the sentence quoted below as indicated and making this substitution in every place the rules indicate that information, direction, forms, instruction, plans, proposals, notification or other like verbiage will be provided: "This information shall be submitted in a format established by the Division pursuant to guidance, and the pre-installation notification form shall be completed in accordance with guidance provided by the Division."

The intent of TFCA with this request is to ensure that direction provided to tank owners is within the boundaries of guidance and rule as established by the UST/SWDC Board.

Response: The Board declines to adopt the suggested revision to Rule 0400-18-01-.03(1)(a)1.

33. There is flexibility added to the federal regulations which allows an agency to set standards without relying on more expensive and stringent Petroleum Equipment Institute standards. TFCA would like to ensure that Rule 0400-18-01-.04(1)(a) contains and specifies this flexibility.

Response: The Board finds parts 2 through 5 of Rule 0400-18-01-.04(1)(a) contain the same flexibilities as the comparable federal regulations. The Board also finds that a "code of practice developed by a nationally recognized association or independent testing laboratory" includes the PMAA alternative test method.

34. Please explain the reason part (1)(a)5 of Rule 0400-18-01-.04 does not match the federal regulations.

Response: The Board finds the difference between Rule 0400-18-01-.04(1)(a)(5) and the comparable federal regulation is to ensure there is no additional risk to human health and the environment.

Furthermore, the language in Rule 0400-18-01-.04(1)(a)(5) is included in the preamble of the federal regulation.

35. TFCA recommends revising subparagraphs (e) and (f) of Rule 0400-18-01-.04(1) to reflect the comparable federal regulation, which requires these inspections annually.

Response: The Board is always interested in the concerns of the regulated community and welcomes discussion of this topic at future meetings.

36. Revise Rule 0400-18-01-.04(3)(d)1(ii) by replacing "Provide continuous monitoring" with "Provide periodic 30 day monitoring." The federal standard is periodic monitoring and Tennessee should mirror the federal language.

Response: The Board is always interested in the concerns of the regulated community and welcomes discussion of this topic at future meetings.

37. The commenter requests clarification as to whether the requirement for subpart (i) of Rule 0400-18-01-.04(3)(e)2 is met with the submittal of a spreadsheet with the raw data?

Response: The Board interprets Rule 0400-18-01-.04(3)(e)2(i) to permit the submission of a spreadsheet containing the raw data to satisfy the requirements of this subpart.

38. TFCA requests that TDEC allow for alternative methods to meet the requirements of Rule 0400-18-01-.04(4)(c). Specifically, an alternative low liquid level integrity method for sumps used as secondary containment and interstitial monitoring for pipes.

Response: The Board finds that Rule 0400-18-01-.04(4)(c) allows for alternative methods and no change to the rule is needed.

39. TFCA believes that double walled piping systems, installed *before the date of state adoption of regulations implementing requirements of the federal Energy Act of 2005*, do not require secondary containment and interstitial monitoring. Instead, owner/operators of such systems may choose to perform annual line tightness testing as the method of piping release detection and the containment sump and sensor would not require periodic testing. Double walled piping did not require secondary containment and interstitial monitoring before the Energy Act of 2005 mandated double walled piping. Tennessee's proposed regulations should be changed so that double walled piping installed before Tennessee implemented the double walled mandate under the Energy Act of 2005 can use annual line leak tests for release detection instead of interstitial monitoring. This way containment sumps will not act as the primary release detection method and will not be required to undergo costly three year testing. TFCA requests confirmation that the proposed rule conforms to this.

Response: The Board finds that Rule 0400-18-01-.04(4)(c)1(iv)(I) allows for double walled piping systems, installed before the July 24, 2007, deadline, to use another method of release detection, and no change is needed.

40. TFCA is concerned that double walled piping is required by these amendments to be continuously monitored regardless of the date of installation. TFCA suggested that subparagraph (4)(c) of Rule 0400-18-01-.04 be revised to clarify that double walled piping installed before implementation of the double wall mandate under the Energy Act of 2005 allows the use of annual line leak tests for leak detection instead of interstitial monitoring.

Response: The Board finds the requested change to Rule 0400-18-01-.04(4)(c) is not justified. Paragraph (4) of Rule 0400-18-01-.04 includes the different available methods of release detection for piping, and subparagraph (2)(b) of Rule 0400-18-01-.02 provides additional clarification.

41. Revise Rule 0400-18-01-.04(4)(c)(1)(ii) by replacing "Provide continuous monitoring" with "Provide periodic 30 day monitoring." The federal standard is periodic monitoring and Tennessee should mirror the federal language.

Response: The Board agrees with the concern of the commenter and for clarification has changed the rule as follows:

(ii) Operate continuously as designed, and provide 30 day periodic testing;

42. TFCA seeks clarification that Rule 0400-18-01-.04(4)(c)1(iv)(I)II states that double walled containment sumps with "periodic" monitoring of the integrity of both the inner and outer wall is exempt from the three year testing requirement. The federal regulations do not require testing for periodically monitored double walled sumps.

Response: The Board finds that testing once every three years is not required if the integrity of double walled sumps are continuously monitored. For clarification the rule has been revised as follows:

II. The containment sumps used for interstitial monitoring of piping which are single walled or double walled with a dry interstice and periodically monitored are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

A. Requirements developed by the manufacturer (Note: Owners and/or operators may use this option only if the manufacturer has developed requirements);

B. Code of practice developed by a nationally recognized association or independent testing laboratory;

C. Guidance provided by the Division; or

D. Requirements determined by the Division to be no less protective of human health and the environment than the options listed in sections A and B of this subitem.

III. Containment sumps which are double walled and constructed so that the inner and outer walls are continuously monitored by interstitial sensors using brine solution or vacuum do not require testing.

43. TFCA requests that Rule 0400-18-01-.04(4)(c)1(iv)(I)II be revised to allow the PMAA Alternative Test Method for Containment Sumps. Walmart requested changing this rule to state that an acceptable test measure would be to fill the sump to the level that would activate the sensor.

Response: The Board finds the requested changes are not justified. The phrase "nationally recognized association" includes PMAA and that the phrase "code of practice" includes the PMAA's alternative test method.

44. The commenter(s) requested that section D of Rule 0400-18-01-.04(4)(c)1(iv)(I)II be deleted as being duplicative of section C of Rule 0400-18-01-.04(4)(c)1(iv)(I)II.

Response: The Board finds the requested deletion is not justified. The Board finds that section D of 0400-18-01-.04(4)(c)1(iv)(I)II is not duplicative of section C of the same rule. As stated by EPA in the summary published in Federal Register Vol. 80 No. 135 Wednesday, July 15, 2015, "EPA is providing implementing agencies flexibility to allow other methods they determine to be as protective of human health and the environment as the manufacturer's requirements or a code of practice."

45. Add "upon request" to suspected release under 0400-18-01-.05(1)(a)3. Monitoring result.

Response: The Board finds that the suggested change to Rule 0400-18-01-.05(1)(a)3 is not justified.

46. The federal regulations do not require containment sump testing if it is double walled and the interstitial areas are "periodically" monitored. TFCA would like to confirm that this will be in compliance with the federal regulations.

Response: The Board finds that testing once every three years is not required if the integrity of double walled sumps are continuously monitored. The Board agrees that this is in compliance with the federal regulations.

47. The commenter requests an additional sentence be added to subparagraph (1)(a) of Rule 0400-18-01-.07 to read "Except for any UST system that is empty throughout its temporary closure period.

Response: The Board finds the requested change would make the rule less stringent than the federal regulations.

48. Please explain how subparagraphs (c) and (d) of Rule 0400-18-01-.07(1) are different from the federal regulation and explain the rational for the difference. TFCA requests that the section on testing required be better defined to reflect requirements in the CFR. With regard to Rule 0400-18-01-.07(1)(c), the Commenter concurs with the TDEC analysis that indefinite temporarily out of service (TOS) tanks are problematic and points out that there are impediments to the proposed requirement for closure of some TOS tanks.

Response: The Board finds that the comment inaccurately states the suggested revision to Rule 0400-18-01-.07(1)(c) and (d) requires closure of tanks that have been TOS for twelve months or more. However, the Board finds that further discussion is warranted and is withdrawing this from the current rulemaking package for further discussion with TFCA.

49. The commenter requests that Rule 0400-18-01-.08(2)(d) be revised to not require tanks listed in Rule 0400-18-01-.17 to comply with Rule 0400-18-01-.08 until three years after October 13, 2018.

Response: The Board finds the requested change is not justified.

50. TFCA requests that Rule 0400-18-01-.09(5)(g) be revised to include the statement that other payments do not include payments for fund deductibles or coverage for any fund ineligible expenses, or expenses not covered by the UST fund.

Response: Upon review, the Board finds that the rule is clear that the Commissioner will authorize disbursement from the fund for fund eligible costs even if the owner and/or operator or petroleum site owner has insurance to cover fund deductibles and/or fund ineligible expenses.

51. TFCA recommends the revisions to Rule 0400-18-01-.09(6)(d)2 be withdrawn. There are new methods, new technology and new problems to be resolved by the division. TFCA urges the division and the UST/SWDC Board to re-examine the criteria for areas where it could be expanded.

Response: The Board withdraws the changes to Rule 0400-18-01-.09(6)(d)2.

52. TFCA understands the considerations of financial savings to the fund and environmental benefit that went into the creation of paragraph (7) of Rule 0400-18-01-.09 several years ago. TFCA strongly recommends that the division and the UST/SWDC Board promulgate additional rules and/or establish guidelines for the management of the program and criteria for qualification. TFCA believes this will improve the understanding of the program by the regulated community and assist the division in implementation.

Response: The Board is always interested in the concerns of the regulated community and welcomes discussion of this topic at future meetings.

53. TFCA requested clarification of Rule 0400-18-01-.09(15) regarding the review committee. Shouldn't the review committee requirements be listed in statute? TFCA recommends that the rule specify a list of types of persons who will be chosen to be on the review committee, how many persons will be on the committee, what entity will choose the committee, and what the term of office is.

Response: The Board finds that Tenn. Code Ann. § 68-215-107 gives the Board authority to promulgate rules that are necessary or desirable to implement the Act as well as to provide conditions for fund eligibility and coverage of releases under Tenn. Code Ann. § 68-215-111. Thus, rules have been promulgated requiring the use of division approved contractors in order to receive fund coverage. Rule

0400-18-01-.09(15) sets forth the approval and removal process for contractors. The Board welcomes discussion of this topic at future meetings.

54. TFCA recommended keeping the 60-day guideline for appeal in Rule 0400-18-01-.09(15)(d)10.

Response: The Board finds that the 30-day deadline for appeal is set in Tenn. Code Ann. § 68-215-123.

55. Under the topic, "UST Sump Test Water Characterization And Disposal" within the Q&A, EPA provides multiple references indicating the reuse of test water is permissible. Walmart strongly recommends the reuse of test water to support conservation goals, reduce potentially hazardous waste generation, and reduce the burden of increased costs on the industry. Walmart is in discussions with a third party service provider to develop a testing approach incorporating a "milk- run" schedule in which it would only service Walmart (or Sam's Club) locations during the milk-run. In this approach, test water will be introduced to sumps for site testing, and at the conclusion of the test, the water will be placed into a mobile tank and transported to the next Walmart test site.

Response: The Board finds that this request is outside the scope of this rulemaking and recommends the commenter consult with the Division of Solid Waste Management for the proper handling of this material.

56. In the Q&A, EPA also provides additional direction, under the "UST Sump Test Water Characterization and Disposal" topic, that test water can be cleaned or filtered while the water is being used/reused to test multiple sumps. Specifically, the Q&A states *"A testing contractor or UST facility owner and operator could potentially reuse the water over and over again, especially if the test water is filtered in between uses to remove any free or dissolved petroleum. When the tester decides not to reuse the water, it then becomes a waste, must be characterized, and either properly disposed or determined if it can be reclaimed."* Walmart recommends the approval of filtration, absorption, or enzymatic cleaning agents to remove and/or reduce the petroleum constituents to further prolong the test water life cycle. Walmart also agrees with EPA that a waste determination would not need to be made until the completion of the testing cycle. The testing contractor who determines when to remove the water from service should be considered the "generator" of the test water.

Response: The Board finds that this request is outside the scope of this rulemaking and recommends the commenter consult with the Division of Solid Waste Management for the proper handling of this material.

57. The commenter requested TDEC consider adopting the UL1856 Outline for Underground Fuel Tank Internal Retrofit Systems Standard and incorporating it into the UST Rules.

Response: The Board finds the suggested change is not justified.

58. We understand that some of the comments you have received seek changes to parts of the rules that were not proposed to be changed in the Notice of Rulemaking Hearing. Under the Uniform Administrative Procedures Act, Section 4-5-203(c), state agencies may not make changes that are outside the scope of the Rulemaking Notice without giving the public notice and an opportunity to comment on the new changes. Therefore, if the Division is going to make changes outside the scope of the Notice, you must do a new Notice of Rulemaking Hearing.

Response: The Board finds that the public notice adequately informed the public that all of Chapter 0400-18-01 fell under the scope of the rules to be considered, and thus, any modifications to this Chapter fall within the scope of the rulemaking.

59. We also understand that one of the comments made was that the rules be no more stringent than EPA's rules. We strongly disagree that the UST rules should never be more stringent than EPA's. When there is a sound basis for being more stringent, it is vital that Tennessee's program do so to protect public health and safety and the environment.

Response: The Board finds the UST Rules are protective of human health and the environment.

60. One specific area we understand TFCA has asked to be changed is to allow vapor monitoring and groundwater monitoring as methods of release detection. The purpose of release detection should be to find out if there is a release before it contaminates the environment. By the time the release shows up in groundwater or vapors, the damage has been done. As well as failing to protect the public and the environment, this would make clean-ups more expensive, since remediating ground water costs much more than only removing soil, irresponsibly depleting the UST Fund.

Response: The Board finds Rule 0400-18-01-.04 does not allow vapor monitoring or groundwater monitoring as release detection methods.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

Any small business that owns underground storage tanks would be subject to the proposed rule. EPA per facility per year cost estimate is $715.00.

(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.

Tank owners and/or operators would be required to keep monthly and annual walkthrough records and testing of spill and overfill equipment records. A basic knowledge of underground storage tanks would be the only professional skills needed for the preparation of the report or record.

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

Other than the cost estimate in (1), there should be no significant effect on impacted small businesses and consumers.

(4) A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.

On July 15, 2015, the Environmental Protection Agency (EPA) made certain revisions to the federal 1988 underground storage tank (UST) regulations and to the 1988 state program approval (SPA) regulations. These changes established federal requirements that are similar to key portions of the Energy Policy Act of 2005. Tennessee currently has state program approval, but to maintain that approval the Tennessee Petroleum Underground Storage Tanks regulations must be no less stringent than the federal regulations. Therefore, there are no other alternative methods of achieving the purpose or objective of the proposed rule. If Tennessee did not have approval, EPA would enforce the requirements in the rules.

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

The proposed rule is consistent with the federal counterparts.

(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.

In order for the state to maintain state program approval, the Tennessee Petroleum Underground Storage Tanks rules must be no less stringent than the federal regulations. The federal rule does not allow exemption for small businesses. Therefore, small businesses cannot be exempted from the proposed rule.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The Board anticipates that these rules will have a projected impact on local governments that own or operate petroleum underground storage tanks.

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;

On July 15, 2015, the Environmental Protection Agency (EPA) made certain revisions to the federal 1988 underground storage tank (UST) regulations and to the 1988 state program approval (SPA) regulations. These changes established federal requirements that are similar to key portions of the Energy Policy Act of 2005. Tennessee currently has state program approval, but to maintain that approval the Tennessee Petroleum Underground Storage Tanks regulations must be no less stringent than the federal regulations. Several years ago, the Underground Storage Tanks and Solid Waste Disposal Control Board amended the state rules to contain many of the new federal rules but not all, and therefore, the state rules require additional amendments in order to support continuing state program approval. These additional changes include:

- monthly walkthrough inspections;
- periodic testing of spill and overfill equipment for calibration and tightness; and
- regulation of airport hydrant systems.

This rulemaking proposes to add one amendment to the state rules not included in the federal regulations but believed to be critical to protecting the Petroleum Underground Storage Tank Fund and reflective of Tenn. Code Ann. § 68-215-103.

- A clarification that an "other responsible party" may be responsible for a suspected and/or confirmed release and that the responsible party may or may not be an owner or operator of the petroleum UST system. Other responsible parties include:
  - the owner or operator of the petroleum site;
  - the owner or operator of the tank that caused the contamination;
  - any person who intentionally caused the petroleum release; and
  - any person not directly associated with the operation of the tank or site whose negligence caused the release.

(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 federal amendments to 40 C.F.R. Parts 280 and 281 were promulgated under the authority of §§ 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, 9010, and 9012 of the Resource Conservation and Recovery Act. The amendments to Chapter 0400-18-01 are made under the authority of Tenn. Code Ann. §§ 68-215-101 et seq.

(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 directly impact owners and operators of petroleum underground storage tanks. Comments were received from Tennessee Fuel and Convenience Store Association ("TFCA"), Walmart, and the Tennessee Environmental Council. The Board believes these entities support the Department receiving state program approval from the EPA.

(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;

The Board is not aware of any.

(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 decrease or increase of state and local government revenues or expenditures.

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

Rhonda Key William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 12th Floor Nashville, Tennessee 37243 615-532-0989 Rhonda.Key@tn.gov

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

Mallorie Kerby Assistant General Counsel 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 Mallorie.Kerby@tn.gov

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

The Board is not aware of any additional relevant information requested by the committee.

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Sequence Number: 07-01-18
Rule ID(s): 7173
File Date: 7/3/18
Effective Date: 10/13/18

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:	Underground Storage Tanks
Contact Person:	Rhonda Key
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 12th Floor Nashville, Tennessee
Zip:	37243
Phone:	615-532-0989
Email:	Rhonda.Key@tn.gov

Revision Type (check all that apply):
X Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0400-18-01	Underground Storage Tank Program
Rule Number	**Rule Title**
0400-18-01-.01	Program Scope, Definitions, and Proprietary Information
0400-18-01-.02	UST System: Installation and Operation
0400-18-01-.03	Notification, Reporting, and Record Keeping
0400-18-01-.04	Release Detection
0400-18-01-.05	Release Reporting, Investigation, and Confirmation
0400-18-01-.06	Petroleum Release Response, Remediation, and Risk Management
0400-18-01-.07	Out-of-Service UST Systems and Closure
0400-18-01-.08	Financial Responsibility
0400-18-01-.09	Petroleum Underground Storage Tank Fund
0400-18-01-.10	Fee Collection
0400-18-01-.11	Appeals
0400-18-01-.12	Indicia of Ownership
0400-18-01-.13	Voluntary Registry
0400-18-01-.14	Record Retention by the Division
0400-18-01-.15	Petroleum Product Delivery
0400-18-01-.16	Certified Operator Program

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DIVISION

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-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 0400-18-01
Underground Storage Tank Program

Amendments

Chapter 0400-18-01 Underground Storage Tank Program is amended by deleting it in its entirety and substituting instead the following:

Chapter 0400-18-01
Underground Storage Tank Program

Table of Contents

0400-18-01-.01 Program Scope, Definitions and Proprietary Information
0400-18-01-.02 UST Systems: Installation and Operation
0400-18-01-.03 Notification, Reporting and Record Keeping
0400-18-01-.04 Release Detection
0400-18-01-.05 Release Reporting, Investigation, and Confirmation
0400-18-01-.06 Petroleum Release Response, Remediation and Risk Management
0400-18-01-.07 Out-of-Service UST Systems and Closure
0400-18-01-.08 Financial Responsibility
0400-18-01-.09 Petroleum Underground Storage Tank Fund
0400-18-01-.10 Fee Collection
0400-18-01-.11 Appeals
0400-18-01-.12 Indicia of Ownership
0400-18-01-.13 ~~Voluntary Registry~~ Reserved
0400-18-01-.14 Record Retention by the Division
0400-18-01-.15 Petroleum Product Delivery
0400-18-01-.16 Certified Operator Program
0400-18-01-.17 UST Systems with Field-Constructed Tanks and Airport Hydrant Systems

0400-18-01-.01 Program Scope, Definitions and Proprietary Information.

(1) Program scope: general.

(a) Purpose, scope, and applicability.

This rule provides definitions of terms, general standards and procedures, as well as overview information applicable to these rules.

(b) Use of number and gender.

As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders;

2. Words in the singular include the plural; and

3. Words in the plural include the singular.

(c) Rule structure.

These rules are organized, numbered, and referenced according to the following outline form:

(1) paragraph

(a) subparagraph

1. part

(i) subpart

(I) item

I. subitem

A. section

(A) subsection

(2) Program scope: applicability.

(a) The requirements of this chapter apply to all owners and/or operators of an UST system as defined in paragraph (4) of this rule except as otherwise provided in ~~subparagraph~~ subparagraphs (b) and (c) of this paragraph. Any UST systems listed in ~~subparagraph (b)~~ part (b)1 of this paragraph shall meet the requirements of ~~paragraph (3) of this rule~~ part (b)2 of this paragraph.

1. UST systems that store fuel solely for use by emergency power generators must meet the requirements of this chapter; provided that the release detection requirements in Rule 0400-18-01-.04 apply to:

(i) Those systems installed on or before the effective date of this rule no later than three years after the effective date of this rule; provided, that those systems may comply prior to such date; and

(ii) Those systems installed after the effective date of this rule at installation.

2. Airport hydrant fuel distribution systems and UST systems with field-constructed tanks must meet the requirements in Rule 0400-18-01-.17.

(b) ~~Deferrals.~~ Partial Exclusions.

~~Rules 0400-18-01-.02 through 0400-18-01-.05 and 0400-18-01-.07 through 0400-18-01-.10 and 0400-18-01-.16 do not apply to any of the following types of UST systems:~~

1. The following UST systems are excluded from Rules 0400-18-01-.02 through 0400-18-01-.05 and 0400-18-01-.07 through 0400-18-01-.10, 0400-18-01-.16, and 0400-18-01-.17:

(i) Wastewater treatment tank systems not excluded by part (c)2 of this paragraph;

~~4.~~(ii) ~~Airport~~ Aboveground storage tanks associated with airport hydrant fuel distribution systems regulated under Rule 0400-18-01-.17;

~~5.~~(iii) Aboveground storage tanks associated with UST systems with field-constructed tanks regulated under Rule 0400-18-01-.17;

~~2.~~(iv) Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following); and

~~3.~~(v) Any UST system that is part of an emergency generator system at nuclear power generation facilities ~~regulated~~ licensed by the Nuclear Regulatory Commission

~~under~~ and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR part 50~~, Appendix A;~~.

~~(c) Deferrals – Emergency generator UST systems.~~

~~1. Except as provided for in part 2 of this subparagraph, release detection requirements in Rule 0400-18-01-.04 do not apply to any UST system that stores fuel solely for use by emergency power generators.~~

~~2. New tanks and piping components of an emergency generator UST system installed on or after July 24, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with subparagraphs (2)(a) and (b) and paragraph (6) of Rule 0400-18-01-.02. However, if the new or replacement piping meets the requirements for safe suction piping set forth in part (2)(b)2 of Rule 0400-18-01-.04, the piping components do not have to be secondarily contained.~~

~~(3) Interim prohibition for deferred UST systems.~~

2. Installation requirements for partially excluded UST systems.

~~(a)~~(i) No person may install ~~an~~ a UST system for the purpose of storing petroleum unless the UST system (whether of single or double-wall construction):

~~1.~~(I) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

~~2.~~(II) Is cathodically protected against corrosion, constructed of non-corrodible material, steel clad with a non-corrodible material, or designed in a manner to prevent the release or threatened release of any petroleum; and

~~3.~~(III) Is constructed or lined with material that is compatible with the petroleum.

~~(b)~~(ii) Notwithstanding ~~subparagraph (a)~~ subpart (i) of this ~~paragraph~~ part, ~~an~~ a UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and/or operators shall maintain records that demonstrate compliance with the requirements of this ~~subparagraph~~ subpart for the remaining life of the tank.

(c) Exclusions. The following UST systems are excluded from the requirements of this chapter:

1. Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and petroleum substances;

~~1.~~2. Any wastewater treatment tank ~~systems~~ system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the Clean Water Act;

~~6.~~3. Equipment or machinery that contains petroleum for operational purposes such as hydraulic lift tanks and electrical equipment tanks;

~~7.~~4. Any UST system whose capacity is 110 gallons or less;

~~8.~~5. Any UST system that contains a de minimis concentration of petroleum; ~~or~~ and

~~9.~~6. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(3) Reserved.

(4) Definitions.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the ~~above-ground~~ aboveground portion of ~~an~~ a UST system and aboveground releases associated with overfills and transfer operations as the petroleum moves to or from ~~an~~ a UST system.

"Access" means the ability and opportunity to gain knowledge of proprietary information in any manner whatsoever.

"Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner and/or operator.

"Airport hydrant fuel distribution system" or "airport hydrant system" means a UST system which fuels aircraft and operates under high pressure with large diameter piping that typically terminates into one or more hydrants (fill stands). The airport hydrant system begins where fuel enters one or more tanks from an external source such as a pipeline, barge, rail car, or other motor fuel carrier.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of petroleum to and from ~~an~~ a UST.

"Annual aggregate" means the total amount of financial responsibility available to cover all obligations that might occur in one year.

"Assets" means properties, tangible or intangible, owned by a business enterprise that have monetary value.

"Authorized person" means any person, including members of the ~~board~~ Board, authorized to receive proprietary information. Except for members of the ~~board~~ Board, such authorization ~~shall~~ must be granted in writing by the ~~commissioner~~ Commissioner.

"Bedrock" means any rock, solid and continuous, which is exposed at the surface of the earth or overlain by unconsolidated material.

"~~Below-ground~~ Belowground release" means any release to the subsurface of the land or to ~~ground-water~~ groundwater. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the petroleum moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Board" means ~~Tennessee Petroleum~~ the Underground Storage Tanks and Solid Waste Disposal Control Board as established ~~under T.C.A. § 68-215-101 et seq~~ by T.C.A. § 68-211-111.

"Bodily injury" means those bodily injuries caused by a release of petroleum from ~~an~~ a UST system for which Tennessee law allows recovery.

"Bond rating agency" means a financial service entity, such as Moody's and Standard and Poor's, which provide ratings with respect to the overall quality of corporately issued bonds as measured by the safety of the principal and the interest. The ratings are used as indicators of a business's ability to self-assure.

"Borrower", "debtor" or "obligor" is a person whose petroleum underground storage tank or UST system is encumbered by a security interest. These terms are used interchangeably.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons shall have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Caused" in the context of third party claims means that degree of causation required by Tennessee law to allow recovery for damages caused by a release of petroleum from ~~an~~ a UST system.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Chemicals of concern" means those chemicals that have been designated as such by the ~~division~~ Division in a chemicals of concern list. The chemicals of concern shall be chemicals that are constituents of or result from the degradation of petroleum product(s) and/or additives released from regulated petroleum underground storage tanks. The list will include those chemicals with the highest risk to human health or the environment. The chemicals of concern for diesel fuel will be different from the chemicals of concern for gasoline.

"Chief executive officer" means:

1. In the case of a company or corporation, the highest ranking executive officer within a company or corporation who has responsibility for overall management of its day-to-day affairs under the supervision of a board of commissioners. The term chief executive officer may indicate an officer with dual responsibilities such as chief executive officer and president or chairman of the board and chief executive officer. The chief executive officer makes recommendations to the board on business policy and proposal but can also take specific actions on subsidiary matters. The chief executive officer also appoints most other officers of the corporation with the approval of the board of commissioners.

2. In the case of local government tank owners and operators or guarantors, the individual with the overall authority and responsibility for the collection, disbursement and use of funds by the local government.

"Class A Operator" means ~~any person having~~ the individual(s) that has primary responsibility for ~~on-site~~ operation and maintenance of underground storage tank systems and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 0400-18-01-.16.

"Class B Operator" means ~~any person having~~ the individual(s) that has daily ~~on-site~~ responsibility for the operation and maintenance of underground storage tank systems and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 0400-18-01-.16.

"Class C Operator" means any on-site employee ~~having~~ that has primary responsibility for initially addressing emergencies presented by a spill or release from an underground storage tank system and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule 0400-18-01-.16.

"Commissioner" means Commissioner of Environment and Conservation, ~~his~~ the Commissioner's authorized representatives, or in the event of his absence or a vacancy in the commissioner's office, the Deputy Commissioner.

"Compartmentalized tank" means an underground storage tank that consists of two or more tank compartments, which are separated from each other by a wall or bulkhead.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which petroleum flows. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumption" with respect to heating oil means consumed on the premises where stored.

"Containment sump" means a liquid-tight ~~compartment that provides containment of any product releases. Containment sumps are typically used underneath product dispensers and/or for enclosing the submersible turbine pump and piping connections at the top of an underground storage tank~~ container that protects the environment by containing leaks and spills of petroleum from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (tank top or submersible turbine pump sump), underneath the dispenser (under-dispenser containment sump), or at the other points in the piping run (transition or intermediate sump).

"Continuous in-tank leak detection system" means a release detection system that allows an underground storage tank to operate continuously or nearly continuously without interruption for release detection tests. However, the system may default to a standard or shut down test, requiring the tank to be taken briefly out of service at the end of the month if sufficient good data has not been obtained over the month. These methods include continuous automatic tank gauging systems and continual reconciliation systems.

"Corrective action" means any activity, including but not limited to evaluation, planning, design, engineering, construction, and any ancillary service, which is carried out in response to any discharge or release of petroleum.

"Corrective action contractor" or "CAC" means a person who is carrying out any corrective action, including a person retained or hired by such person to provide services relating to a corrective action.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall submit documentation for review by the ~~division~~ Division that ~~they have~~ the person has accreditation or certification as a ~~corrosion specialist~~ corrosion protection specialist or ~~senior corrosion technologist~~ cathodic protection specialist by the National Association of Corrosion Engineers (NACE) or equivalent title ~~or have education and a minimum of four (4) years responsible charge work experience in the corrosion field~~. If it is determined by the ~~division~~ Division that a person has sufficient experience and education to be qualified to take responsible charge in corrosion control of buried or submerged metal piping systems and metal tanks, then that person shall be classified by the ~~division~~ Division as a corrosion expert for the purposes of this rule.

"Damages" in the context of third party claims means the value or cost of bodily injury or property damage caused by the release of petroleum from ~~an~~ a UST system as determined by using methods allowed under Tennessee law.

"Date of release" means the earliest date that proof of a release exists. This will be the date a release is reported to or discovered by the ~~division~~ Division unless an earlier date is determined during the investigation of the release.

"De minimis" means very low concentrations of petroleum.

"Department" means the Tennessee Department of Environment and Conservation.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (for example, tank from piping).

"Director" means the director of the ~~division~~ Division.

"Dispenser" means ~~a device~~ equipment located aboveground that ~~discharges~~ dispenses petroleum products from underground storage ~~tanks~~ tank systems ~~into tanks in motorized vehicles, equipment tanks, or other containers, while simultaneously measuring the amount of petroleum dispensed~~.

"Dispenser system" means the dispenser and the equipment necessary to connect the dispenser to the underground storage tank system including the flex connector and shear valves.

"Division" means the division designated by the ~~commissioner of the Department of Environment and Conservation~~ Commissioner as the agency to implement the Underground Storage Tank Program in Tennessee.

"Document" means any recorded information regardless of its physical form or characteristics, including, but not limited to, written or printed material; processing cards and tapes; maps; charts; paintings; drawings; engravings; sketches; working papers and notes; reproductions of such things by any means or process; and sound, voice, or electronic recordings in any form.

"Document control number" means the unique number assigned by the document control officer to any document containing proprietary information.

"Document control officer" means the individual authorized by the ~~commissioner~~ Commissioner in writing to be responsible for all incoming and outgoing documents identified as containing proprietary information.

"Drinking water supply" means any aquifer or water source whose chemical characteristics meet the primary and secondary drinking water standards as defined under Chapter ~~1200-05-01~~ 0400-45-01 and that provides a yield of at least one-half gallon per minute. ~~This~~ Drinking water supply shall also include any water supply used for drinking by the citizens of the state.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Engineering control" means a modification to a site to reduce or eliminate the potential for migration of, and exposure to, chemicals of concern. An engineering control can be used to eliminate a pathway to reduce future risk. Engineering controls may include, but are not limited to: physical or hydraulic control measures, caps, liners, point-of-use treatments, slurry walls or vapor barriers.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure pathway" means the course a chemical(s) of concern takes from a source area(s) to a receptor. Each exposure pathway includes a source area(s), a point of exposure, and an exposure route, and usually a transport/exposure medium or media.

"Face amount" or "face value" means the total amount the insurer is obligated to pay under an insurance policy.

"Facility is operating", for purposes of Rule 0400-18-01-.16, means normal or extended business hours when product can be dispensed from UST systems. This does not include periods when a facility is closed for business, nor when a facility is closed, but deliveries can be made to UST systems.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank shall be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Field-constructed tank" means a tank constructed in the field. For example, a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field is considered field-constructed.

"Financial reporting year" means the annual period for which a business compiles its performance data for the purpose of the assessment of the business as "a going concern" by its managers, investors, creditors, and government regulators.

"Financial statements" means financial performance data compiled by the subject business that have undergone the review and evaluation of an independent certified public accountant for the purpose of assessing the conformity of the business' accounting practices with generally accepted accounting principles (GAAP). The independent Certified Public Accountant (CPA), issues a statement summarizing his/her assessment or findings.

"Financial strength ratios" mean a financial comparison of the relationship of any two or more performance indicators of a business with the industry standard for the relationship between such performance indicators. The calculation of these ratios and their subsequent comparison to industry norms can be helpful in assessing the ability of a business to provide self-assurance to meet the financial assurance requirements of this rule. ~~These regulations utilize~~ This chapter utilizes the following three ratios to evaluate a business's ability to self-assure:

1. "Total liabilities to net worth" means a ratio that expresses the relationship between capital contributed by creditors and capital contributed by owners. If debt is substantial relative to equity, it means that a relatively small decrease in the value of assets could wipe out the owner's equity and remove protection from creditors who could force the business into bankruptcy.

2. "Net income, depreciation, depletion and amortization to total liabilities" means a ratio that expresses the ability of a business to service its debt, long term and short term, from cash flow from business operations without borrowing money for the repayment of debt.

3. "Current assets to current liabilities" means a ratio that is used to measure the short term solvency of a business. It is the most commonly used ratio and indicates the extent to which the claims of short-term creditors are covered by assets expected to be converted to cash in a period roughly corresponding to the maturity of the claim.

"Flow-through process tank" means a tank whose principle use is not for storage but is primarily used in the manufacture of a product or in a treatment process. Flow-through process tanks form an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Foreclosure" or "foreclosure and its equivalent" means purchase at a foreclosure sale, acquisition or assignment of title in lieu of foreclosure, termination of a lease or other repossession, acquisition of right to title or possession, an agreement in satisfaction of the obligation, or any other formal or informal manner (whether pursuant to law under warranties, covenants, conditions, representations or promise from the borrower) by which the holder acquires title to or possession of secured property.

"Free product" refers to petroleum that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water).

"Fund" means the petroleum underground storage tank fund established under T.C.A. § 68-215-101 et seq. unless the context clearly indicates otherwise.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"~~Ground water~~ Groundwater" means water below the land surface in a zone of saturation.

"Guidance" means written guidelines and/or guidance documents provided by the division. Such guidance is not mandatory, but provides information and instruction for achieving regulatory compliance. Other approaches to achieving regulatory compliance may be used in lieu of guidance provided by the ~~division~~ Division, if those other approaches are proposed, in writing, by tank owners and/or operators for review and approval by the ~~division~~ Division prior to implementation.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Holder" is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum underground storage tank or UST system. A holder includes the initial holder or purchaser (such as a loan originator), any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market), any subsequent assignee, transferee or purchaser from a holder, guarantor of an obligation, surety or any other person who holds ownership who acts on behalf of or for the benefit of a holder.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and/or other similar devices.

"Impacted drinking water" means a water supply that contains chemicals of concern at levels that do or potentially may place human health at risk and that is being used for human consumption, and/or other human domestic use including, but not limited to, bathing, cooking, and dishwashing.

"Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest or evidence of an interest in real or personal property securing a loan or other obligations, including any legal or equitable title to real or personal property acquired incident to foreclosure and its equivalents. Evidence of such interests includes, but is not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (herein "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure, and its equivalents. Evidence of such interests also includes assignments, pledges or other rights to or other forms of encumbrances against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

"Information" means knowledge which can be communicated by any means.

"Installation" is the process of constructing a UST system for operation.

"Institutional control" means a legal means of limiting exposure to chemicals of concern at a petroleum site with a confirmed release of petroleum.

"Instruction" in the context of proprietary information means fully informing individuals in writing of their responsibilities for safeguarding proprietary information and the security procedures they shall follow.

"Legal defense cost" means any expense that an owner or operator, petroleum site owner, or provider of financial assurance incurs in defending against claims or actions brought:

1. By EPA or a state to require corrective action or to recover the costs of corrective action;

2. By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or

3. By any person to enforce the terms of a financial assurance mechanism.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing petroleum.

"Month" means from the first day to the last day of the calendar month.

"Monthly" means at least once during a calendar month.

"Monitoring well" means a hole drilled into the earth, by boring or otherwise, constructed for the primary purpose of obtaining information on the elevation or physical, chemical, radiological or biological characteristics of the ~~ground water~~ groundwater and/or for the recovery of ~~ground water~~ groundwater for treatment.

"Motor fuel" means ~~petroleum or a petroleum-based substance that is~~ a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, biodiesel, ultra low sulphur diesel, or any ~~grade of gasohol, and is typically used in the operation of a motor engine~~ blend containing one or more of these substances (for example: motor gasoline blended with alcohol).

"Noncommercial purposes", with respect to motor fuel, means not for resale.

"Occurrence" means the discovery of environmental contamination at a specific time and date, due to the release of petroleum from petroleum underground storage tanks.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operation" means the use, storage, filling, or dispensing of petroleum contained in a petroleum underground storage tank or an underground storage tank (UST) system.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Rule 0400-18-01-.07.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Operator Training", for purposes of Rule 0400-18-01-.16, means a program recognized by the ~~division~~ Division as meeting the specific requirements for each operator class as published by EPA in the Final Grant Guidelines To States For Implementing The Operator Training Provision Of The Energy Policy Act Of 2005, August, 2007.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the petroleum to the environment.

"Owner" means:

1. In the case of ~~an~~ a UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of petroleum; and

2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Owner or operator," in the context of financial responsibility, when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Penal sum" means a sum to be paid as a penalty especially under the terms of a bond.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this state or any other state or country.

"Petroleum" means crude oil or any fraction thereof that is liquid at standard temperature and pressure (sixty degrees (60°) Fahrenheit and 14.7 pounds per square inch absolute). The term petroleum includes but is not limited to petroleum and petroleum based substances comprised of a complex blend of hydrocarbons~~ derived from crude oil through processes of separation, conversion, upgrading, and finishing~~, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

~~"Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.~~

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other hazardous substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation, but does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as a protection of a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why ownership indicia are held shall be for protection of a security interest.

"Property damage" means those type damages to property caused by the release of petroleum from an UST system for which Tennessee law allows recovery.

"Property improvements" in the context of fund reimbursement includes, but is not limited to, petroleum dispensing equipment, canopies, signage, buildings and outbuildings, underground storage tanks, asphalt, and concrete.

"Proprietary information" means any confidential information that relates to a trade secret, product, apparatus, process, operation, style of work, or financial information which is owned (not necessarily exclusively) by or licensed to a person and claimed by that person to be proprietary and confidential; provided that the claim is accompanied by a written statement from such person relating the reasons why such information should be held confidential. Such information may be submitted to the ~~division~~ Division by the owner/licensee of the trade secret, product, etc.; or by another governmental agency which has obtained the information. If submitted by the owner/licensee, the written statement accompanying the information claimed proprietary shall, at a minimum, answer the questions in parts 1 through 4 of this definition. If submitted by another governmental agency, the written statement need include only the accompanying statements/reasons obtained by that agency.

1. Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between the disclosure and the harm?

2. What measures have you taken to guard against undesired disclosure of the information to others?

3. To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?

4. Has the U.S. Environmental Protection Agency or any other Federal or State of Tennessee agency made a pertinent confidentiality determination? (If so, please include a copy of this determination, if available.)

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through a mechanism or mechanisms allowed by subparagraph (4)(a) of Rule 0400-18-01-.08, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or the State of Tennessee.

"Reasonable cost" means that monetary amount or range, as determined by the ~~division~~ Division, to be commensurate with a corrective action. The ~~division~~ Division's determination is based on an evaluation of typical costs expected for the particular corrective action under review considering the scope and complexity of the activities involved and/or hourly rates which are competitive among approved corrective action contractors.

"Receptor" means a person, structure, surface water body, or drinking water supply that receives or may potentially receive exposure to a chemical of concern as the result of a petroleum release.

"Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching, or disposing of a petroleum substance from ~~an~~ a UST including its associated piping, into groundwater, surface water, or subsurface soils.

"Release detection" means determining whether a release of petroleum has occurred from the UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier ~~immediately~~ or secondary containment around ~~or beneath~~ it.

"Repair" means:

1. In the context of UST system operation, to restore ~~the~~ to proper operating condition a tank or pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment, or other UST system component that has caused the release of petroleum from the UST system or has failed to function properly;

2. In the context of replacement of piping on or after July 24, 2007, restoration of a portion of piping in lieu of replacement of an entire piping run authorized by the division in writing; or

3. In the context of fund eligibility of property improvements, restoration of a property improvement to the position and condition it was in immediately prior to removal for the purpose of remediation of the contamination caused by a leaking petroleum underground storage tank system.

"Replaced" means:

1. For a tank – to remove a tank and install another tank.

2. For piping – to remove fifty percent (50%) or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Responsible party," except as specified in part 2 of this definition, means:

1. (i) The owner and/or operator of a petroleum site;

   (ii) Any person who at the time of the release which caused the contamination was an owner and/or operator of a petroleum underground storage tank;

   (iii) Any person whose intentional actions directly cause the release of petroleum at a petroleum site; or

   (iv) Any person whose negligent actions directly cause the release of petroleum at a petroleum site, other than an employee, officer, director, principal, or shareholder of the owner or operator of the underground storage tank system or of the owner of the petroleum site.

2. A responsible party does not include a unit of state or local government which becomes an owner or operator of a petroleum site by acquiring ownership or control through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless such governmental entity has otherwise owned or operated a petroleum underground storage tank on the site or has caused or contributed to the release or threatened release from such a tank.

"Retraining" means any remedial training approach imposed by the ~~division~~ Division when significant operational compliance violations are discovered at a facility. Retraining may be directed to any or all operator classes assigned to a facility and may include requirements to successfully complete additional education, testing, and/or training, or be subject to other administrative or enforcement options at the discretion of the division.

"Risk Based Cleanup Level" or "RBCL" means the concentration of a chemical(s) of concern in soils or ~~ground water~~ groundwater in the source area(s) that will assure an acceptable risk at the point of exposure, based upon conservative non-site-specific assumptions and default parameters.

"Routinely contains petroleum" means those parts of the UST system designed to store, transport or dispense petroleum.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Secondary containment" or "secondarily contained means a release prevention and release detection system ~~designed and installed so that any material that is released from the primary containment is prevented from reaching the soil or ground water outside the system~~ for a tank and/or piping. This system has an inner and outer barrier with an interstitial space that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

"Security interest" means an interest in a petroleum underground storage tank or UST system or petroleum site which is created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens and title pursuant to lease financing transaction. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, inventory and/or other personal property financing arrangements and consignments, if the transaction creates or establishes an interest in a petroleum underground storage tank or UST system or petroleum site for the purpose of securing a loan or other obligation.

"Septic tank" is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Site specific cleanup level" or "SSCL" means the concentration of a chemical(s) of concern in soils or ~~ground water~~ groundwater in the source area(s) that will assure an acceptable risk at the point of exposure, based upon site specific conditions.

"Source" means the source of contamination. Sources may include, but are not limited to, a leaking tank, a leaking underground storage tank system, a spill, an overfill, free product or residual contaminated soil or ~~ground water~~ groundwater.

"~~Storm-water~~ Stormwater or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of ~~storm water~~ stormwater and wastewater does not include treatment except where incidental to conveyance.

"Submersible turbine pump" or "STP" means a pump located inside a petroleum underground storage tank, positioned near the bottom of the tank, thereby "submerged" in the petroleum.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of petroleum and constructed of non-earthen materials (for example, wood, concrete, steel, fiberglass) that provide structural support.

"Tank compartment" means a portion of a UST that is separated from other portions of that UST by one or more walls, or bulkheads, creating two ~~(2)~~ or more individual storage spaces within the UST.

"Termination" in the context of financial responsibility means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Third party" means any person except: the owner or operator of an UST system from which a release of petroleum occurred; the owner of the petroleum site; any person in his or her capacity as an agent, servant or employee of such owner or operator or petroleum site owner; the division; the department; or the Environmental Protection Agency.

"Third party claim" means any civil action brought or asserted by a third party against any owner and/or operator for damages resulting in bodily injury or property damages which are caused by a release of petroleum from an UST system.

"~~Unmanned~~ Unattended facility" means an unattended emergency generator or a facility that dispenses fuel without the presence of an attendant who monitors the pumps, such as card lock

fleet facilities or an unattended service station. A facility that is unattended part of the time will be required to follow subparagraph (3)(c) of Rule 0400-18-01-.16 during the time the facility is attended and subparagraph (3)(d) of Rule 0400-18-01-.16 during the time the facility is unattended.

"Under-dispenser containment" or "UDC" means containment underneath a dispenser system designed to prevent leaks from the dispenser and piping within or above the UDC from reaching soil or groundwater.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any ~~below ground~~ belowground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of petroleum, and the volume of which (including the volume of underground pipes connected thereto) is ~~ten percent (~~10%~~)~~ or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of ~~eleven hundred (~~1,100~~)~~ gallons or less capacity used for storing motor fuel for non-commercial purposes;

2. Tank used for storing heating oil for consumption on the premises where stored;

3. Septic tank;

4. Pipeline facility (including gathering lines) ~~regulated under~~:

   (i) ~~The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.)~~ Which is regulated under 49 U.S.C. chapter 601, or

   (ii) ~~The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or~~

   ~~(iii)~~ Which is an intrastate pipeline facility regulated under state laws ~~comparable to the provisions of the law referred to in subparts 4(i) or (ii) of this definition~~ as provided in 49 U.S.C. chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;

5. Surface impoundment, pit, pond, or lagoon;

6. ~~Storm-water~~ Stormwater or wastewater collection system;

7. Flow-through process tank;

8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in parts 1 through 9 of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of petroleum.

"UST facility" means any location at which one or more regulated underground storage tank systems are located.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

"Waters" means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to, and retained within, the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

"Week" means any seven day period, provided that days run consecutively.

"Weekly", in the context of manual tank gauging, means once per week, resulting in a minimum of four weekly tests per month.

(5) Proprietary information.

(a) General.

1. Purpose, scope and applicability.

Any information which is supplied to the ~~division~~ Division as required or necessitated by the Tennessee Petroleum Underground Storage Tank Act or the ~~regulations~~ rules promulgated pursuant thereto or which is supplied by other governmental agencies and which is designated proprietary information (as defined in paragraph (4) of this rule) shall be handled by the ~~division~~ Division as specified in this paragraph to assure that its confidentiality is maintained. Unless it is claimed or designated as proprietary at the time it is first delivered to the ~~division~~ Division together with the supporting information required by paragraph (4) of this rule, any claim that it is proprietary is waived and any information supplied to the ~~division~~ Division under or relating to these rules shall be available for public review at any time during the ~~division~~ Division's normal business hours, subject to availability and scheduling limitations set by the ~~division~~ Division, without further notice to any person supplying the information or having an interest in the information.

2. Policy.

Division employees are prohibited from disclosing, in any manner and to any extent not authorized by law or ~~regulations~~ rules, any proprietary information coming to ~~them~~ the employees in the course of their employment or official duties. Proprietary information is to be held in confidence, protected in accordance with the procedures described in this paragraph, and released to authorized persons.

(b) Responsibilities.

1. Commissioner.

The commissioner is responsible for:

(i) Designating a document control officer;

(ii) Assuring that all ~~division~~ Division employees receiving and handling proprietary information receive instruction as to their responsibility for controlling proprietary information;

(iii) Maintaining a record which lists all employees who have authorized access to proprietary information;

(iv) Obtaining a "Confidentiality Agreement" from all employees having access to proprietary information;

(v) Obtaining a "Confidentiality Agreement upon Transfer or Termination" from all employees having access to proprietary information in the event such employees decide to terminate employment or are transferred to a position not requiring such access;

(vi) Assuring that the appropriate requirements for storage and use are met, including control of access to keys and combination;

(vii) Taking appropriate disciplinary action concerning any ~~division~~ Division employees who fail to comply with the requirements of this paragraph; and

(viii) Notifying the person submitting proprietary information which has been disclosed in violation of the requirements of this paragraph of such occurrence.

2. Document control officer.

The document control officer is responsible for the maintenance, control, and distribution of all proprietary information received by the ~~division~~ Division as follows:

(i) Logging of all proprietary information as received by the ~~division~~ Division, both incoming and outgoing;

(ii) Assigning a document control number to each document received containing proprietary information;

(iii) Maintaining a system which identifies employees authorized to receive proprietary information;

(iv) Releasing proprietary information only to persons from whom the confidentiality agreements of subparts 1(iv) and (v) of this subparagraph have been obtained;

(v) Maintaining a system to insure that any proprietary information transmitted to field locations is received;

(vi) Maintaining at division offices a system for retrieval of documents that are furnished to other program offices;

(vii) Authorizing and supervising the reproduction and destruction of proprietary information; and

(viii) Assuring that recipients of proprietary information have proper storage capability prior to release of such documents, or, if they do not, requiring return of the released proprietary information the same day.

3. Employees.

Employees are responsible for:

(i) Controlling all proprietary information entrusted to them;

(ii) Only discussing proprietary information with authorized persons;

(iii) Never leaving the proprietary information unattended when not properly stored;

(iv) Never discussing the proprietary information over the telephone except upon approval of the document control officer should the proprietary information be needed in an emergency situation;

(v) Storing the proprietary information as specified in part (c)5 of this paragraph when not in use and at the close of business;

(vi) Not reproducing proprietary information documents. Additional copies shall be obtained through the document control officer; and

(vii) Reporting immediately possible violations of these ~~regulations~~ rules to the ~~commissioner~~ Commissioner.

(c) Procedures.

1. Receipt and handling.

The document control officer shall:

(i) Receive all information claimed as proprietary and confidential ~~which~~ that is submitted to the ~~division~~ Division;

(ii) Log in all proprietary information received by the ~~division~~ Division;

(iii) Assign a document control number to all proprietary information;

(iv) Attach a proprietary information cover sheet to the document;

(v) Release proprietary information only to authorized persons; and

(vi) Review the claim and, using the written statement accompanying the information claimed proprietary, the answers to the questions in the definition of proprietary information in paragraph (4) of this rule, and other information as may be required, determine whether to approve or deny ~~it~~ the claim, in part or in whole.

2. Transmission.

(i) Proprietary information shall be transmitted in a double envelope by Registered Mail, Return Receipt Requested. The inner envelope shall reflect the address of the recipient with the following wording on the front side of the inner envelope:

"Confidential Business – To Be Opened By Document Control Officer Only."

The outer envelope shall reflect the normal address without the additional wording.

(ii) All requests to the document control officer for proprietary information shall be in writing and signed by the requesting employee.

(iii) Proprietary information may be hand carried to other ~~division~~ Division facilities by authorized persons provided the dispatching document control officer maintains a record and obtains a receipt from the receiving document control officer. Information being hand carried shall be packaged as described in subpart (i) of this part.

(iv) Proprietary information within a division office shall be hand delivered only by an authorized person. At no time shall proprietary information be transmitted through inner office mailing channels.

3. Reproduction.

Proprietary information shall not be reproduced except upon approval by and under the supervision of the document control officer. Any reproduction shall be limited by a document control system and be subject to the same control requirements as for the original.

4. Destruction.

Proprietary information shall not be destroyed except upon approval by and under the supervision of the document control officer. The document control officer shall keep a record of destruction in the appropriate log and notify the person submitting the proprietary information.

5. Storage.

(i) Documents containing proprietary information shall be stored within a locked cabinet so as to limit access to authorized persons.

(ii) Keys and/or combinations to cabinets and/or rooms where the data is stored shall be issued only to an authorized person.

(d) Transmittal outside division offices.

~~Proprietary~~ No proprietary information shall ~~not~~ be transmitted outside division offices without the approval of the ~~commissioner and such~~ Commissioner. Any proprietary information approved to be transmitted shall be transmitted by the document control officer in accordance with part (c)2 of this paragraph. The person submitting the proprietary information shall be notified when such transmission occurs.

(e) Release to EPA.

Notwithstanding any requirement of this paragraph seemingly to the contrary, proprietary information may be released to the U.S. Environmental Protection Agency in connection with the ~~commissioner's or board's~~ implementation of ~~his or it's~~ the Commissioner's or Board's responsibilities pursuant to the Act or as necessary to comply with federal law. Any such release of proprietary information to EPA, however, may be made with a confidentiality claim and shall be accompanied by the written statement received by the ~~division~~ Division pursuant to the definition of proprietary information as set forth in paragraph (4) of this rule. Any transmittal of proprietary information to EPA shall be subject to the requirements of subparagraph (d) of this paragraph. The ~~commissioner~~ Commissioner shall notify the submitter of proprietary information of the release of such information to EPA as soon as practicable, to be no later than five ~~(5)~~ days after such release, following receipt of EPA's request for the information.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.02 UST Systems: Installation and Operation.

(1) Installation.

(a) At least ~~fifteen (~~15~~)~~ days prior to the installation of any tank and/or new UST system construction activities at the site, the tank owner shall notify the ~~division~~ Division in the following manner:

1. Submit a pre-installation notification form in accordance with part (1)(a)1 of Rule 0400-18-01-.03 for all the petroleum underground storage tanks and/or UST systems for which installation and/or construction is planned; and

2. Submit annual tank fees for all tanks, tank compartments and/or UST systems, which are listed in the pre-installation notification form, in accordance with paragraph (3) of Rule 0400-18-01-.10.

(b) All ~~tanks and piping~~ underground storage tank systems shall be installed in accordance with the manufacturer's installation instructions.

(c) All tanks, pressurized piping and/or suction piping that do not meet the requirements of subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04, and/or motor fuel dispensers installed on or after July 24, 2007, shall be secondarily contained in accordance with paragraph (2) of this rule.

(d) The following requirements take effect when a petroleum product is being placed into a tank, tank compartment, and/or UST system either during or following installation:

1. Petroleum shall not be placed into an underground storage tank, tank compartment and/or UST system until such time as a notification form has been submitted to the ~~division~~ Division in accordance with part (a)1 of this paragraph.

2. Prior to placing product into the tank, tank compartment and/or UST system, spill and overfill prevention measures shall be implemented in accordance with paragraph (3) of this rule.

~~3. Prior to placing product into the tank or tank compartment an air pressure test or a vacuum test shall be conducted in accordance with the manufacturer's recommendations. The results of this test shall be maintained for the operational life of the underground storage tank system. The test results shall contain at a minimum the following information:~~

~~(i) The name of the manufacturer whose pressure test recommendations have been applied to the tank;~~

~~(ii) The name of the person performing the test and the name of the company that person represents;~~

~~(iii) The date of the pressure test;~~

~~(iv) The identification number assigned to the facility by the division;~~

~~(v) The amount of pressure applied to the tank;~~

~~(vi) The duration of the test period; and~~

~~(vii) The results of the test.~~

~~4.~~3. Begin release detection in accordance with Rule 0400-18-01-.04 immediately if the tank or tank compartment contains more than two and one-half (2.5) centimeters (one (1) inch) of product.

~~5.~~4. Immediately protect against corrosion in accordance with paragraph (4) of this rule.

~~6.~~5. A line tightness test in accordance with subparagraph (4)(b) of Rule 0400-18-01-.04 and a tank tightness test in accordance with subparagraph ~~(3)(c)~~ (3)(b) of Rule 0400-18-01-.04 shall be performed upon completion of the installation and prior to the dispensing of fuel from the UST system. The results of this tightness test shall be maintained for the operational life of the underground storage tank system. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer.

(e) Installation shall be certified in accordance with part (1)(d)1 of Rule 0400-18-01-.03 within ~~fifteen (~~15~~)~~ days following completion of the installation.

(2) Secondary Containment.

(a) Tanks.

Tanks that are required to be secondarily contained in accordance with ~~subparagraph (2)(c) of Rule 0400-18-01-.01, with~~ subparagraph (1)(c) of this rule, or with paragraph (6) of this rule shall comply with the following:

1. Tanks shall be double-walled or jacketed and shall have an interstitial space;

2. Tanks shall meet the interstitial monitoring requirements of part ~~(3)(g)1~~ (3)(d)1 of Rule 0400-18-01-.04;

3. Tanks shall prevent the release of petroleum to the environment for the operational life of the underground storage tanks;

4. Tanks shall contain a release until detected and removed; and

5. Tanks shall be monitored for a release at least every ~~thirty (~~30~~)~~ days in accordance with part 2 of this subparagraph.

(b) Piping.

Pressurized piping or suction piping that does not meet the requirements of subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04 that is required to be secondarily contained in accordance with ~~subparagraph (2)(c) of Rule 0400-18-01-.01, with subparagraphs~~ subparagraph (1)(c) of this rule~~,~~ or with paragraph (6) of this rule shall comply with the following:

1. Piping shall comply with one of the following:

   (i) Piping shall be one hundred percent (100%) double-walled; or

   (ii) Piping shall be secondarily contained with single-walled piping ends that terminate in tank and dispenser sumps that meet the requirements of parts (c)1 through 3 of this paragraph;

2. Piping shall meet the interstitial monitoring requirements of part ~~(3)(g)1~~ (3)(d)1 of Rule 0400-18-01-.04;

3. Piping shall prevent the release of petroleum to the environment for the operational life of the piping;

4. Piping shall contain a release until detected and removed; and

5. Piping shall be monitored for a release at least every ~~thirty (~~30~~)~~ days.

(c) Motor fuel dispensers.

Motor fuel dispensers that are required to be secondarily contained in accordance with subparagraph (1)(c) of this rule or with paragraph (6) of this rule shall comply with the following:

1. The containment sump shall be liquid tight on the sides, the bottom and at any penetrations;

2. The containment sump shall be compatible with the petroleum products stored in the UST system; and

3. The containment sump shall be designed to allow for a visual inspection and access to the components of containment systems, including that used for piping, and shall be monitored in accordance with subparagraph ~~(1)(g)~~ (1)(f) of Rule 0400-18-01-.04.

(3) Spill and overfill prevention.

(a) Equipment.

1. Except as provided in ~~part 2~~ parts 2 and 3 of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment:

   (i) Spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

   (ii) Overfill prevention equipment that will:

      (I) Automatically shut off flow into the tank when the tank is no more than ~~ninety-five percent (~~95%~~)~~ full;

      (II) Alert the transfer operator when the tank is no more than ~~ninety percent (~~90%~~)~~ full by restricting the flow into the tank or triggering a high-level alarm; or

      (III) Restrict flow ~~thirty (~~30~~)~~ minutes prior to overfilling, alert the transfer operator with a high level alarm one ~~(1)~~ minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.

2. Owners and/or operators are not required to use the spill and overfill prevention equipment specified in part 1 of this subparagraph if:

   (i) Alternative equipment is used that is determined by the ~~division~~ Division to be no less protective of human health and the environment than the equipment specified in subpart 1(i) or (ii) of this subparagraph; or

   (ii) The UST system is filled by transfers of no more than ~~twenty-five (~~25~~)~~ gallons at one time.

3. Flow restrictors used in vent lines may not be used to comply with subpart 1(ii) of this subparagraph when overfill prevention is installed or replaced three years after the effective date of this rule.

4. Spill and overfill prevention equipment must be periodically tested or inspected in accordance with paragraph (8) of this rule.

(b) Operating requirements.

1. For as long as the UST system is used to store petroleum, owners and/or operators shall ensure that releases due to spilling or overfilling do not occur. The owner and/or operator shall ensure that the volume available in the tank is greater than the volume of petroleum to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

2. Each spill catchment basin shall be provided with a lid that is in good condition and is not in contact with the fill cap.

3. Owners and/or operators shall keep spill catchment basins free of water, dirt, debris, and/or other substances that could interfere with the ability of the catchment basin to prevent spills.

4. Spill catchment basins shall be visually inspected by the owner and/or operator at least once per month to assure the integrity of the storage space provided for spill containment. A log of these inspections showing at a minimum the last ~~twelve (~~12~~)~~ months shall be maintained by the owner and/or operator. Unless directed or allowed to

do otherwise by the division the log shall be maintained in a format established by the division and in accordance with guidance provided by the division.

5. The owner and/or operator shall report, investigate, and clean up any spills and overfills in accordance with paragraph (4) of Rule 0400-18-01-.05.

6. Overfill prevention equipment shall be in good working condition in accordance with the manufacturer's specifications.

(c) Periodic testing of spill prevention equipment and periodic inspection of overfill prevention equipment.

1. Monitoring. Spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device) must prevent releases to the environment by meeting one of the following:

(i) The equipment is double walled and is periodically monitored at a frequency not less than the frequency of the walkthrough inspections described in paragraph (8) of this rule. Owners and/or operators must begin meeting subpart (ii) of this part and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

(ii) The spill prevention equipment is tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

(I) Requirements developed by the manufacturer (Note: Owners and/or operators may use this option only if the manufacturer has developed requirements);

(II) Code of practice developed by a nationally recognized association or independent testing laboratory;

(III) Guidance provided by the Division; or

(IV) Requirements determined by the Division to be no less protective of human health and the environment than the options listed in items (I) through (III) of this subpart.

2. Inspections. Overfill prevention equipment must be inspected at least once every three years. At a minimum, the inspection must ensure that overfill prevention equipment is set to activate at the correct level specified in subpart (a)1(ii) of this paragraph and will activate when petroleum reaches that level. Inspections must be conducted in accordance with one of the criteria in items 1(ii)(I) through (IV) of this subparagraph.

3. Owners and/or operators must begin meeting these requirements as follows:

(i) For UST systems in use on or before the effective date of this rule, the initial spill prevention equipment test, and overfill prevention equipment inspection must be conducted not later than three years after the effective date of this rule.

(ii) For UST systems brought into use after the effective date of this rule, these requirements apply at installation.

(d) Owners and/or operators must maintain records as follows (in accordance with subparagraph (2)(b) of Rule 0400-18-01-.03) for spill prevention equipment, and overfill prevention equipment:

1. All records of testing or inspection must be maintained for three years; and

2. For spill prevention equipment not tested every three years, documentation showing that the prevention equipment is double walled and is periodically monitored must be maintained for as long as the equipment is periodically monitored.

(4) Corrosion protection.

(a) Tank construction.

Each tank shall ~~be~~ have corrosion protection that is properly designed and constructed and/or properly upgraded. Any portion underground that routinely contains petroleum shall utilize one of the following methods of corrosion protection:

1. The tank is constructed of fiberglass-reinforced plastic.

2. The tank is constructed of steel which is cathodically protected in the following manner:

(i) The tank is coated with a suitable dielectric material unless cathodic protection has been added to the tank for the purpose of upgrading;

(ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(iii) Impressed current systems are designed to allow determination of current operating status as required in part (c)4 of this paragraph;

(iv) Cathodic protection systems are operated and maintained in accordance with subparagraph (c) of this paragraph or in a manner determined by the division to provide equivalent protection against corrosion, provided that such determination is made by the ~~division~~ Division prior to installation and/or operation; and

(v) If cathodic protection was initially installed for the purpose of upgrading subsequent to UST system installation, the integrity of the tank has been ensured using one of the following methods:

(I) Internal inspection and assessment ensured that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system.

(II) At the time of installation of the cathodic protection system, the tank had been installed for less than ten ~~(10)~~ years and monthly monitoring was being conducted in accordance with subparagraphs ~~(3)(d) through (h)~~ (3)(c) through (e) of Rule 0400-18-01-.04.

(III) The tank was assessed for corrosion holes by conducting two ~~(2)~~ tightness tests that met the requirements of subparagraph ~~(3)(c)~~ (3)(b) of Rule 0400-18-01-.04:

I. The first tightness test was conducted no more than ~~one hundred twenty (~~120~~)~~ days prior to installing the cathodic protection system.

II. The second tightness test was conducted between three ~~(3)~~ and six ~~(6)~~ months following the first operation of the cathodic protection system.

(IV) The tank was assessed for corrosion holes by a method determined by the division, prior to assessment, to be no less protective of human health and the environment than items (I) through (III) of this subpart.

3. The tank, which is constructed of steel and was installed on or before December 22, 1988, was lined subsequent to installation of the tank and has satisfied the following requirements:

   (i) The lining was installed in accordance with at least the following procedures and practices:

      (I) The lining was installed so as to effectively prevent releases for the operational life of the tank;

      (II) The lining material is compatible with the product to be stored;

      (III) The tank shell was structurally sound prior to lining;

      (IV) Lining manufacturer's directions were followed during installation of lining;

      (V) After the tank was lined and before the tank was returned to service, the tank was tank tightness tested according to subparagraph ~~(3)(c)~~ (3)(b) of Rule 0400-18-01-.04; and

      (VI) Records that demonstrate compliance with this part shall be maintained for the remaining operational life of the tank. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer; and

   (ii) Within ten ~~(10)~~ years after lining, and every five ~~(5)~~ years thereafter, the lined tank is/was internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications. However, tanks which use lining in combination with cathodic protection systems operated in accordance with subparagraph (c) of this paragraph do not have to be internally inspected subsequent to addition of cathodic protection.

   (iii) Lining may be used in combination with cathodic protection if the cathodic protection system meets the requirements of subparts 2(ii) through (v) of this subparagraph.

   (iv) Unless directed to do otherwise by the ~~division~~ Division, a tank shall be permanently closed in accordance with Rule 0400-18-01-.07 if the internal inspection required in subpart (ii) of this part determines:

      ~~I.~~(I) The tank is not structurally sound; and/or

      ~~II.~~(II) The lining is not performing in accordance with original design specifications.

   (v) Unless directed to do otherwise by the division, a tank constructed of steel that was lined on or before December 22, 1999, to which a cathodic protection system was not installed on or before December 22, 2012, shall be permanently closed by December 22, 2012.

4. The tank is constructed of ~~a steel-fiberglass-reinforced-plastic composite~~ steel and clad or jacketed with a non-corrodible material.

5. The tank is constructed of metal without additional corrosion protection measures provided that:

   (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operational life; and

(ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (i) of this part for the remaining operational life of the tank. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer.

6. The tank construction and corrosion protection are determined by the ~~division~~ Division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than parts 1 through 5 of this subparagraph.

(b) Piping construction.

Piping that routinely contains petroleum and is in contact with the ground or with standing water or other liquids shall be properly designed and constructed and/or properly upgraded. However, the presence of condensate within a sump or containment area shall not constitute contact with standing water. Piping shall also utilize at least one of the following methods of corrosion protection:

1. Piping, whether rigid or flexible in design, that is constructed of nonmetallic materials, and ~~complies with subparts (i) and (ii) of this part.(i) Piping~~ was installed on or after November 1, 2005, shall meet or exceed the Standard for Safety established by Underwriters Laboratory in UL 971 - "Non-Metallic Underground Piping for Flammable Liquids", July 1, 2005. This requirement shall apply to all new and/or replacement piping.

~~(ii) Pipe marking or labeling shall comply with the Underwriters Laboratory standard referenced in subpart (i) of this part. Piping shall, at a minimum, be permanently and legibly marked with the following information at ten (10) foot intervals:~~

~~(I) The manufacturer's name, trade name, trademark, or other information that identifies the manufacturer;~~

~~(II) Manufacturing date, or a verifiable date code, accurate to at least the quarter of a year in which the pipe was manufactured;~~

~~(III) The nominal size of the pipe and a number identifying the pipe, such as a catalog, model or part number;~~

~~(IV) The maximum pressure rating (psig) and the statement: Underground Use Only;~~

~~(V) The type of pipe system(s), which may be abbreviated, and which may include, but not be limited to:~~

~~I. Primary Carrier;~~

~~II. Secondary Containment;~~

~~III. Integral Primary/Secondary;~~

~~IV. Normal Vent; and/or~~

~~V. Vapor Recovery;~~

~~(VI) The flammable liquid group rating(s), which may be abbreviated, and which may include, but not be limited to:~~

~~I. Motor Vehicle Fuels;~~

~~II. Concentrated Fuels;~~

~~III. High Blend Fuel; and/or~~

~~IV. Aviation and Marine Fuels.~~

2. The piping, whether rigid or flexible in design, including flex connectors, is constructed of steel and cathodically protected in the following manner:

   (i) The piping is coated with a suitable dielectric material unless cathodic protection was added for the purpose of upgrading;

   (ii) Field-installed cathodic protection systems are designed by a corrosion expert;

   (iii) Impressed current systems are designed to allow determination of current operating status as required in part (c)4 of this paragraph; and

   (iv) Cathodic protection systems are operated and maintained in accordance with subparagraph (c) of this paragraph or in a manner determined by the ~~division~~ Division to provide equivalent protection against corrosion, provided that such determination is made by the ~~division~~ Division prior to installation and/or operation of the cathodic protection system.

3. The piping is constructed of metal without additional corrosion protection measures provided that:

   (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operational life; and

   (ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (i) of this part for the remaining operational life of the piping. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer.

4. The piping construction and corrosion protection are determined by the ~~division~~ Division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than the requirements in parts 1 through 3 of this subparagraph.

5. Fill piping used for introducing petroleum into an underground storage tank system shall not be required to have cathodic protection if it is lined with a drop tube.

(c) Operation and maintenance of corrosion protection.

All owners and/or operators of ~~steel~~ metal UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented ~~for as long as~~ until the UST system is ~~used to store petroleum~~ permanently closed or undergoes a change-in-service in accordance with paragraph (4) of Rule 0400-18-01-.07:

1. All corrosion protection systems shall be operated and maintained in accordance with a corrosion expert's design to continuously provide corrosion protection to the metal components of that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground ~~or with standing water or other liquids. However, the presence of condensate within a sump or containment area shall not constitute contact with standing water~~.

2. All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(i) ~~Frequency.~~ All cathodic protection systems shall be tested within six ~~(6)~~ months of installation and at least every three ~~(3)~~ years thereafter;

(ii) The cathodic protection system shall be functioning as designed and is effectively preventing corrosion; and

(iii) Test results shall be recorded in a format established by the ~~division~~ Division, completed in accordance with guidance provided by the division, and maintained by the owner and/or operator to demonstrate compliance with this subparagraph.

3. All UST systems to which ~~sacrificial~~ anodes have been added for the purpose of replacing or enhancing an existing cathodic protection system shall be tightness tested in accordance with subparagraphs ~~(3)(c)~~ (3)(b) and (4)(b) of Rule 0400-18-01-.04. The tightness test shall be conducted no later than six ~~(6)~~ months, but no sooner than three ~~(3)~~ months, following the addition of the anodes.

4. UST systems with impressed current cathodic protection systems shall also be inspected every ~~sixty (60)~~ days to ensure the equipment is ~~running~~ operating properly. The results of the inspection shall be recorded in a format established by the ~~division~~ Division and in accordance with the instructions provided by the ~~division~~ Division.

5. For UST systems using cathodic protection, records of the operation of the cathodic protection shall be maintained, in accordance with ~~paragraph (2)~~ part (2)(b)5 of Rule 0400-18-01-.03, to demonstrate compliance with ~~the performance standards in~~ this paragraph. These records shall be maintained in accordance with the following:

(i) The results of testing from the last two inspections required in part 2 of this subparagraph shall be retained;

(ii) A record of the addition of sacrificial anodes to an existing cathodic protection system shall be retained for the remaining operational life of the underground storage tank system and such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer;

(iii) The results of tightness testing required in part 3 of this subparagraph shall be retained for the remaining operational life of the underground storage tank system. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer; and

(iv) The results of the last three inspections required in part 4 of this subparagraph shall be retained.

6. UST systems with impressed current systems that have failed to provide continuous protection in accordance with part 1 of this subparagraph shall comply with this part in accordance with the following:

(i) For UST systems with impressed current systems which have been turned off or inoperable for a period of less than ~~twelve (12)~~ months, ~~unless directed to do otherwise by the division,~~ the tanks and lines shall be tightness tested in accordance with subparagraphs ~~(3)(c)~~ (3)(b) and (4)(b) of Rule 0400-18-01-.04. Another tightness test shall be conducted no later than six ~~(6)~~ months, but no sooner than three ~~(3)~~ months, following the return of the impressed current system to operation.

(ii) For UST systems with impressed current systems which have been turned off or inoperable for a period of ~~twelve (12)~~ months or ~~more unless directed to do otherwise by the division, the tanks~~ more, one of the following requirements shall be met:

(I) The UST system shall be permanently closed; or

(II) Owners and/or operators shall submit a written request to the division justifying why the UST system should not be permanently closed. If the Division determines that the circumstances warrant further investigation, the division will send a written response requiring the owner and/or operator to:

I. Tightness test the tanks and/or lines in accordance with subparagraphs (3)(b) and (4)(b) of Rule 0400-18-01-.04;

II. Test the impressed current corrosion protection system and have it recertified by a NACE Certified corrosion expert;

III. Submit documentation to the Division verifying that all UST systems are in current compliance with release detection requirements in Rule 0400-18-01-.04 and release prevention requirements in Rule 0400-18-01-.02; and

IV. Pay any outstanding tank fees and late penalties.

If the Division approves the request, the tanks and/or lines shall be tightness tested in accordance with subparagraphs (3)(b) and (4)(b) of Rule 0400-18-01-.04 no later than six months, but no sooner than three months, following the certification by the NACE Certified corrosion expert.

(5) Compatibility.

(a) Owners and/or operators shall use an UST system made of or lined with materials that are compatible with the petroleum substance stored in the UST system.

(b) Owners and/or operators must notify the Division at least 30 days prior to switching to a petroleum substance containing greater than 10% ethanol or greater than 20% biodiesel. In addition, owners and/or operators with UST systems storing these petroleum substances must demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment) using one of the following options:

1. Certification or listing of UST system equipment or components by a nationally recognized, independent testing laboratory for use with the petroleum substance stored;

2. Equipment or component manufacturer approval. The manufacturer's approval must be in writing, indicate an affirmative statement of compatibility, specify the range of biofuel blends the equipment or component is compatible with, and be from the equipment or component manufacturer;

3. In accordance with guidance provided by the Division; or

4. Another option determined by the Division to be no less protective of human health and the environment than the options listed in parts 1 through 3 of this subparagraph.

(c) Owners and/or operators must maintain records in accordance with paragraph (2) of Rule 0400-18-01-.03 documenting compliance with subparagraph (b) of this paragraph for as long as the UST system is used to store the petroleum substance.

(6) Replacement.

Tank owners and/or operators replacing any tanks, piping and/or motor fuel dispensers on or after July 24, 2007, shall comply with the following:

(a) Tank owners and/or operators replacing any tanks, piping and/or motor fuel dispensers shall install secondary containment and interstitial monitoring for the replacement tanks, pressurized piping, and suction piping that does not meet the requirements of subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04 and secondary containment for replacement motor fuel dispensers in accordance with paragraph (2) of this rule.

(b) In the case of the replacement of an existing underground storage tank or existing piping connected thereto, the requirements in subparagraph (a) of this paragraph shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes located at the underground storage tank facility.

(c) Unless determined to be a piping repair by the ~~division~~ Division in accordance with subparagraph (d) of this paragraph, if piping is being replaced, all piping connected to that particular underground storage tank shall be removed and secondarily contained piping with interstitial monitoring shall be installed in accordance with paragraph (2) of this rule. However, if the replacement piping meets the requirements for suction piping set forth in subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04, the piping does not have to be secondarily contained.

(d) Piping repairs:

1. The ~~division~~ Division may authorize a repair of underground piping, which shall not be considered a replacement;

2. Requests for division authorization of piping repairs shall be submitted in writing. However, division authorization shall not be required and the repair shall not be considered replacement if:

   (i) The repair does not involve replacement of any piping; or

   (ii) The repair is limited to replacement of a flexible connector;

3. The ~~division~~ Division may request additional information about the proposed repair as deemed necessary; and

4. Requests for division authorization of piping repairs shall be approved or denied by the division.

(e) Replacement of a motor fuel dispenser has occurred and is subject to the provisions of this paragraph as well as the requirements in subparagraph (2)(c) of this rule if the existing dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the piping is replaced. Connecting equipment includes ~~one of the following:~~ check valves, shear valves, unburied risers or flexible connectors, or other transitional components that are underneath the dispenser and connect the dispenser to the underground piping.

~~1. Components beneath the dispenser that are below the shear valve in a pressurized piping system; or~~

~~2. Components beneath the dispenser that are below the union in a suction piping system.~~

(f) Records documenting the replacement of tanks, piping and/or dispensers shall be maintained for the operational life of the UST system. Such records shall document compliance with the design criteria set forth in paragraph (2) of this rule. However, if the replacement piping meets the requirements for suction piping set forth subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-.04, the piping components do not have to be secondarily contained.

(7) Repairs ~~allowed~~.

Owners and/or operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store petroleum. Owners and/or operators shall

repair or replace any tanks or piping which have had a structural failure. The repairs shall meet the following requirements:

(a) Repairs to UST systems shall be conducted so as to effectively prevent releases for the operational life of the tank system.

(b) Repairs to fiberglass-reinforced plastic tanks shall be made by the manufacturer's authorized representatives or in accordance with the manufacturer's specifications.

(c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced in accordance with subparagraphs (6)(a) through (d) and (6)(f) of this rule. ~~Fiberglass~~ Non-corrodible pipes and fittings may be repaired in accordance with the manufacturer's specifications if ~~division~~ Division approval has been granted in accordance with subparagraph (6)(d) of this rule.

(d) ~~Repaired~~ Repairs to secondary containment areas of tanks and piping used for interstitial monitoring and to containment sumps used for interstitial monitoring of piping must have the secondary containment tested for tightness according to the manufacturer's instructions or in accordance with guidance provided by the Division within 30 days following the date of completion of the repair.

(e) All other repairs to tanks and/or piping shall be tightness tested in accordance with subparagraphs ~~(3)(c)~~ (3)(b) and (4)(b) of Rule 0400-18-01-.04 within ~~thirty (30)~~ days following the date of the completion of the repair except as provided in ~~parts 1 through 3~~ part 1 or 2 of this subparagraph:

1. ~~The repaired tank is internally inspected prior to placing product in the tank; or 2.~~ The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in subparagraphs ~~(3)(d) through (h)~~ (3)(c) through (e) of Rule 0400-18-01-.04; however, on or after January 1, 2009, the monitoring methods in ~~part (3)(d)1, subparagraph (3)(f), and parts (3)(g)2 and 3~~ parts (3)(c)1 and (3)(d)2 of Rule 0400-18-01-.04 shall no longer meet the requirements of this rule; ~~in addition, on or after January 1, 2010, the monitoring method in subparagraph (3)(e) of Rule 0400-18-01-.04 shall no longer meet the requirements of this rule;~~ or

~~3.~~2. Another test method is used, provided that prior to use in the ~~State~~ state of Tennessee that method is determined by the ~~division~~ Division to be no less protective of human health and the environment than ~~those~~ the method listed in ~~parts~~ part 1 ~~and 2~~ of this subparagraph.

~~(e)~~(f) Within six ~~(6)~~ months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with parts (4)(c)2 and 3 of this rule to ensure that it is operating properly.

(g) Within 30 days following any repair to spill or overfill prevention equipment (except flow restrictors used in vent lines), the repaired spill or overfill prevention equipment must be tested or inspected, as appropriate, in accordance with subparagraph (3)(c) of this rule to ensure it is operating properly.

~~(f)~~(h) UST system owners and/or operators shall maintain records of each repair that demonstrate compliance with the requirements of this paragraph ~~for the remaining operating life of~~ until the UST system is permanently closed or undergoes a change-in-service in accordance with paragraph (4) of Rule 0400-18-01-.07. Such records shall be transferred in accordance with subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer.

(8) Periodic operation and maintenance walkthrough inspections.

(a) To properly operate and maintain UST systems, no later than three years after the effective date of this rule, owners and/or operators must meet one of the following:

1. Conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below:

(i) Every 30 days (Exception: spill prevention equipment at UST systems receiving deliveries at intervals greater than every 30 days may be checked prior to each delivery):

(I) Spill prevention equipment – visually check for damage; remove liquid or debris; check for and remove obstructions in the fill pipe; check the fill cap to make sure it is securely on the fill pipe; and, for double walled spill prevention equipment with interstitial monitoring, check for a leak in the interstitial area; and

(II) Release detection equipment – check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present; and ensure records of release detection testing are reviewed and current; and

(ii) Annually:

(I) Containment sumps – visually check for damage, leaks to the containment area, or releases to the environment; remove liquid (in contained sumps) or debris; and, for double walled sumps with interstitial monitoring, check for a leak in the interstitial area; and

(II) Hand held release detection equipment – check devices such as tank gauge sticks or groundwater bailers for operability and serviceability;

2. Conduct operation and maintenance walkthrough inspections according to a standard code of practice developed by a nationally recognized association or independent testing laboratory that checks equipment comparable to part (a)1 of this paragraph; or

3. Conduct operation and maintenance walkthrough inspections in accordance with guidance provided by the Division comparable to part (a)1 of this paragraph.

(b) Owners and/or operators must maintain records (in accordance with subparagraph (2)(b) of Rule 0400-18-01-.03) of operation and maintenance walkthrough inspections for one (1) year. Records must include a list of each area checked, whether each area checked was acceptable or needed action taken, a description of actions taken to correct an issue, and delivery records if spill prevention equipment is checked less frequently than every 30 days due to infrequent deliveries.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.03 Notification, Reporting, and Record Keeping.

(1) Notification requirements.

(a) Any owner who intends to bring or brings a new underground storage tank system into use shall notify the division as follows:

1. Pre-installation notification form.

Notification shall be made ~~fifteen (~~15~~)~~ days prior to commencement of installation of such underground storage tank systems by submitting a pre-installation notification form to the division. The pre-installation notification form shall include, but not be limited to, the following information: the property address; the business name; the tank owner's name and address; and the number of compartments in each tank. This information shall be submitted in a format established by the division and the pre-installation notification form shall be completed in accordance with instructions provided by the ~~division~~ Division.

2. Notification form for newly installed tanks.

The owner of a newly installed tank shall submit notification of the underground storage tank system installation to the ~~division~~ Division within ~~fifteen (~~15~~)~~ days in accordance with subparagraphs (b) through (d) of this paragraph. The owner shall use the notification form designated by the ~~division~~ Division.

(b) Owners shall complete the notification form accurately and in its entirety for each tank, tank compartment, and the piping connected thereto, for which notice is required in accordance with part (a)2 of this paragraph. The form shall be completed in accordance with the instructions provided by the ~~division~~ Division.

(c) Owners required to submit notification under part (a)2 of this paragraph shall provide notification to the ~~division~~ Division for each tank and tank compartment they own. Owners may provide notification for several tanks using one notification form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.

(d) All owners of UST systems installed after December 22, 1988 shall certify in the notification form compliance with the following requirements:

1. Installation of tanks and piping has been certified using one of the following methods:

(i) The installer has been certified by the tank and piping manufacturers;

(ii) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;

(iii) The installation has been inspected and approved by the division;

(iv) All work listed in the manufacturer's installation checklist has been completed; or

(v) The owner has complied with another method for ensuring compliance with paragraph (1) of Rule 0400-18-01-.02 that has been determined by the division prior to installation to be no less protective of human health and the environment~~.~~;

2. Cathodic protection of steel tanks and piping in accordance with paragraph (4) of Rule 0400-18-01-.02;

3. Financial responsibility in accordance with Rule 0400-18-01-.08; and

4. Release detection in accordance with Rule 0400-18-01-.04.

(e) All owners of UST systems installed after December 22, 1988 shall ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in paragraph (1) of Rule 0400-18-01-.02.

(f) Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser at the time of sale of such tank of the owner's obligations for notification prior to installation under subparagraph (a) of this paragraph. ~~The seller shall place the statement contained in Appendix 0400-18-01-.03-A on all invoices and shipping tickets.~~

(g) Any change in the status of the tanks at a petroleum UST facility shall be reported within ~~thirty (~~30~~)~~ days of said change. This includes but is not limited to changes of ownership, upgrading or replacement of tanks, changes in mailing address, permanent closure of a tank compartment, and changes in service. Such reports shall be made using an amended notification form. In the case of a sale of tanks, the seller shall submit the notification form designated by the ~~division~~ Division, completed in accordance with instructions provided by the ~~division~~ Division, and shall also inform the buyer of the notification requirement.

(h) Any change in Class A, or Class B Operators shall be reported to the ~~division~~ Division within ~~thirty (30)~~ days of said change in the ~~division~~ Division's web based training database.

(2) Reporting and record keeping.

Owners, operators, and/or other responsible parties of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the ~~division~~ Division, as well as requests for document submission, testing, and monitoring by the owner, operator, and/or other responsible parties in accordance with the Tennessee Petroleum Underground Storage Tank Act T.C.A. §§ 68-215-101 et seq.

(a) Reporting.

Owners, operators, and/or other responsible parties shall submit the following information to the ~~division~~ Division:

1. Notification for all UST systems (paragraph (1) of this rule), which includes certification of installation for new UST systems (subparagraphs (1)(d) and (e) of this rule) and notification for any change in the status of the tanks at a petroleum UST facility (subparagraph (1)(g) of this rule);

2. Notification prior to switching UST systems to certain petroleum substances in accordance with subparagraph (5)(b) of Rule 0400-18-01-.02;

~~2.~~3. Reports of all releases including suspected releases (paragraph (1) of Rule 0400-18-01-.05), spills and overfills (paragraph (4) of Rule 0400-18-01-.05), and confirmed releases (Rule 0400-18-01-.06);

~~3.~~4. Corrective actions planned or taken including, but not limited to, initial response measures (paragraph (3) of Rule 0400-18-01-.06), hazard management measures (paragraph (4) of Rule 0400-18-01-.06), initial site characterization and exposure assessment (paragraph (5) of Rule 0400-18-01-.06), corrective action plan (paragraph (10) of Rule 0400-18-01-.06), and as otherwise directed by the division;

~~4.~~5. A notification before permanent closure or change-in-service (paragraphs (3) and (4) of Rule 0400-18-01-.07); and

~~5.~~6. Tank closure activities including site assessment results (paragraph (5) of Rule 0400-18-01-.07).

(b) Record keeping.

Owners, operators, and/or other responsible parties shall maintain the following information:

1. A log of the monthly spill catchment basin inspections showing at a minimum the last 12 months of inspections (part (3)(b)4 of Rule 0400-18-01-.02);

2. Documentation of compliance for spill and overfill prevention equipment and containment sumps used for interstitial monitoring of piping (part (3)(d) of Rule 0400-18-01-.02);

3. Documentation of compliance with the lining requirements for a tank, which is constructed of steel and was installed on or before December 22, 1988 (subpart (4)(a)3(i) of Rule 0400-18-01-.02);

~~1.~~4. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (part (4)(a)5 of Rule 0400-18-01-.02; part (4)(b)3 of Rule 0400-18-01-.02);

~~2.~~5. Documentation of operation of corrosion protection equipment (subparagraph (4)(c) of Rule 0400-18-01-.02);

6. Documentation of compatibility for UST systems (subparagraph (5)(b) of Rule 0400-18-01-.02);

7. Documentation of the replacement of tanks, piping, and/or dispensers (subparagraph (6)(f) of Rule 0400-18-01-.02);

~~3.~~8. Documentation of UST system repairs (subparagraph ~~(7)(f)~~ (7)(g) of Rule 0400-18-01-.02);

9. Documentation of operation and maintenance walkthrough inspections (subparagraph (8)(b) of Rule 0400-18-01-.02);

10. A log of the quarterly dispenser inspections showing at a minimum the last 12 months of inspections (subparagraphs (1)(e) and (f) of Rule 0400-18-01-.04);

~~4.~~11. Recent compliance with release detection requirements (paragraph (5) of Rule 0400-18-01-.04); and

~~5.~~12. ~~Results~~ Documentation of compliance with closure requirements and results of the site ~~investigation~~ assessment conducted at permanent closure (paragraph ~~(5)~~ (7) of Rule 0400-18-01-.07).

(c) Availability and maintenance of records.

1. Owners, operators, and/or other responsible parties shall keep the records required either:

(i) At the UST site and immediately available for inspection by the ~~division~~ Division; or

(ii) At a readily available alternative site and be provided for inspection to the ~~division~~ Division upon request; or

(iii) In the case of permanent closure records required under paragraph (7) of Rule 0400-18-01-.07, owners, operators, and/or other responsible parties are also provided with the additional alternative of mailing closure records to the ~~division~~ Division if they cannot be kept at the site or an alternative site as indicated in subparts (i) or (ii) of this part.

2. If an inspection is scheduled by the ~~division~~ Division in advance of the date of that inspection, all records shall be present and available for review during the scheduled inspection.

(d) Records transfer.

Upon transfer of ownership, including, but not limited to, sale of the UST systems, originals and/or copies of all documents required to satisfy the reporting and recordkeeping requirements of this paragraph shall be transferred to the new owner of the USTs at the time of ownership transfer.

~~Appendix 0400-18-01-.03-A~~

~~Statement for shipping tickets and invoices.~~

~~Note: A federal law (the Resource Conservation and Recovery Act (RCRA), as amended (Pub. L. 98-616)) requires owners of certain underground storage tanks to notify designated state or local agencies by May 8, 1986, of the existence of their tanks. The Tennessee Petroleum Underground Storage Tanks Act (T.C.A. § 68-215-101 et seq.) also contains notification requirements. Notifications for tanks brought into use after July 1, 1989 shall be made fifteen (15) days in advance of installation. Consult EPA's regulations, issued on November 8, 1985 (40 CFR Part 280), state law (T.C.A. §68-215-101 et seq.) and state regulations (Chapter 1200-01-15) to determine if you are affected by these laws and regulations.~~

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.04 Release Detection.

(1) General requirements for release detection.

(a) Owners and/or operators of UST systems shall provide a method, or combination of methods, of release detection that:

1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains petroleum;

2. Is installed~~,~~ and calibrated~~,~~ in accordance with the manufacturer's instructions and is operated~~,~~ and maintained in accordance with ~~the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and~~ one of the following:

(i) The manufacturer's instructions;

(ii) A code of practice developed by a nationally recognized association or independent testing laboratory; or

(iii) Requirements determined by the Division to be no less protective of human health and the environment than the two options listed in subparts (i) and (ii) of this part.

3. Ensures that electronic and mechanical components are tested for proper operation in accordance with subparts 2(i) through (iii) of this subparagraph. The test must be performed at least annually, and at a minimum, as applicable to the facility, cover the following components and criteria:

(i) Automatic tank gauge and other controllers: test alarm; verify system configuration; test battery backup;

(ii) Probes and sensors: inspect for residual buildup; ensure floats move freely; ensure shaft is not damaged; ensure cables are free of kinks and breaks; test alarm operability and communication with controller;

(iii) Automatic line leak detector: test operation to meet criteria in subparagraph (4)(a) of this rule by simulating a leak; and

(iv) Vacuum pumps and pressure gauges: ensure proper communication with sensors and controller.

~~3.~~4. Meets the performance requirements of paragraph (3) or (4) of this rule or subparagraph (2)(d) of Rule 0400-18-01-.17, as applicable, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, the methods ~~used after December 22, 1990 except for methods permanently installed prior to that date,~~ listed in paragraphs (3) and (4) of this rule and subparagraph (2)(d) of Rule 0400-18-01-.17, as applicable shall be capable of detecting the leak rate or quantity specified for that method in subparagraphs ~~(3)(b), (c), and (d)~~ (3)(a), (b), and (c) or (4)(a) and (b) of this rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.

5. Has had a third party evaluation reviewed by the National Work Group on Leak Detection Evaluations (NWGLDE) and a listing of the leak detection equipment or method appears on the list maintained by the NWGLDE. However, any NWGLDE listed leak detection equipment or method for which there is no longer any technical support available may not be used to meet the requirements of this paragraph.

(b) When a release detection method operated in accordance with ~~the performance standards in paragraphs~~ paragraph (3) ~~and~~ or (4) of this rule or subparagraph (2)(d) of Rule 0400-18-01-.17, as applicable, indicates a release may have occurred, owners and/or operators shall notify the ~~division~~ Division in accordance with Rule 0400-18-01-.05. If more than one method of release detection is operated on a UST system, a suspected release shall be reported to the ~~division~~ Division in accordance with Rule 0400-18-01-.05 if any one of the release detection methods indicates a release may have occurred.

~~(c) Owners and/or operators of newly installed USTs shall comply with the release detection requirements of this rule immediately upon installation.~~

~~(d)~~(c) If a method of release detection that complies with the requirements of this rule cannot be applied to and/or operated for any UST system, the owner and/or operator of that UST system shall complete the closure procedures in Rule 0400-18-01-.07.

~~(e)~~(d) If a release detection method selected by the owner and/or operator cannot meet the ~~performance standards~~ requirements in ~~paragraph~~ paragraphs (3) and (4) of this rule and subparagraph (2)(d) of Rule 0400-18-01-.17, as applicable, to the satisfaction of the ~~division~~ Division, then the owner and/or operator shall select another method of release detection.

~~(f)~~(e) The dispenser cover shall be opened and a visual inspection for petroleum releases, including seeps and drips, shall be performed at least quarterly, that is, at least once every three ~~(3)~~ months. A log of these inspections showing at a minimum the last ~~twelve (~~12~~)~~ months shall be maintained by the owner and/or operator.

~~(g)~~(f) Under-dispenser containment sumps for motor fuel dispensers required by subparagraph (1)(c) or paragraph (6) of Rule 0400-18-01-.02 to be secondarily contained in accordance with subparagraph (2)(c) of Rule 0400-18-01-.02 shall be visually inspected at least quarterly, that is, at least once every three ~~(3)~~ months. A log of these inspections, showing at a minimum the last ~~twelve (~~12~~)~~ months, shall be maintained by the owner and/or operator. The visual inspection shall check for the presence of petroleum and/or water in the sumps. If liquid is observed in the dispenser sump, the liquid shall be removed from the sump in such a manner as to prevent the release of petroleum into the environment.

(2) Requirements for petroleum UST systems.

Owners and/or operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(a) Tanks.

Tanks shall be monitored at least monthly for releases using one of the methods listed in subparagraphs ~~(3)(d) through (i)~~ (3)(c) through (f) of this rule, except that~~: 1. UST systems that meet the performance standards in Rule 0400-18-01-.02, and the manual tank gauging requirements in subparagraph (3)(b) of this rule, may use tank tightness testing (conducted in accordance with subparagraph (3)(c) of this rule) at least every five (5) years until ten (10) years after the tank was installed or upgraded in compliance with the performance standards in Rule 0400-18-01-.02. UST systems installed before July 24, 2007 that meet the performance standards in Rule 0400-18-01-.02, and the monthly inventory control requirements in subparagraphs (3)(a) of this rule, may use tank tightness testing (conducted in accordance with subparagraph (3)(c) of this rule), until December 31, 2008. However, tanks which were over ten (10) years old when the cathodic protection system was added in accordance with item (4)(a)2(v)(III) of Rule 0400-18-01-.02 shall use a monthly monitoring method of release detection in accordance with subparagraphs (3)(d) through (i) of this rule. 2. Tanks~~ tanks which meet the volume, diameter, and test duration requirements as set forth in subpart ~~(3)(b)1(i)~~ (3)(a)1(i) of this rule may use manual tank gauging (conducted in accordance with subparagraph ~~(3)(b)~~ (3)(a) of this rule).

~~3. On or after January 1, 2009, the monitoring methods in part (3)(d)1 of this rule, subparagraph (3)(f) of this rule, and parts (3)(g)2 and 3 of this rule shall no longer meet the requirements of this rule.~~

~~4. On or after January 1, 2010, the monitoring method in part (3)(e) of this rule shall no longer meet the requirements of this rule.~~

(b) Piping.

Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:

1. Pressurized piping.

Underground piping that conveys petroleum under pressure shall:

(i) Be equipped with an automatic line leak detector conducted in accordance with subparagraph (4)(a) of this rule; and

(ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

2. Suction piping.

Underground piping that conveys petroleum under suction shall either have a line tightness test conducted at least every three ~~(3)~~ years and in accordance with subparagraph (4)(b) of this rule, or use a monthly monitoring method conducted in accordance with subparagraph (4)(c) of this rule. No release detection is required for suction piping that is designed and constructed to meet the following standards:

(i) The below-grade piping operates at less than atmospheric pressure;

(ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

(iii) Only one check valve is included in each suction line;

(iv) The check valve is located directly below and as close as practical to the suction pump; and

(v) A method is provided that allows compliance with subparts ~~(b)2~~(ii) through (iv) of this part to be readily determined.

(3) Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

~~(a) Inventory control. Inventory control shall meet the following requirements:~~

~~1. Inventory volume measurements for petroleum inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;~~

~~2. The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;~~

~~3. Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch;~~

~~4. The petroleum inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;~~

~~5. Deliveries are made through a drop tube that extends to within one (1) foot of the tank bottom;~~

~~6. Product level measurements which are taken using a gauge stick shall be taken through a drop tube;~~

~~7. Petroleum dispensing is metered and recorded to within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of petroleum withdrawn, and the meters are calibrated at least annually;~~

~~8. The measurement of any water level in the bottom of the tank is made and recorded to the nearest one-eighth of an inch at least once a month; and~~

~~9. A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the monthly total of either daily overages or shortages is greater than one percent (1.0%) of the total monthly flow-through plus one hundred thirty (130) gallons.~~

~~(b)~~(a) Manual tank gauging.

1. Manual tank gauging shall only be applicable to tanks as set forth below:

   (i) Tanks which meet the volume, diameter and test duration requirements as set forth below may use manual tank gauging as the sole method of release detection:

Nominal Capacity	Tank Diameter	Minimum Duration Of Test
up to 550 gallons	*	36 hours
551 – 1000 gallons	64 inches	44 hours
551 – 1000 gallons	48 inches	58 hours

   *Any diameter of tank up to 550 gallons may use manual tank gauging as the sole method of release detection if the duration of the test is at least 36 hours.

   (ii) Manual tank gauging shall not be used as the sole method of release detection for tanks of 551 to 1000 gallons nominal capacity which cannot meet the diameter or test duration requirements as set forth in subpart (i) of this part or for tanks of 1001 to 2000 gallon nominal capacity. These tanks shall use manual tank gauging in combination with tank tightness testing in accordance with subparagraph (2)(a) of this rule.

   (iii) Tanks of greater than 2000 gallons nominal capacity using this method shall not meet the requirements of this rule.

2. Manual tank gauging shall meet the following requirements:

   (i) Tank liquid level measurements are taken at the beginning and ending of a period of ~~at least thirty-six (36) hours~~ using the appropriate minimum duration of the test value in the table in subpart 1(i) of this subparagraph during which no liquid is added to or removed from the tank;

(ii) Level measurements are based on an average of two (2) consecutive stick readings at both the beginning and ending of the required period;

(iii) The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;

(iv) Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch;

(v) A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Capacity	Tank Diameter	Minimum Duration Of Test	Weekly Standard (One Test)	Monthly Standard (Average Of 4 Tests)
Up to 550 gallons		36 hours	10 gallons	5 gallons
551 – 1000 gallons		36 hours	13 gallons	7 gallons
551 – 1000 gallons	64 inches	44 hours	9 gallons	4 gallons
551 – 1000 gallons	48 inches	58 hours	12 gallons	6 gallons
1001 – 2000 gallons		36 hours	26 gallons	13 gallons

~~(c)~~(b) Tank tightness testing.

1. Tank tightness testing shall be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains petroleum while accounting for the effects of thermal expansion or contraction of the petroleum, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

2. Tank tightness testing devices, automatic tank gauging devices or other equipment may be used provided that the testing meets the performance criteria set forth in part 1 of this subparagraph.

3. The information relating to the tank tightness test shall be reported in a format established by the ~~division~~ Division. The tank tightness test report shall include, but is not necessarily limited to the following information:

(i) Information which identifies the tank and the facility;

(ii) Information which identifies the test method and test conditions established by the manufacturer's specifications and/or required by the third party certification of the method;

(iii) Information which identifies the person and/or company performing the test;

(iv) Data gathered during the performance of the test; and

(v) Results expressed as follows:

(I) Leak rate in gallons per hour and as "Pass" or "Fail" for volumetric test methods; or

(II) "Pass" or "Fail" for non-volumetric test methods.

4. A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the method detects a release rate greater than ~~the performance standard for the method as~~ that established by the manufacturer's specifications and/or third party certification.

~~(d)~~(c) Automatic tank gauging.

Equipment for automatic tank gauging shall be permanently installed in the tank and shall meet one of the following requirements:

~~1. For automatic tank gauging devices which were installed prior to December 22, 1990, and which do not meet the requirements of parts 2 or 3 of this subparagraph:~~

~~(i) Inventory control (or another test of equivalent performance) shall be conducted in accordance with the requirements of subparagraph (3)(a) of this rule; and~~

~~(ii) A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the monthly total of either daily overages or shortages is greater than 1.0 percent of the total monthly flow-through plus one hundred thirty (130) gallons.~~

~~2.~~1. For automatic tank gauging devices capable of detecting at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains petroleum:

(i) The monitor shall be placed in the leak test mode at least once per month; and

(ii) A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the monitoring results indicate that the underground storage tank has had a release above the established threshold of the automatic tank gauging device as determined through third party certification.

~~3.~~2. For automatic tank gauging systems which are capable of detecting at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains petroleum using continuous statistical release detection:

(i) The automatic tank gauging system shall be placed in the leak test mode at least once per month if a test cannot be obtained during any one month period, except for those systems which also use statistical inventory reconciliation in accordance with subparagraph ~~(3)(h)~~ (e) of this ~~rule~~ paragraph; and

(ii) A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if the monitoring results indicate that the underground storage tank has had a release above the established threshold of the automatic tank gauging device as determined through third party certification, except that those systems also using statistical inventory reconciliation shall report suspected releases in accordance with subparagraph ~~(3)(h)~~ (e) of this ~~rule~~ paragraph.

~~(e) Vapor monitoring.~~

~~Testing or monitoring for vapors within the soil gas of the excavation zone shall meet the following requirements:~~

~~1. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;~~

~~2. The stored petroleum, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;~~

3. ~~The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty (30) days;~~

4. ~~The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;~~

5. ~~The vapor monitors are designed and operated to detect any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;~~

6. ~~In the UST excavation zone, the site is assessed to ensure compliance with the requirements in parts 1 through 4 of this subparagraph and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains petroleum;~~

7. ~~Monitoring wells are:~~

   (i) ~~Clearly marked and secured to avoid unauthorized access and tampering;~~

   (ii) ~~Maintained in a manner that reduces risk of environmental contamination; and~~

   (iii) ~~Properly abandoned in accordance with division guidance when the monitoring wells are no longer used for release detection, unless:~~

      (I) ~~The wells are located in the tank pit and are used as observation wells; or~~

      (II) ~~The wells are located outside the tank pit and can reasonably be utilized for initial response in accordance with subparagraph (3)(d) of Rule 0400-18-01-.06 and/or hazard management in accordance with part (4)(b)3 of Rule 0400-18-01-.06 in the event of a release petroleum from the UST system; and~~

8. ~~A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if:~~

   (i) ~~An automatic and/or continuous monitoring device signals an alarm; or~~

   (ii) ~~Any liquid product is observed during manual monitoring; or~~

   (iii) ~~Any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance or a tracer compound placed in the tank system is detected by a monitoring device.~~

(f) ~~Groundwater monitoring.~~

~~Testing or monitoring for liquids on the ground water shall meet the following requirements:~~

1. ~~Ground water monitoring shall not be allowed in areas where the tank excavation zone has encountered bedrock;~~

2. ~~The petroleum stored is immiscible in water and has a specific gravity of less than one (1);~~

3. ~~Ground water is never more than twenty (20) feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (for example, the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);~~

~~4. The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of petroleum on the water table into the well under both high and low ground water conditions;~~

~~5. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;~~

~~6. Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;~~

~~7. The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;~~

~~8. Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in parts 1 through 6 of this subparagraph and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains petroleum;~~

~~9. Monitoring wells are:~~

~~(i) Clearly marked and secured to avoid unauthorized access and tampering;~~

~~(ii) Maintained in a manner that reduces risk of environmental contamination; and~~

~~(iii) Properly abandoned in accordance with division guidance when the monitoring wells are no longer used for release detection, unless:~~

~~(I) The wells are located in the tank pit and are used as observation wells; or~~

~~(II) The wells are located outside the tank pit and can reasonably be utilized for initial response in accordance with subparagraph (3)(d) of Rule 0400-18-01-.06 and/or hazard management in accordance with part (4)(b)3 of Rule 0400-18-01-.06 in the event of a release petroleum from the UST system; and~~

~~10. A release is suspected and subject to the requirements of Rule 0400-18-01-.05 if:~~

~~(i) An automatic and/or continuous monitoring device signals an alarm; or~~

~~(ii) Any liquid product is observed on top of the groundwater in the monitoring well during manual monitoring.~~

~~(g)~~(d) Interstitial monitoring.

Interstitial monitoring between the UST system and a secondary barrier immediately around it may be used, but only if the system is designed, constructed and installed to detect a ~~release~~ leak from any portion of the tank that routinely contains petroleum and also meets one of the following requirements:

1. For double-walled UST systems, the monitoring method shall:

   (i) Be able to detect a ~~release~~ leak through the inner wall in any portion of the UST system that routinely contains petroleum;

   (ii) Provide continuous monitoring; and

   (iii) Be installed, maintained and operated in accordance with guidance provided by the division.

~~2. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier; provided that the following conditions are met:~~

~~(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the petroleum stored) to direct a release to the monitoring point and permit its detection;~~

~~(ii) The barrier is compatible with the petroleum stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;~~

~~(iii) For cathodically protected tanks, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;~~

~~(iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty (30) days;~~

~~(v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a twenty-five (25) year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,~~

~~(vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.~~

~~3.~~2. For tanks with an internally fitted liner, an automated device can detect a ~~release~~ leak between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

~~(h)~~(e) Statistical inventory reconciliation.

Statistical analysis of inventory, delivery and dispensing data collected over a period of time shall meet the following requirements:

1. Inventory control shall be conducted in accordance with the following requirements: ~~of parts (3)(a)1 through 8 of this rule;~~

   (i) Inventory volume measurements for petroleum inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

   (ii) Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch over the full range of the tank's height;

   (iii) The petroleum inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

   (iv) Deliveries are made through a drop tube that extends to within one ~~(1)~~ foot of the tank bottom;

   (v) Petroleum dispensing is metered and recorded within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five ~~(5)~~ gallons of petroleum withdrawn, and the meters are calibrated at least annually; and

   (vi) The measurement of any water level in the bottom of the tank is made and recorded to the nearest one-eighth of an inch at least once a month.

2. A report shall be generated monthly, ~~within ten (10) days~~ after the end of the data collection for that time period. The report shall include, but is not limited to the following:

(i) The inventory records used, that is, the raw data (data consisting of daily product levels, deliveries and sales as determined by direct measurement or automatic tank gauges, and daily reconciliation of measured amounts in the tank compared with calculated amounts in the tank); and

(ii) The statistical inventory reconciliation determination;

3. For quantitative statistical inventory reconciliation methods, the numerical leak rate shall be reported unless the statistical inventory reconciliation determination results in an "Inconclusive" under the provisions of subpart 4(iii) of this subparagraph;

4. The statistical inventory reconciliation determination shall be reported using the term "Pass", "Fail" or "Inconclusive". For quantitative statistical inventory reconciliation methods the applicable term shall be used in accordance with subparts (i) through (iii) of this part:

(i) If the calculated leak rate does not exceed 0.10 gallons per hour, the results shall be reported as a "Pass";

(ii) If the calculated leak rate exceeds 0.10 gallons per hour, the results shall be reported as a "Fail";

(iii) If the leak rate cannot be calculated using the available data, the results shall be reported as an "Inconclusive";

~~5. If the statistical inventory reconciliation method used requires more than one (1) month of data for initial evaluation, another method of release detection shall be conducted during that initial data collection period;~~

~~6.~~5. If there are too few operational days for statistical inventory reconciliation to successfully analyze during any month, then another method of release detection shall be utilized during that month; and

~~7.~~6. The owner and/or operator shall report a suspected release in accordance with Rule 0400-18-01-.05:

(i) When the statistical inventory reconciliation determination is reported as a "Fail"; or

(ii) When two consecutive "Inconclusive" statistical inventory reconciliation determinations are reported.

~~(i)~~(f) Other methods of release detection.

1. Prior to use by the tank owner and/or operator, division approval shall be obtained in writing for any other type of release detection method, or combination of methods.

(i) The written approval shall be kept on file at the facility or at the place of business of the tank owner and/or operator while the method is being utilized for release detection and for at least ~~twelve (~~12~~)~~ months thereafter. If the owner and/or operator is unable to maintain the approval document due to closure of the facility, the approval document shall be submitted to the division with the closure records submitted in accordance with subparagraph (7)(c) of Rule 0400-18-01-.07.

(ii) The written approval shall be valid for two ~~(2)~~ years. The written approval must be renewed every two ~~(2)~~ years thereafter.

2. The ~~division~~ Division may approve another method if that method has been third party certified to effectively and consistently detect releases. In reviewing methods for division approval, the ~~division~~ Division shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected as set forth in the third party certification.

3. If the method has been approved in writing by the ~~division~~ Division, the owner and/or operator shall comply with any conditions imposed by the ~~division~~ Division on its use to ensure the protection of human health and the environment.

(4) Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

(a) Automatic line leak detectors.

Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or triggering an audible or visual alarm may be used only if they detect leaks of three ~~(3)~~ gallons per hour at ten ~~(10)~~ pounds per square inch line pressure within one ~~(1)~~ hour. An annual test of the operation of the leak detector shall be conducted in accordance with guidance provided by the ~~division~~ Division.

(b) Line tightness testing.

A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(c) ~~Applicable tank methods~~ Interstitial monitoring.

~~Any of the methods in subparagraphs (3)(e) through (i) of this rule may be used if they are designed to detect a release from any portion of the underground piping that routinely contains petroleum, except that the method in subparagraph (3)(f) and in part (3)(g)2 of this rule shall not satisfy the requirements of this rule on or after January 1, 2009 and the method in subparagraph (3)(e) shall not satisfy the requirements of this rule on or after January 1, 2010~~. Interstitial monitoring between the primary piping and the secondary barrier immediately around it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the piping that routinely contains petroleum and also meets one of the following requirements:

1. For double-walled UST systems, the monitoring method shall:

(i) Be able to detect a leak through the inner wall in any portion of the UST system that routinely contains petroleum;

(ii) Operate continuously as designed, and provide 30 day periodic testing;

(iii) Be installed, maintained and operated in accordance with guidance provided by the Division; and

(iv) If owners and/or operators of UST systems have containment sumps used for interstitial monitoring of piping, the containment sumps must meet the following requirements to ensure the equipment is operating properly and will prevent releases to the environment:

(I) Containment sumps used for interstitial monitoring of piping must prevent releases to the environment by meeting one of the following:

I. The equipment is double walled and is periodically monitored at a frequency not less than the frequency of the walkthrough

inspections described in paragraph (8) of Rule 0400-18-01-.02. Owners and/or operators must begin meeting subitem II of this item and conduct a test within 30 days of discontinuing periodic monitoring of this equipment; or

II. The containment sumps used for interstitial monitoring of piping which are single walled or double walled with a dry interstice and periodically monitored are tested at least once every three years to ensure the equipment is liquid tight by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:

A. Requirements developed by the manufacturer (Note: Owners and/or operators may use this option only if the manufacturer has developed requirements);

B. Code of practice developed by a nationally recognized association or independent testing laboratory;

C. Guidance provided by the Division; or

D. Requirements determined by the Division to be no less protective of human health and the environment than the options listed in sections A and B of this subitem.

III. Containment sumps which are double walled and constructed so that the inner and outer walls are continuously monitored by interstitial sensors using brine solution or vacuum do not require testing.

(v) When electronic sensors are used to comply with this subparagraph in secondarily contained piping systems, sensors must be installed in every sump and must be placed at the lowest point in the sump and tested for proper operation at least once per year.

2. Reserved.

(d) Statistical inventory reconciliation.

Statistical analysis of inventory, delivery and dispensing data collected over a period of time shall meet the following requirements:

1. Inventory control shall be conducted in accordance with the following requirements:

(i) Inventory volume measurements for petroleum inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(ii) Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch over the full range of the tank's height;

(iii) The petroleum inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(iv) Deliveries are made through a drop tube that extends to within one foot of the tank bottom;

(v) Petroleum dispensing is metered and recorded within the local standards for meter calibration or an accuracy of six cubic inches for every five gallons of petroleum withdrawn, and the meters are calibrated at least annually; and

(vi) The measurement of any water level in the bottom of the tank is made and recorded to the nearest one-eighth of an inch at least once a month.

2. A report shall be generated monthly, after the end of the data collection for that time period. The report shall include, but is not limited to the following:

(i) The inventory records used, that is, the raw data (data consisting of daily product levels, deliveries and sales as determined by direct measurement or automatic tank gauges, and daily reconciliation of measured amounts in the tank compared with calculated amounts in the tank); and

(ii) The statistical inventory reconciliation determination;

3. For quantitative statistical inventory reconciliation methods, the numerical leak rate shall be reported unless the statistical inventory reconciliation determination results in an "Inconclusive" under the provisions of subpart 4(iii) of this subparagraph;

4. The statistical inventory reconciliation determination shall be reported using the term "Pass", "Fail" or "Inconclusive". For quantitative statistical inventory reconciliation methods the applicable term shall be used in accordance with subparts (i) through (iii) of this part:

(i) If the calculated leak rate does not exceed 0.10 gallons per hour, the results shall be reported as a "Pass";

(ii) If the calculated leak rate exceeds 0.10 gallons per hour, the results shall be reported as a "Fail";

(iii) If the leak rate cannot be calculated using the available data, the results shall be reported as an "Inconclusive";

5. If there are too few operational days for statistical inventory reconciliation to successfully analyze during any month, then another method of release detection shall be utilized during that month; and

6. The owner and/or operator shall report a suspected release in accordance with Rule 0400-18-01-.05:

(i) When the statistical inventory reconciliation determination is reported as a "Fail"; or

(ii) When two consecutive "Inconclusive" statistical inventory reconciliation determinations are reported.

(5) Release detection record keeping.

All UST system owners and/or operators shall maintain records in accordance with paragraph (2) of Rule 0400-18-01-.03 demonstrating compliance with all applicable requirements of this rule. Release detection information shall be recorded in a format established by the ~~division~~ Division and in accordance with instructions provided by the division. These records shall include the following:

(a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for five ~~(5)~~ years from the date of installation or until such time as the release detection method to which the performance claim pertains is no longer used at the facility, whichever is later; for a release detection method that has been approved by the division under the provisions of subparagraph ~~(3)(i)~~ (3)(f) of this rule, the division's written approval shall be maintained by the tank owner and/or operator while the method is being utilized for release detection and for at least ~~twelve (~~12~~)~~ months thereafter;

(b) The results of any sampling, testing, or monitoring shall be maintained for at least one (1) year except ~~that the~~ as follows:

1. The results of tank and/or line tightness testing conducted in accordance with subparagraphs ~~(3)(c)~~ (3)(b) or (4)(b) of this rule and subparagraph (2)(d) of Rule 0400-18-01-.17 shall be retained until the next test is conducted;

2. The results of testing conducted in accordance with part (1)(a)3 of this rule shall be maintained for three years. At a minimum, the results must list each component tested, indicate whether each component tested meets criteria in part (1)(a)3 of this rule or needs to have action taken, and describe any action taken to correct an issue; and

(c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least one ~~(1)~~ year after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for five ~~(5)~~ years from the date of installation or until such time as the release detection method to which the schedule of required calibration and maintenance pertains is no longer used at the facility, whichever is later.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.05 Release Reporting, Investigation and Confirmation.

(1) Reporting Of Suspected Releases.

(a) Owners and/or operators of UST systems shall report to the division within ~~seventy-two (~~72~~)~~ hours and follow the procedures in paragraph (3) of Rule 0400-18-01-.05 for any of the following conditions:

1. The discovery by owners and/or operators or others of released petroleum at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).

2. Unusual operating conditions observed by owners and/or operators (such as the erratic behavior of petroleum dispensing equipment, the sudden loss of petroleum from the UST system, or an unexplained presence of water in the tank, or liquid in the interstitial space of secondary contained systems), unless: ~~system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and~~

(i) The system equipment or component is found not to be releasing petroleum into the environment;

(ii) Any defective system equipment or component is immediately repaired or replaced; and

(iii) For secondarily contained systems any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.

3. Monitoring results, including investigation of an alarm, from a release detection method required under paragraph (2) of Rule 0400-18-01-.04 that indicate a release may have occurred unless:

(i) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring within ~~thirty (~~30~~)~~ days does not confirm the initial result; ~~or~~

(ii) ~~In the case of inventory control, a second consecutive month of data does not confirm the initial result.~~ The leak is contained in the secondary containment and conditions of subparts 2(ii) and (iii) of this subparagraph are met;

(iii) The investigation determines no release has occurred; or

(iv) The alarm was investigated and determined to be a non-release event (for example, from a power surge caused by filling the tank during release detection testing).

(b) In order for the tank owner, tank operator or petroleum site owner to receive reimbursement from the fund, an Application for Fund Eligibility shall be filed within ~~ninety (~~90~~)~~ days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with this rule.

(c) To satisfy the requirements for fund coverage in subparagraph (10)(c) of Rule 0400-18-01-.09, an owner and/or operator shall submit release detection records as well as documentation to demonstrate compliance with corrosion protection and spill and overfill and secondary containment requirements within ~~thirty (~~30~~)~~ days of the discovery of a suspected release.

(2) Investigation due to environmental impacts.

When required by the ~~division~~ Division, owners and/or operators of UST systems shall follow the procedures in paragraph (3) of this rule to determine if the UST system is the source of environmental impacts. These impacts include the discovery of petroleum escaping from the UST system, associated containment devices, or any component of a tank, line, dispenser, meter, or line leak detector, not designed for the purpose of dispensing petroleum as well as the discovery of petroleum in the environment (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the ~~division~~ Division or brought to its attention by another party.

(3) Release Investigation and Confirmation Steps.

Unless corrective action is initiated in accordance with Rule 0400-18-01-.06, owners and/or operators shall immediately investigate and confirm all suspected releases of petroleum requiring reporting under paragraph (1) of this rule within ~~thirty (~~30~~)~~ days in accordance with this paragraph.

(a) System test.

Owners and/or operators shall conduct tests (according to the requirements for tightness testing in subparagraphs ~~(3)(c)~~ (3)(b) and (4)(b) of Rule 0400-18-01-.04 or, as appropriate, secondary containment testing described in subparagraph (7)(d) of Rule 0400-18-01-.02) ~~that determine whether a leak exists in that portion of the tank that routinely contains petroleum, or the attached delivery piping, or both~~.

1. The test must determine whether:

(i) A leak exists in that portion of the tank that routinely contains petroleum, or the attached delivery piping, or

(ii) A breach of either wall of the secondary containment has occurred.

~~1.~~2. ~~Owners~~ If the system test confirms a leak into the interstice or a release, owners and/or operators shall repair, replace or ~~upgrade~~ close the UST system, and begin corrective action in accordance with Rule 0400-18-01-.06 if the test results for the system, tank, or delivery piping indicate that a ~~leak~~ release exists.

~~2.~~3. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a ~~leak~~ release exists and if environmental contamination is not the basis for suspecting a release.

~~3.~~4. Owners and/or operators shall conduct a site check as described in subparagraph (b) of this paragraph if the test results for the system, tank, and delivery piping do not indicate

that a ~~leak~~ release exists but environmental contamination is the basis for suspecting a release.

(b) Site check.

Owners and/or operators shall measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and/or operators must consider the nature of the stored petroleum, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ~~ground water~~ groundwater, and other factors appropriate for identifying the presence and source of the release.

1. If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and/or operators must begin corrective action in accordance with Rule 0400-18-01-.06;

2. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

(c) Field activities and environmental data.

During the course of the release investigation and confirmation activities in subparagraphs (a) and (b) of this paragraph, a tank owner and/or operator shall comply with the following:

1. Tank owners and/or operators shall notify the ~~division~~ Division at least one (1) working day in advance of systems test or site check activities.

2. Soil borings and/or monitoring wells shall be drilled, converted to monitoring wells and/or abandoned in accordance with guidance provided by the division.

3. Environmental samples.

(i) Samples shall be collected, labeled, handled, and transported in accordance with guidance and instructions provided by the ~~division~~ Division. Samples shall satisfy any requirements specific to the required laboratory method that is used to analyze the samples.

(ii) Samples shall be analyzed using a method recognized by the United States Environmental Protection Agency or another method that has been approved by the division prior to the analysis.

(iii) Sample analysis reports submitted to the ~~division~~ Division shall be original documents unless otherwise specified by the division. Such reports shall include, but not be limited to, the following information:

(I) The facility identification number assigned to the UST facility by the ~~division~~ Division;

(II) The sampling point, including depth and the unique combination of letters or numbers assigned to the boring or monitoring well at the time that boring or well was installed;

(III) The sample collection date;

(IV) The date the sample analysis was completed;

(V) The analytical method, including the detection limit for the method, utilized to analyze the sample;

(VI) The dilution factor used on the sample; and

(VII) The analytical results expressed as a concentration of the chemical(s) of concern.

(4) Reporting And Cleanup Of Spills And Overfills.

(a) Owners and/or operators of UST systems shall contain and immediately clean up a spill or overfill and report to the ~~division~~ Division within ~~seventy-two (~~72~~)~~ hours and begin corrective action if a spill or overfill of petroleum results in a release to the environment that exceeds ~~twenty-five (~~25~~)~~ gallons or that causes a sheen on nearby surface water; or

(b) Owners and operators of UST systems shall contain and immediately clean up a spill or overfill of petroleum that is less than ~~twenty-five (~~25~~)~~ gallons. If cleanup cannot be accomplished within ~~seventy-two (~~72~~)~~ hours owners and/or operators must immediately notify the ~~division~~ Division.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.06 Petroleum Release Response, Remediation, and Risk Management.

(1) General requirements.

(a) ~~Owners and/or operators~~ Owners, operators, and/or other responsible parties of petroleum UST systems shall, in response to a confirmed release from a UST system, comply with the requirements of this rule. ~~A petroleum site owner who elects to perform release response activities shall comply with the requirements of this rule to receive authorized disbursements from the fund in accordance with subparagraph (5)(a) of Rule 0400-18-01-.09.~~

(b) Field activities and environmental data.

During the course of responding to the release, conducting remediation, and/or managing risk, ~~a tank owners and/or operators~~ owners, operators, and/or other responsible parties of petroleum UST systems shall comply with the following:

1. Notice of Field Activities.

(i) ~~Tank owners and/or operators~~ Owners, operators, and/or other responsible parties of petroleum UST systems shall notify the ~~division~~ Division at least one ~~(1)~~ working day in advance of any routine field activity. Routine field activities include, but are not limited to, placement of soil borings, construction of monitoring wells, sample collection events, field surveys, such as water use surveys or land use surveys, installation and/or start-up of treatment systems.

(ii) ~~Tank owners and/or operators~~ Owners, operators, and/or other responsible parties of petroleum UST systems shall notify the division by no later than one ~~(1)~~ working day after any non-routine field activity, such as emergency response activities.

2. Soil borings and/or monitoring wells shall be drilled, converted to monitoring wells and/or abandoned in accordance with guidance provided by the division.

3. Environmental samples.

(i) Samples shall be collected, labeled, handled, and transported in accordance with guidance and instructions provided by the ~~division~~ Division. Samples shall satisfy any requirements specific to the required laboratory method that is used to analyze the samples.

(ii) Samples shall be analyzed using a method recognized by the United States Environmental Protection Agency or another method that has been approved by the ~~division~~ Division prior to the analysis.

(iii) Sample analysis reports submitted to the ~~division~~ Division shall be original documents unless otherwise specified by the ~~division~~ Division. Such reports shall include, but not be limited to, the following information:

(I) The facility identification number assigned to the UST facility by the ~~division~~ Division;

(II) The sampling point, including depth and the unique combination of letters or numbers assigned to the boring or monitoring well at the time that boring or well was installed;

(III) The sample collection date;

(IV) The date the sample analysis was completed;

(V) The analytical method, including the detection limit for the method, utilized to analyze the sample;

(VI) The dilution factor used on the sample; and

(VII) The analytical results expressed as a concentration of the chemical(s) of concern.

(2) Applicability.

(a) This rule shall apply to all newly reported and/or discovered releases from petroleum underground storage tanks.

(b) Unless directed otherwise by the ~~division~~ Division, this rule shall apply to all previously reported releases from petroleum underground storage tanks.

1. Data which has previously been gathered shall be utilized by the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system to comply with this rule, provided that such data is valid and is representative of the site. The fund shall not reimburse the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of petroleum UST system for the cost of generating duplicate data.

2. Any requirements of this rule that have not previously been satisfied, shall be satisfied by the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system unless directed otherwise by the ~~division~~ Division.

(3) Initial Response.

Upon confirmation of a release in accordance with paragraph (3) of Rule 0400-18-01-.05 or after a release from a UST system is identified in any other manner, ~~owners and/or operators~~ the owner, operator, and/or other responsible party of the petroleum UST system shall, unless directed to do otherwise by the ~~division~~ Division, perform the following initial response actions:

(a) Report the release to the ~~division~~ Division within ~~seventy-two (~~72~~)~~ hours (for example, by telephone, facsimile machine or electronic mail);

(b) Take immediate actions to prevent any further release of the petroleum into the environment including, but not limited to:

1. If the source of the release has not been determined and a systems test has not been performed under the authority of subparagraph (3)(a) of Rule 0400-18-01-.05, a systems test may be required by the division; if required, the test shall be conducted in accordance with subparagraphs ~~(3)(c)~~ (3)(b) and (4)(b) of Rule 0400-18-01-.04;

2. Removing as much of the petroleum from the UST system as is necessary to prevent any further release;

3. Taking the UST system out of service until piping or ancillary equipment associated with the release are replaced or repaired; and/or

4. Preventing the placing of petroleum product into the leaking UST system;

(c) Take immediate action to identify fire, explosion, and/or vapor hazards. Report and manage any hazards identified in accordance with paragraph (4) of this rule;

(d) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the petroleum into surrounding soils and/or ~~ground water~~ groundwater;

(e) Perform a water use survey in accordance with guidance provided by the division. All drinking water supplies, including both wells and springs, located within one-tenth mile of the petroleum site shall be investigated and sampled for the presence of a release. The ~~division~~ Division may require additional investigation and sampling of drinking water supplies in the area, based on hydro-geological conditions or other physical characteristics in the area. Impacted drinking water shall be reported in accordance with subparagraph (4)(a) of this rule and addressed as required in part (4)(b)1 of this rule; and

(f) In order for the ~~tank owner, tank operator or petroleum site owners~~ owner, operator, and/or other responsible party of the petroleum UST system to receive reimbursement from the fund, an Application for Fund Eligibility shall be filed:

1. Within ~~ninety (~~90~~)~~ days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with Rule 0400-18-01-.05; or

2. Within ~~sixty (~~60~~)~~ days of a release which was identified in any manner other than the process for confirmation of a suspected release.

(4) Hazard Management.

When human health hazards, such as impacted drinking water, petroleum vapors, and/or free product are discovered in the vicinity of the petroleum site, the following actions shall be taken to manage such hazards:

(a) Notification.

Report the discovery of impacted drinking water, petroleum vapors, free product, and/or other hazards to the ~~division~~ Division within ~~seventy-two (~~72~~)~~ hours using a Hazard Notification Report form established by the ~~division~~. The form shall be completed in accordance with guidance provided by the ~~division~~ Division. The form may be submitted by facsimile machine or electronic mail.

(b) Abatement Measures.

1. Impacted Drinking Water. Upon discovery and/or confirmation of impacted drinking water, immediately provide an alternate drinking water supply to replace the impacted drinking water unless directed to do otherwise by the ~~division~~ Division.

(i) A temporary source of drinking water may be used in the short term to satisfy the requirement of this part, such as providing bottled water or installing a water filtration system. However, a proposal for providing a permanent source of alternate drinking water shall be supplied as required in subpart (ii) of this part unless otherwise directed by the ~~division~~ Division.

(ii) A proposal for providing a permanent source of potable drinking water, including a cost proposal, shall be submitted to the ~~division~~ Division. The proposal shall be in a format established by the ~~division~~ Division and shall recommend that one of the following methods be utilized:

(I) Install a connection to a public water supply system;

(II) Install a drinking water well into a deeper, non-impacted aquifer;

(III) Restore the impacted aquifer utilizing active remediation measures; or

(IV) Utilize another means of supplying a permanent source of potable drinking water.

(iii) Upon approval by the ~~division~~ Division of a proposal for providing a permanent source of potable drinking water, the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall take such actions as are necessary to implement the approved proposal for providing a permanent source of potable drinking water.

2. Vapor hazards.

Upon discovery and/or confirmation of vapor hazards in a basement, sewer, utility, or other confined space, immediate actions shall be taken to eliminate the vapor hazard in that area unless directed to do otherwise by the ~~division~~ Division.

(i) Vapor hazard control shall, at a minimum, prevent explosion and fire hazards as well as preventing the completion of a human health inhalation exposure pathway.

(ii) After confirmation of a vapor hazard or potential hazard, vapor levels shall be monitored in accordance with guidance provided by the ~~division~~ Division and in accordance with a schedule established by the ~~division~~ Division.

3. Free Product.

(i) Upon confirmation of free product, interim free product removal measures shall be taken immediately to control the migration of the free product associated with recent releases or for free product present in excavations, unless directed to do otherwise by the ~~division~~ Division.

(ii) Free Product Investigation.

The ~~division~~ Division may require an investigation to be made in response to the discovery of free product at or in the vicinity of the petroleum site.

(I) Free Product Investigation Plan.

I. If required by the ~~division~~ Division, the Free Product Investigation Plan shall be submitted to the ~~division~~ Division in a format and with guidance provided by the ~~division~~ Division. The Free Product Investigation Plan shall be submitted in accordance with a schedule established by the ~~division~~ Division. The plan shall include, but not be limited to:

A. A proposal for monitoring well installation and placement; and

B. A cost proposal.

II. Upon division approval of the Free Product Investigation Plan, the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall implement the approved plan in accordance with the provisions of the plan.

(II) Free Product Investigation Report.

A report shall be prepared and submitted to the ~~division~~ Division in a format and in accordance with a schedule established by the ~~division~~ Division. Unless directed otherwise by the ~~division~~ Division, the report shall include, but not be limited to the following:

I. Site characteristics;

II. The areal and vertical extent of free product;

III. An estimation of the volume of free product; and

IV. The feasibility of recovery of the free product.

(iii) Based on the results of the Free Product Investigation Report required under the authority of subpart (ii) of this part, the ~~division~~ Division may require ~~a tank owner and/or operator~~ an owner, operator, and/or other responsible party of the petroleum UST system to submit a Free Product Removal Plan (FPRP) in a format and in accordance with a schedule established by the ~~division~~ Division. The FPRP shall be completed in accordance with guidance provided by the ~~division~~ Division. Unless directed otherwise by the ~~division~~ Division, the FPRP shall include, but not be limited to, the following:

(I) Both the long term and the short term objectives of free product recovery at this site, for example, hydraulic containment, limited draw-down with limited smearing, or other objectives, as well as performance measures;

(II) The design of the free product recovery system or systems, if two or more types of systems are to be used during the course of free product recovery, and a strategy for future integration of the free product recovery system(s) with any soil and/or ~~ground water~~ groundwater treatment determined to be necessary;

(III) An operation and maintenance schedule;

(IV) Schedules for monitoring and reporting;

(V) A list of actionable causes which would result in the re-evaluation of the continued need for and/or the redesign and/or termination of the free product recovery system;

(VI) A schedule and conditions for post termination monitoring; and

(VII) A cost proposal.

(iv) Upon approval of the Free Product Removal Plan, the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall implement the approved plan in accordance with the provisions of the plan.

(v) All reporting requirements contained in the plan shall be followed and the reports shall be submitted to the division in accordance with the schedule contained in the approved plan.

4. Take appropriate actions, approved in advance by the division, to abate any other identified hazards.

(c) Reporting.

~~Tank owners and/or operators~~ Owners, operators, and/or other responsible parties of petroleum UST systems shall submit a Hazard Management Report detailing the actions that have been taken to address the hazards discovered at or in the vicinity of the petroleum site. Hazard Management Reports shall be submitted in a format and in accordance with a schedule established by the division and shall be completed in accordance with guidance provided by the division. Such reports shall include, but not be limited to the following:

1. An Initial Response Hazard Management Report;

2. An Impacted Drinking Water Hazard Management Report;

3. A Vapor Hazard Management Report; ~~or~~ and

4. A Free Product Hazard Management Report.

(5) Initial Site Characterization and Exposure Assessment.

Unless directed to do otherwise by the ~~division~~ Division, the ~~owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall, in accordance with this paragraph, assess the characteristics of the site as well as the nature of the release and shall identify risk to human health, safety and the environment associated with the petroleum release.

(a) Site Assessment.

1. In accordance with guidance provided by the ~~division~~ Division, the ~~owner/operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall conduct an assessment of the petroleum site by installing four ~~(4)~~ soil borings completed as ~~ground water~~ groundwater monitoring wells. The soil and the ~~ground water~~ groundwater shall be sampled for laboratory evaluation to determine the presence and the levels of the chemicals of concern in each sample.

2. If the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system concludes that more than four ~~(4)~~ soil borings and/or monitoring wells are necessary for site characterization and/or risk assessment, the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system may submit a proposal. Such a proposal shall include a cost proposal and a justification statement for review and approval by the ~~division~~ Division. This may be done during the initial site characterization or at any time subsequent thereto.

3. The ~~division~~ Division may require the installation of more than four ~~(4)~~ soil borings and/or monitoring wells for site characterization and/or risk assessment. This may be done during the initial site characterization or at any time subsequent thereto.

(b) Initial Site Characterization Report.

A report shall be prepared and submitted to the ~~division~~ Division in a format and in accordance with a schedule established by the ~~division~~ Division. Data collection, risk analysis and report completion shall be done in accordance with guidance provided by the ~~division~~ Division. The Initial Site Characterization Report shall include but not be limited to the following:

1. A site history, including the types of petroleum products stored, used and/or dispensed on the site, set forth in a chronology of site events;

2. A release history, including any of the following that are known or can be obtained or determined:

(i) The source of the release;

(ii) The type(s) of petroleum product(s), including additives, released;

(iii) Records of release detection conducted at the site that, at a minimum, include the ~~twelve (~~12~~)~~ consecutive months immediately preceding the date of the release;

(iv) The date of the release;

(v) The volume of the release;

(vi) The cause of the release; and

(vii) Levels of chemicals of concern at or in the vicinity of the petroleum site;

3. Petroleum site conditions, including, but not limited to, the following:

(i) A site map;

(ii) Location of utilities;

(iii) Land conditions, including current land use, both inside and outside of the facility property boundaries;

(iv) ~~Ground water~~ Groundwater conditions and use, both inside and outside of the facility property boundaries, including the water use survey conducted in accordance with subparagraph (3)(e) of this rule; and

(v) Surface water conditions, including current surface water use, both inside and outside of the facility property boundaries;

4. Risk factors including, but not necessarily limited to, the following:

(i) Current and reasonably anticipated receptors shall be identified and located on a site map. Receptors shall include, but not necessarily be limited to:

(I) Human receptors: adult, child, residential, commercial/industrial worker;

(II) Ecological; and/or

(III) Physical receptors, such as: drinking water wells and springs, buildings and basements, utilities, surface water; and

(ii) Current and reasonably anticipated exposure pathways between the source area(s) and the identified receptors shall be identified. The exposure pathways shall include ingestion and inhalation; and

5. A Risk Analysis Report (RAR) spreadsheet completed in accordance with guidance and instructions provided by the ~~division~~ Division and using computational software provided by the ~~division~~ Division. The RAR shall be used to determine cleanup levels, either Risk Based Cleanup Levels (RBCLs) or Site Specific Cleanup Levels (SSCLs), for the site based on risk to human health, safety and the environment.

(6) Contamination Case Closure or No Further Action.

If the maximum concentrations of the chemicals of concern at the site are at or below the RBCLs and/or the SSCLs for the site as determined in the Risk Analysis Report section of the Initial Site Characterization Report, then contamination case closure activites shall be completed in accordance with

a schedule established by the ~~division~~ Division and in accordance with guidance provided by the ~~division~~ Division. Contamination case closure activities may include, but are not limtied to, the following:

(a) Closure monitoring;

(b) Proper abandonment of monitoring wells; and/or

(c) Report submittal.

(7) Consideration of Additional Corrective and/or Risk Management Measures.

If the maximum concentrations of the chemicals of concern at the site are above the RBCLs and/or the SSCLs for the site as determined in the Risk Analysis Report section of the Initial Site Characterization Report, then it may be necessary to consider additional remediation and/or risk management measures such as those outlined in paragraphs (8) through (10) of this rule.

(a) If the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system concludes that the use of specific additional measures will result in a more cost effective approach to case management and/or in faster contamination case closure, the ~~tank~~ owner, operator, and/or other responsible party of the petroleum UST system may submit a proposal. Such a proposal shall include a cost proposal and a justification statement.

(b) If the ~~division~~ Division concludes that the use of specific additional measures will result in a more cost effective approach to case management and/or in faster contamination case closure, the tank owner shall, at the direction of the ~~division~~ Division, submit a proposal, including a cost proposal. However, ~~a tank owner and/or operator~~ an owner, operator, and/or other responsible party of the petroleum UST system who is not also the petroleum site owner shall not be required to establish institutional controls in accordance with subparagraph (8)(c) of this rule.

(c) The cost of additional measures taken prior to division approval of a proposal will not be reimbursed by the fund.

(8) Interim Remediation and/or Risk Management.

In accordance with the provisions of paragraph (7) of this rule the ~~division~~ Division may require or allow the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system to take interim remediation and/or risk management measures. After taking any interim remediation action or risk management measure, the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall reevaluate the risk in accordance with guidance provided by the ~~division~~ Division. Interim remediation or risk management may include, but is not limited to:

(a) Source removal.

1. Source removal activities shall not spread contamination into previously uncontaminated or less contaminated areas through improper storage, improper treatment, untreated discharges, or improper disposal.

2. Soil removal.

The excavated soil shall be handled in a manner that prevents human exposure to contaminated soil and that prevents soil exposure to precipitation that may cause surface runoff. The excavation pit shall be secured in a manner that prevents accidental or intentional entry by the public;

(b) Risk reduction.

Actions that eliminate or reduce risk include, but are not limited to, the following activities:

1. Supplying a permanent source of potable water to replace impacted drinking water; and/or

2. Re-routing utility lines or replacing vulnerable portions of utility lines with materials that can withstand the impacts of petroleum;

(c) Establishing institutional controls in accordance with the following:

1. A Notice of Land Use Restrictions, which satisfies the requirements of T.C.A. § 68-212-225, shall be filed in the register of deeds office in the appropriate county.

2. The Notice of Land Use Restrictions may include, but is not limited to, restrictions on the current and future uses of the land, use of the property, current and future uses of ~~ground water~~ groundwater, building, filling, grading and/or excavating; and/or

(d) Employing engineering controls.

(9) Advanced Risk-Based Modeling.

In accordance with the provisions of paragraph (7) of this rule, the division may require or allow advanced risk based modeling:

(a) The ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall submit predictive modeling information in a format and in accordance with a schedule established by the ~~division~~ Division and in accordance with guidance provided by the ~~division~~ Division.

(b) The modeling information shall be accompanied by or include a conclusion as to the course of action which should be taken to address the petroleum contamination at the site provided that such course of action takes into account both adequate risk management and cost effectiveness.

(10) Corrective Action Plan.

In accordance with the provisions of paragraph (7) of this rule, the ~~division~~ Division may require or allow the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system to submit a Corrective Action Plan (CAP).

(a) The CAP shall be in a format established by the ~~division~~ Division and completed in accordance with guidance provided by the ~~division~~ Division. The corrective action plan shall be submitted in accordance with a schedule established by the ~~division~~ Division.

(b) The Corrective Action Plan shall include, but not be limited to, the following:

1. General requirements applicable to all Corrective Action Plans, unless the ~~division~~ Division specifically instructs the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system that certain requirements do not apply to the petroleum site. The general requirements shall include, but not be limited to, the following:

(i) Corrective action system tasks, repairs, maintenance, record keeping, and/or evaluations;

(ii) Performance measurement of site remediation;

(iii) Monitoring events, monitoring tasks and/or monitoring results reporting; and

(iv) Causes for modification and/or termination; and

2. Site-specific requirements, which shall include, but not be limited to, the following:

(i) The applicable site specific ~~clean-up~~ cleanup level for each chemical of concern in soil and/or ~~ground water~~ groundwater;

(ii) The proposed corrective action(s) for soil and/or ~~ground water~~ groundwater remediation;

(iii) A schedule for planned operation and maintenance as well as a contingency plan for unscheduled operation and maintenance activities;

(iv) A cost proposal; and

(v) Performance measures.

(c) Upon approval of the Corrective Action Plan the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall implement the approved plan in accordance with the provisions of the plan.

(d) All reporting requirements contained in the plan shall be followed and the reports shall be submitted to the ~~division~~ Division in accordance with the schedule contained in the approved plan.

(11) Public participation.

(a) For each confirmed release for which a Corrective Action Plan has been required or allowed, the ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.

(b) The ~~division~~ Division shall ensure that site release information and decisions concerning the Corrective Action Plan are made available to the public for inspection upon request.

(c) Before approving a Corrective Action Plan, the ~~division~~ Division may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

(d) The ~~tank owner and/or operator~~ owner, operator, and/or other responsible party of the petroleum UST system shall, at the direction of the ~~division~~ Division, give public notice that complies with subparagraph (a) of this paragraph if implementation of an approved Corrective Action Plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the ~~division~~ Division.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.07 Out-Of-Service UST Systems And Closure.

(1) Temporary closure.

(a) When ~~an~~ a UST system is temporarily closed, owners, operators, and/or other responsible parties shall continue operation and maintenance of corrosion protection in accordance with paragraph (4) of Rule 0400-18-01-.02, and any release detection in accordance with Rule 0400-18-01-.04 and Rule 0400-18-01-.17. Rule 0400-18-01-.05 and Rule 0400-18-01-.06 shall be complied with if a release is suspected or confirmed. However, release detection ~~is~~ and release detection operation and maintenance testing and inspections in Rule 0400-18-01-.02 and Rule 0400-18-01-.04 are not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than ~~two and one-half (~~2.5~~)~~ centimeters (one ~~(1)~~ inch) of residue remains in the system. In addition, spill and

overfill operation and maintenance testing and inspections in Rule 0400-18-01-.02 are not required as long as the UST system is empty.

(b) When an UST system is temporarily closed for three ~~(3)~~ months or more, owners, operators, and/or other responsible parties shall also comply with the following requirements:

1. Leave vent lines open and functioning;

2. Cap and secure all other lines, pumps, manways, and ancillary equipment; and

3. File an amended notification form showing the tank system as temporarily out of use.

(2) Substandard UST systems.

Unless directed to do otherwise by the ~~division~~ Division, owners, operators, and/or other responsible parties of an UST system which does not meet the requirements in paragraphs (3) and (4) of Rule 0400-18-01-.02 shall permanently close the substandard UST system in accordance with paragraphs (4) and (5) of this rule, except that parts (4)(a)6 and 7 of this rule shall not apply to a substandard UST system. Owners, operators, and/or other responsible parties of a substandard UST system shall complete the permanent closure, including submittal of the Permanent Closure Report, within ~~sixty (60)~~ days of division approval of the Application for Permanent Closure of Underground Storage Tanks.

(3) Tank compartment closure.

For a tank that has more than one ~~(1)~~ tank compartment, one ~~(1)~~ or more of the tank compartments may be permanently closed in accordance with the provisions of this paragraph as well as paragraph (5) of this rule. If all the compartments in a tank are to be permanently closed, the requirements for permanent closure set forth in paragraphs (4) and (5) of this rule shall be followed by the tank owner, operator, and/or other responsible parties.

(a) At least ~~thirty (30)~~ days before beginning tank compartment closure, owners, operators, and/or other responsible parties shall apply for tank compartment closure. Application for tank compartment closure shall meet the following requirements:

1. An Application for Closure of Tank Compartment(s) shall be submitted in a format established by the ~~division~~ Division. The application shall be completed according to the instructions provided by the ~~division~~ Division.

2. The Application for Closure of Tank Compartment(s) shall be accompanied by a written statement provided by either the tank manufacturer or a Registered Professional Engineer certifying the following:

(i) The planned closure of the tank compartment(s) will not cause structural damage to the tank; and

(ii) The corrosion protection system will continue to function as designed and will continue to effectively prevent corrosion of the tank following completion of the planned closure of the tank compartment(s).

3. The tank owner, operator, and/or other responsible party shall obtain division approval of the Application for Closure of Tank Compartment(s) prior to closing the tank compartment(s).

4. The application shall constitute a plan for tank compartment(s) closure.

5. Tank compartment(s) closure activities shall be conducted in accordance with the plan contained in the approved Application for Closure of Tank Compartment(s). If alterations to the plan are required, an amended Application for Closure of Tank Compartment(s) shall be submitted to the ~~division~~ Division for approval.

6. The approved Application for Closure of Tank Compartment(s) shall be available for inspection upon request at the petroleum site at the time of tank compartment closure.

7. Division approval of the Application for Closure of Tank Compartment(s) shall be valid for ~~twelve (~~12~~)~~ months following such approval. However, such approval shall not be transferable to another person during that ~~twelve (~~12~~)~~ month approval time.

8. If tank compartment(s) closure is not completed within ~~twelve (~~12~~)~~ months, the tank owner, operator, and/or other responsible parties shall submit a new Application for Closure of Tank Compartment(s) to the ~~division~~ Division for approval at least ~~thirty (~~30~~)~~ days before beginning tank compartment closure.

(b) The required site assessment under paragraph (5) of this rule shall be performed after receipt of division approval of the Application for Tank Compartment(s) Closure, but before completion of the tank compartment closure. Results of all samples taken during the closure of the tank compartment must be reported to the ~~department~~ Division within ~~sixty (~~60~~)~~ days of collection. Samples may be taken while the compartments of the underground storage tank system that are not being permanently closed are in operation. However, samples may not be taken while the tank compartment that is being permanently closed is still in operation.

(c) To permanently close a tank compartment, owners, operators, and/or other responsible parties shall ~~empty and~~ clean the compartment which is to be closed by removing all liquids and accumulated sludges. All tank compartments taken out of service permanently shall be filled with an inert solid material such as a cement compound, sand, gravel, etc. The inert solid material must have a specific gravity greater than ~~one~~ (1.0).

(d) Tank compartment closure activities shall not damage those portions of the underground storage tank system that are not being permanently closed.

(e) Tank compartment closure activities shall not cause or allow a release of petroleum from the underground storage tank system into the environment.

(f) Paragraphs (4) and (5) of this rule shall be followed when the final tank compartment is permanently closed.

(4) Permanent closure and changes-in-service.

(a) At least ~~thirty (~~30~~)~~ days before beginning either permanent closure of any portion of an underground storage tank system or a change-in-service under subparagraphs (b) and (c) of this paragraph, owners, operators, and/or other responsible parties shall apply for permanent closure, unless such action is in response to corrective action. Application for permanent closure or change in service shall meet the following requirements:

1. An Application for Permanent Closure of Underground Storage Tank Systems shall be submitted in a format established by the ~~division~~ Division. The application shall be completed according to the instructions provided by the ~~division~~ Division.

2. The tank owner, operator and/or other responsible party shall obtain division approval of the Application for Permanent Closure prior to permanently closing the UST system or any portion thereof or effecting a change in service of the UST system, unless tank compartment closure is conducted in accordance with paragraphs (3) and (5) of this rule.

3. The application shall constitute a plan for closure or change in service of the UST system, or any portion thereof.

4. Change in service or closure activities shall be conducted in accordance with the plan contained in the approved Application for Permanent Closure. If alterations to the plan are required, an amended Application for Permanent Closure shall be submitted to the ~~division~~ Division for approval.

5. The approved Application for Permanent Closure of Underground Storage Tank Systems shall be available for inspection upon request at the petroleum site at the time of closure.

6. Division approval of the Application for Permanent Closure shall be valid for ~~twelve (~~12~~)~~ months following such approval. However, such approval shall not be transferable to another person during that ~~twelve (~~12~~)~~ month approval time.

7. If permanent closure or change-in-service is not completed within ~~twelve (~~12~~)~~ months, the tank owner, operator, and/or other responsible parties shall submit a new Application for Permanent Closure to the division for approval at least ~~thirty (~~30~~)~~ days before beginning underground storage tank system closure.

(b) To permanently close a tank, owners, operators, and/or other responsible parties shall ~~empty and~~ clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently shall also be either removed from the ground or filled with an inert solid material such as a cement compound, sand, gravel, etc. The inert solid material shall have a specific gravity greater than 1.0.

(c) ~~Continued use~~ Use of ~~an~~ a petroleum UST system to store a ~~non-regulated~~ non-petroleum substance is considered a change-in-service. Before a change-in-service, owners, operators, and/or other responsible parties shall ~~empty and~~ clean the tank by removing all ~~liquid~~ liquids and accumulated ~~sludge~~ sludges and conduct a site assessment in accordance with paragraph (5) of this rule.

(d) Should an owner, operator, and/or other responsible parties elect to excavate and remove a tank from the site, such excavation and removal shall be done in accordance with Appendix 0400-18-01-.07-A.

(e) Once a tank has been excavated, it may be stored on-site or transported off-site for storage or disposal. Excavated tanks which have not been cut into sections for disposal shall be considered in storage and shall at all times, while in storage, be maintained in a vapor-free state and stored in accordance with Appendix 0400-18-01-.07-A.

(f) Tanks shall not be stored at a UST facility unless they are maintained in a vapor-free state, stored in accordance with Appendix 0400-18-01-.07-A, and one of the following conditions are met:

1. (i) Tanks have been cleaned by removal of all liquids and accumulated sludges; and

   (ii) Tanks have been purged of vapors so that any explosive levels do not exceed ~~twenty percent (~~20%~~)~~ of the lower explosive limit for the ~~regulated~~ petroleum substance; and

   (iii) Tanks have an opening or openings installed which comprise a minimum of ~~ten percent (~~10%~~)~~ of the total tank surface area. Such openings will not be considered openings if they are in contact or contiguous with the ground or surface on which the tank may be resting; or

2. Subparts 1(i) and (ii) of this subparagraph have been complied with and there are no remaining USTs either in use or in a temporarily closed condition at the facility; or

3. Tanks which are removed from a UST facility and are intended for reuse at the same or another facility as USTs may be stored at a UST facility if the owner, operator, and/or other responsible parties meets the conditions described in subparts 1(i) and (ii) of this subparagraph, and either removes the tank off-site from a UST facility or puts it back into service within ~~thirty (~~30~~)~~ days of excavation.

(g) Tanks shall be stored in a manner which does not pose safety hazards. Tanks shall be stored in a position with the tank's center of gravity closest to the ground. Tanks shall not be stacked. Tanks shall be secured so that they will not roll or slide across a level or sloping ground surface.

[NOTE: Transportation and disposal of tanks will be subject to all applicable ~~Federal~~ federal, ~~State~~ state, and local laws and regulations concerning the safe transportation and proper disposal of such materials.]

(5) Assessing the site at tank closure, tank compartment closure or change-in-service.

The required site assessment shall be performed after receipt of division approval of either an Application for Permanent Closure of Underground Storage Tank System(s) or an Application for Closure of Tank Compartment(s), but before completion of either the permanent closure, tank compartment closure or a change-in-service. The required site assessment shall be performed in accordance with guidance provided by the ~~division~~ Division.

(a) Before permanent closure of a tank or a tank compartment or a change-in service is completed, owners, operators, and/or other responsible parties shall measure for the presence of a release where contamination is most likely to be present at the UST site. Sampling shall meet the following requirements:

1. In selecting sample types, sample locations, and measurement methods, owners, operators, and/or other responsible parties shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ~~ground water~~ groundwater, and other factors appropriate for identifying the presence of a release.

2. At least one day before samples are taken, the owner, operator, and/or other responsible parties shall notify the ~~division~~ Division concerning the schedule for sample collection.

(b) Results of all samples taken during change in service or closure of the underground storage tank system or closure of a tank compartment shall be reported to the ~~division~~ Division within ~~sixty (60)~~ days of collection. Samples shall not be taken while the underground storage tank system is in operation, except when tank compartment closure is being conducted in accordance with paragraph (3) of this rule. Sample results shall be submitted as an attachment to either a Permanent Closure Report for Underground Storage Tank Systems or a Permanent Closure Report for Tank Compartments.

(c) The Permanent Closure Report for Underground Storage Tank Systems and/or tank compartments shall be submitted in a format established by the ~~division~~ Division. The Permanent Closure Report for Underground Storage Tank Systems shall be completed in accordance with the instructions provided by the ~~division~~ Division.

~~(d) The Permanent Closure Report for Tank Compartments shall be submitted in a format established by the division. The Permanent Closure Report for Tank Compartments shall be completed in accordance with the instructions provided by the division.~~

~~(e)~~(d) The report, either the Permanent Closure Report for Underground Storage Tank Systems or the Permanent Closure Report for Tank Compartments, shall include, but not be limited to, the following information:

1. The facility identification number assigned to the facility by the ~~division~~ Division;

2. Facility name and address;

3. An updated post-closure site map;

4. Sampling, including field screening and laboratory analytical results;

5. Information concerning the removal, storage and/or disposal of tanks, piping and other ancillary underground equipment; and

6. Information concerning the removal, remediation and/or disposal of petroleum, petroleum waste, petroleum contaminated soil and/or ~~ground water~~ groundwater.

~~(f)~~(e) If contaminated soils, contaminated ~~ground water~~ groundwater, or free product as a liquid or vapor is discovered under subparagraph (a) of this paragraph, or by any other manner, owners, operators, and/or other responsible parties shall begin release response and corrective action in accordance with Rule 0400-18-01-.06.

(6) Applicability to previously closed UST systems.

When directed by the ~~division~~ Division, the owner, operator, and/or other responsible parties of an UST system permanently closed before December 22, 1988, shall assess the site and close the UST system in accordance with this rule if releases from the UST may, in the judgment of the ~~division~~ Division, pose a current or potential threat to human health and the environment.

(7) Closure records.

Owners, operators, and/or other responsible parties shall maintain records in accordance with paragraph (2) of Rule 0400-18-01-.03 that are capable of demonstrating compliance with closure requirements under this rule. The results of the site assessment required in paragraph (5) of this rule shall be maintained for at least three ~~(3)~~ years after completion of permanent closure or change-in-service in one of the following ways:

(a) By the owners, operators, and/or other responsible parties who took the UST system out of service;

(b) By the current owners, operators, and/or other responsible parties of the UST system site; or

(c) By mailing these records to the ~~division~~ Division if they cannot be maintained at the closed facility.

APPENDIX 0400-18-01-.07–A

REMOVAL OF UNDERGROUND TANKS.

(1) Preparation.

(a) Drain product piping into the tank, being careful to avoid any spillage. Cap or remove product piping.

(b) Remove liquids and residues from the tank by using explosion-proof or air-driven pumps. Pump motors and suction hoses shall be bonded to the tank or otherwise grounded to prevent electrostatic ignition hazards. It may be necessary to use a hand pump to remove the last few inches of liquid from the bottom of the tank.

NOTE: (The Federal Resource Conservation and Recovery Act (RCRA) 42 U.S.C. Section 6901 et seq., and the Tennessee Hazardous Waste Management Act (HWMA) Part 1 T.C.A. § 68-212-101 et seq. place restrictions on disposal of certain residues that may be present in some underground storage tanks. Residues from tanks that have held leaded gasoline should be treated with extreme caution. Lead compounds and other residues in the tank may be classified as hazardous wastes).

(c) Excavate to the top of tank.

(d) Remove the fill pipe, gauge pipe, vapor recovery truck connection, submersible pumps, and other tank fixtures. Remove the drop tube, except when it is planned to vapor-free the tank by using an eductor. Cap or remove all non-product lines, such as vapor recovery lines, except the vent line. The vent line shall remain connected until the tank is purged. Temporarily plug all other tank openings so that all vapors will exit through the vent line during the vapor-freeing process.

(2) Purging.

(a) Remove flammable vapors by one of the methods described in subparagraphs (b) through (e) of this paragraph, or as required by local codes. These methods provide a means for temporary

vapor-freeing of the tank atmosphere. However, it is important to recognize that the tank may continue to be a source of flammable vapors even after following the vapor-freeing procedures described in subparagraphs (b) through (e) of this paragraph. For this reason, caution shall always be exercised when handling or working around tanks that have stored flammable or combustible liquids. Before initiating work in the tank area or on the tank, a combustible gas indicator shall be used to assess vapor concentrations in the tank and work area. All work shall be done in accordance with ~~Paragraph~~ paragraph (3)~~, "Testing"~~ of this appendix.

(b) Vent all vapors from the tank at a minimum height of ~~twelve (~~12~~)~~ feet above grade and three ~~(3)~~ feet above any adjacent roof lines until the tank is purged of flammable vapors. The work area shall be free from sources of ignition.

(c) Flammable and combustible vapors may be purged with an inert gas such as carbon dioxide (CO_2) or nitrogen (N_2). This method is not to be utilized if the tank is to be entered for any reason, as the tank atmosphere will be oxygen deficient. The inert gas is to be introduced through a single tank opening at a point near the bottom of the tank at the end of the tank opposite the vent. When inert gases are used, they shall be introduced under low pressure to avoid the generation of static electricity. When using CO_2 or N_2, pressures in the tank shall not exceed five ~~(5)~~ pounds per square inch gauge.

Caution: The process of introducing compressed gases into the tank may create a potential ignition hazard as the result of the development of static electrical charges. The discharging device shall therefore be grounded. Explosions have resulted from the discharging of CO_2 fire extinguishers into tanks containing a flammable vapor-air mixture. CO_2 extinguishers shall not be used for inerting flammable atmospheres.

(d) If the method described in subparagraph (c) of this paragraph is not practical, the vapors in the tank may be displaced by adding solid carbon dioxide (dry ice) to the tank in the amount of at least ~~one and one-half (~~1.5~~)~~ pounds per ~~one hundred (~~100~~)~~ gallons of tank capacity. The dry ice should be crushed and distributed evenly over the greatest possible area in the tank to promote rapid evaporation. As the dry ice vaporizes, flammable vapors will flow out of the tank and may surround the area. Therefore, where practical, plug all tank openings except the vent after introducing the solid CO_2 and continue to observe all normal safety precautions regarding flammable or combustible vapors. Make sure that all of the dry ice has evaporated before proceeding.

(e) Flammable vapors may be exhausted from the tank by one of two methods of tank ventilation listed below:

1. Ventilation using an eductor-type air mover usually driven by compressed air. The eductor-type air mover shall be properly bonded to prevent the generation and discharge of static electricity. When using this method, the fill (drop) tube shall remain in place to ensure ventilation at the bottom of the tank. Tanks equipped with fill (drop) tubes that are not removable should be purged by this method. An eductor extension shall be used to discharge vapors a minimum of ~~twelve (~~12~~)~~ feet above grade and at least three ~~(3)~~ feet above any adjacent roof line.

2. Ventilation with a diffused air blower. When using this purging method, it is imperative that the air-diffusing pipe is properly bonded to prevent the discharge of a spark. Fill (drop) tubes shall be removed to allow proper diffusion of the air in the tank. Air supply should be from a compressor that has been checked to ensure a clean air supply and is free from volatile vapors. Air pressure in the tank shall not exceed five ~~(5)~~ pounds per square inch gauge.

(3) Testing.

(a) The tank atmosphere and the excavation area are to be regularly tested for flammable or combustible vapor concentrations until the tank is removed from both the excavation and the site. Such tests are to be made with a combustible gas indicator which is properly calibrated according to the manufacturer's instructions and which is thoroughly checked and maintained in accordance

with the manufacturer's instructions. Persons responsible for testing shall be completely familiar with the use of the instrument and the interpretation of the instrument's readings.

(b) The tank vapor space is to be tested by placing the combustible gas indicator probe into the fill opening with the drop tube removed. Readings should be taken at the bottom, middle, and upper portions of the tank, and the instrument should be cleared after each reading. If the tank is equipped with a non-removable fill tube, readings are to be taken through another opening. Liquid product shall not enter the probe. Readings of ~~twenty percent (~~20%~~)~~ or less of the lower flammable limit shall be obtained before the tank is considered safe for removal from the ground.

(c) Tanks purged with an inert gas shall be sampled with an oxygen indicator and the oxygen content shall be considered while interpreting combustible gas indicator results.

(4) Removal.

(a) After the tank has been freed of vapors and before it is removed from the excavation, plug or cap all accessible holes. One plug shall have a one-eighth of an inch vent hole to prevent the tank from being subjected to excessive differential pressure caused by temperature changes. The tank shall always be positioned with this vent plug on top of the tank during subsequent transport and storage.

(b) Excavate around the tank to uncover it for removal. Remove the tank from the excavation and place it on a level surface. Use wood blocks to prevent movement of the tank after removal and prior to loading on a truck for transportation. Use screwed (boiler) plugs to plug any corrosion holes in the tank shell.

(c) Precautions shall be taken to assure any vapors left in the tank do not reach a combustible level. If this situation occurs, the tank shall be purged according to paragraph (2) of this appendix.

(d) Before the tank is removed from the site, the tank atmosphere shall be checked with a combustible gas indicator to ensure that it does not exceed ~~twenty percent (~~20%~~)~~ of the lower flammable limit.

(e) The tank shall be secured on a truck for transportation to the storage or disposal site with the one-eighth of an inch vent hole located at the uppermost point on the tank. Tanks shall be transported in accordance with all applicable local, state, and federal laws and regulations.

(f) Tanks shall be labeled after removal from the ground but prior to removal from the site. Regardless of the condition of the tank, the label shall contain a warning against certain types of reuse. The former contents and present vapor state of each tank, including vapor-freeing treatment and data shall also be indicated. The label shall be similar to the following in legible letters at least two ~~(2)~~ inches high:

Tank Has Contained Leaded Gasoline*

Not Vapor Free

Not Suitable For Storage Of Food Or Liquids

Intended For Human Or Animal Consumption

Date Of Removal: Month/Day/Year

*Or other flammable/combustible liquid. Use the applicable designation, for example, diesel.

Tanks that have held leaded motor fuels (or whose service history is unknown) shall also be clearly labeled with the following information:

Tank Has Contained Leaded Gasoline

Lead Vapors May Be Released If Heat

Is Applied To The Tank Shell

(5) Storage Of Used Tanks.

Storage Procedures.

(a) Tanks shall be vapor-freed before being placed in storage. Tanks shall also be free of all liquids and residues. All tank openings shall be tightly plugged or capped, with one plug having a one-eighth of an inch vent hole to prevent the tank from being subjected to excessive differential pressure caused by temperature changes. Tanks shall be stored with the vented plug at the highest point on the tank. All tanks shall be labeled.

(b) Used tanks shall be stored in secure areas where the general public will not have access.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.08 Financial Responsibility.

(1) Purpose.

A tank owner or operator is required to pay for corrective action and/or for compensating third parties for bodily injury or property damages caused by accidental releases arising from the operation of petroleum underground storage tank systems. Furthermore, a tank owner or operator is required to demonstrate financial responsibility or the ability to pay for corrective action and/or for compensating third parties for bodily injury or property damages caused by accidental releases arising from the operation of petroleum underground storage tank systems. The purpose of this rule is to authorize the use of certain financial assurance mechanisms to satisfy the requirement to demonstrate financial responsibility.

(2) Applicability.

(a) This rule applies to owners and/or operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this paragraph.

(b) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are deemed to meet financial responsibility requirements without having to meet the requirements of this rule.

(c) The requirements of this rule do not apply to owners and/or operators of any UST system described in subparts (2)(b)1(i), (iv) and (v) and subparagraph ~~(2)(b)~~ (2)(c) of Rule 0400-18-01-.01.

(d) UST systems listed in Rule 0400-18-01-.17 must comply with the requirements of this rule as provided in Rule 0400-18-01-.17.

~~(d)~~(e) If the owner and the operator of a petroleum underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

(3) Amount And Scope Of Required Financial Responsibility.

(a) Per occurrence amounts.

Owners or operators of petroleum underground storage tank systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per occurrence amounts:

1. For owners or operators of petroleum underground storage tank systems that are located at petroleum marketing facilities, or that handle an average of more than ~~ten thousand (~~10,000~~)~~ gallons of petroleum per month based on annual throughput for the previous calendar year: ~~one million dollars (~~$1,000,000~~)~~.

2. For all other owners or operators of petroleum underground storage tank systems: ~~five hundred thousand dollars (~~$500,000~~)~~.

(b) Annual aggregate amounts.

Owners or operators of petroleum underground storage tank systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems in at least the following annual aggregate amounts:

1. For owners or operators of one ~~(1)~~ to ~~one hundred (~~100~~)~~ petroleum underground storage tank compartments: ~~one million dollars (~~$1,000,000~~)~~.

2. For owner or operators of ~~one hundred one (~~101~~)~~ or more petroleum underground storage tank compartments: ~~two million dollars (~~$2,000,000~~)~~.

(c) The amounts of financial assurance required under this paragraph exclude legal defense costs.

(d) The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(4) Allowable Financial Assurance Mechanisms and Combinations of Mechanisms.

(a) A tank owner or operator may use one of following financial assurance mechanisms to satisfy the requirements of paragraph (3) of this rule:

1. Tennessee Petroleum Underground Storage Tank Fund in accordance with paragraph (5) of this rule and Rule 0400-18-01-.09;

2. Financial Test of Self-Assurance in accordance with paragraph (6) of this rule;

3. Corporate Parent Financial Test Guarantee in accordance with paragraph (7) of this rule;

4. Liability Insurance in accordance with paragraph (8) of this rule;

5. Surety Bond or Performance Bond in accordance with paragraph (9) of this rule;

6. Irrevocable Standby Letter of Credit in accordance with paragraph (10) of this rule;

7. Personal Bond Supported by Certificate of Deposit in accordance with paragraph (11) of this rule;

8. Trust Fund and Agreement in accordance with paragraph (12) of this rule;

9. Local Government Bond Rating Test in accordance with paragraph (13) of this rule; or

10. Local Government Financial Test in accordance with paragraph (14) of this rule.

(b) Standby Trust Fund.

1. If a tank owner or operator uses one of the financial assurance mechanisms listed in this part to meet the requirements of paragraph (3) of this rule, a Standby Trust Fund and Agreement shall be established in accordance with paragraph (15) of this rule at the time the mechanism is established.

(i) Liability Insurance in accordance with paragraph (8) of this rule;

(ii) Surety Bond or Performance Bond in accordance with paragraph (9) of this rule; or

(iii) Irrevocable Standby Letter of Credit in accordance with paragraph (10) of this rule.

2. If a tank owner or operator uses one of the financial assurance mechanisms listed in this part to meet the requirements of paragraph (3) of this rule, a Standby Trust Fund and Agreement shall be established in accordance with paragraph (15) of this rule if the requirements of the financial test can no longer be met and the owner or operator fails to provide an alternative financial assurance mechanism that meets the requirements of this rule.

(i) Financial Test of Self-Assurance in accordance with paragraph (6) of this rule;

(ii) Corporate Parent Financial Test Guarantee in accordance with paragraph (7) of this rule;

(iii) Local Government Bond Rating Test in accordance with paragraph (13) of this rule; or

(iv) Local Government Financial Test in accordance with paragraph (14) of this rule.

(c) Use of combinations of financial assurance mechanisms.

1. The following financial assurance mechanisms may be used in combination by a tank owner or operator to satisfy the requirements of subparagraphs (3)(a) and (b) of this rule:

(i) Tennessee Petroleum Underground Storage Tank Fund in accordance with paragraph (5) of this rule and Rule 0400-18-01-.09;

(ii) Liability insurance in accordance with paragraph (8) of this rule;

(iii) Surety Bond or Performance Bond in accordance with paragraph (9) of this rule;

(iv) Irrevocable Standby Letter of Credit in accordance with paragraph (10) of this rule;

(v) Personal Bond Supported by Certificate of Deposit in accordance with paragraph (11) of this rule; and

(vi) Trust Fund and Agreement in accordance with paragraph (12) of this rule.

2. The following financial assurance mechanisms shall not be used in combination by a tank owner or operator to satisfy the requirements of subparagraphs (3)(a) and (b) of this rule:

(i) Financial Test of Self-Assurance in accordance with paragraph (6) of this rule;

(ii) Corporate Parent Financial Test Guarantee in accordance with paragraph (7) of this rule;

(iii) Local Government Bond Rating Test in accordance with paragraph (13) of this rule; or

(iv) Local Government Financial Test in accordance with paragraph (14) of this rule.

(d) The amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in subparagraphs (a) and (b) of paragraph (3) of this rule if the owner

or operator uses separate mechanisms or separate combinations of mechanisms in accordance with subparagraph (c) of this paragraph to demonstrate financial responsibility for:

1. Taking corrective action in accordance with Rule 0400-18-01-.06; or

2. Compensating third parties for bodily injury and property damage caused by accidental releases.

(e) The tank owner or operator using a financial assurance mechanism other than the Tennessee Petroleum Underground Storage Tank Fund shall not be considered to have satisfied the financial assurance requirements of this rule until the financial assurance mechanism has been received and approved by the Commissioner.

(f) These financial assurance mechanisms are established for use by the ~~division~~ Division for taking corrective action or for paying third party claims in the event the owner or operator fails to take corrective actions or pay third party claims. The financial assurance mechanisms in this rule shall not be used by the owner or operator to satisfy the requirements of corrective action or third party liability claims with the exception of the Tennessee Petroleum Underground Storage Tank Fund authorized by paragraph (5) of this rule.

(5) Tennessee Petroleum Underground Storage Tank Fund.

Tank owners or operators may satisfy the requirements of paragraphs (3) of this rule by establishing fund eligibility in accordance with paragraph (3) of Rule 0400-18-01-.09 and with the provisions of this paragraph.

(a) Corrective action costs.

Tank owners or operators who are eligible for reimbursement from the fund shall demonstrate that they have incurred the amount of the applicable fund entry level or deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the ~~division~~ Division in accordance with subparagraph (3)(c) of Rule 0400-18-01-.09.

1. If a fund eligible tank owner or operator claims financial inability to pay the corrective action entry level or deductible set forth in paragraph (6) of Rule 0400-18-01-.09 at the time an Application for Fund Eligibility is submitted to the ~~division~~ Division, the fund may be utilized to pay the deductible for taking corrective action.

   (i) The tank owner or operator shall supply documentation of inability to pay the fund entry level or deductible for taking corrective action to the Commissioner upon request.

   (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action.

2. If a fund eligible tank owner or operator fails, without sufficient cause, to perform the release response, remediation, and/or risk management actions required in Rule 0400-18-01-.06 on order of the Commissioner and fails, without sufficient cause to pay the amount of the applicable fund entry level or deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the ~~division~~ Division, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action. In addition, pursuant to T.C.A. § 68-215-116, the Commissioner may seek a penalty in the amount of ~~one hundred fifty percent (~~150%~~)~~ of the costs expended by the fund as the result of the failure to take proper action.

3. If a fund eligible tank owner or operator has been denied fund coverage of corrective action costs under the provisions of subparagraph (10)(c) of Rule 0400-18-01-.09 and the

owner or operator claims financial inability to pay for part or all of the necessary corrective action, the fund may be utilized to pay for taking corrective action.

(i) The tank owner or operator shall supply documentation of inability to pay for corrective action to the ~~division~~ Division upon request.

(ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount paid by the fund for taking corrective action.

(b) Third party claims.

Owners or operators who are eligible for reimbursement from the fund shall demonstrate that they have incurred the amount of the applicable fund entry level or deductible amount for third party claims set forth in paragraph (6) of Rule 0400-18-01-.09 at the time the ~~division~~ Division receives an application for payment accompanied by the original or a certified copy of a final judgment in accordance with subparagraph (12)(h) of Rule 0400-18-01-.09.

1. If a fund eligible tank owner or operator cannot pay the amount of the applicable fund entry level or deductible amount for third party claims at the time an application for payment accompanied by the original or a certified copy of a final judgment is submitted to the ~~division~~ Division in accordance with subparagraph (12)(h) of Rule 0400-18-01-.09, the fund may be utilized to pay the deductible for satisfying the third party claim.

(i) The tank owner or operator shall supply documentation of ~~their~~ the owner's or operator's inability to pay the fund entry level or deductible for third party claims to the ~~division~~ Division upon request.

(ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or ~~tank~~ operator for the amount of the entry level or deductible paid by the fund for satisfying the third party claim.

2. If a fund eligible tank owner or operator fails, without sufficient cause, to pay the amount of the applicable fund entry level or deductible amount for a third party claim, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for third party damages.

(6) Financial Test Of Self-Assurance.

A tank owner or operator may satisfy the requirements of paragraph (3) of this rule by passing a Financial Test of Self-Assurance in accordance with the provisions of this paragraph.

(a) A Financial Test of Self-Assurance shall not be used in combination with other financial assurance mechanisms, and shall not be used in cases where an owner or operator has a parent company or any other entity holding majority control of its voting stock.

(b) The financial statements of the owner or operator shall be prepared in accordance with generally accepted accounting principles applicable to the United States, and an independent certified public accountant (CPA) shall verify the accuracy of the financial test data relative to the financial statements.

(c) In order to demonstrate that the owner or operator meets the requirements of the Financial Test of Self-Assurance as set forth in this paragraph, the Chief Executive Officer or the Chief Financial Officer of the business firm of the owner or operator shall complete and submit a notarized letter, including a Financial Test of Self-Assurance as required in subparagraph (d) of this paragraph, both initially and within ~~ninety (~~90~~)~~ days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Executive Officer or the Chief Financial Officer of the business firm of the owner or operator shall be in accordance with guidance

provided by the ~~division~~ Division. The letter shall be in a format established by the ~~division~~ Division.

(d) Both initially and annually, within ~~ninety (~~90~~)~~ days after the close of each succeeding fiscal year, the owner or operator shall demonstrate that the owner or operator has adequate financial strength to provide the guarantee required by subparagraphs (h) and (i) of this paragraph by passing the applicable financial test, that is, either Financial Test of Self-Assurance – Alternative I, completed in accordance with subparagraph (f) of this paragraph, or Financial Test of Self-Assurance – Alternative II, completed in accordance with subparagraph (g) of this paragraph.

(e) The financial test alternatives, a comparison of business performance ratios, financial strength ratios, credit ratings, net worth, assets, operating revenues, and bond ratings relative to fixed criteria, shall be in a format established by the ~~division~~ Division and completed in accordance with guidance provided by the ~~division~~ Division.

(f) To use the Financial Test of Self-Assurance - Alternative I as a financial assurance mechanism, the tank owner or operator shall meet the following conditions:

1. The tank owner or operator shall have a tangible net worth of at least ~~ten million dollars (~~$10,000,000~~)~~ plus the dollar amount of all financial assurance covered by a financial test.

2. The tank owner or operator shall have a tangible net worth at least six ~~(6)~~ times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six ~~(6)~~ times the sum of all other amounts covered by a financial test of the owner or operator for all other environmental programs or agencies in the State of Tennessee, other states, and federal agencies.

3. The tank owner or operator shall have assets located in the United States which shall amount to at least ~~ninety percent (~~90%~~)~~ of the total assets of the owner or operator or at least six ~~(6)~~ times the current amounts of financial assurance covered by the owner or operator through the use of the Financial Test of Self-Assurance - Alternative I.

4. The tank owner or operator shall satisfy at least two ~~(2)~~ of the three ~~(3)~~ ratio standards in subparts (i) through (iii) of this part:

   (i) The ratio of total liabilities to net worth shall equate to less than 1.5;

   (ii) The ratio of the sum of net income plus depreciation, depletion, and amortization minus ~~ten million dollars (~~$10,000,000~~)~~ to the total liabilities shall equate to greater than 0.10; and/or

   (iii) The ratio of current assets to current liabilities shall equate to greater than 1.5.

5. The tank owner or operator shall report the firm's financial position to Dun and Bradstreet annually and have a financial strength rating of 4A or 5A and a composite credit appraisal of 1 by Dun and Bradstreet.

6. The tank owner or operator shall comply with one of the following:

   (i) The owner or operator shall file financial statements with the U.S. Securities and Exchange Commission annually; or

   (ii) The owner or operator shall file complete financial statements with the Energy Information Administration annually.

7. The fiscal year-end financial statements of the owner or operator:

   (i) Shall be examined by an independent certified public accountant (CPA);

(ii) Shall be accompanied by the CPA's report of the examination; and

(iii) Shall not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

8. Annually the owner or operator shall submit a special report prepared by a CPA. The report shall include statements by the CPA that:

(i) The CPA has reviewed the data, specified as having been derived from the latest year-end financial statements of the owner or operator, in the Letter from the Chief Executive Officer or the Chief Financial Officer required by subparagraph (c) of this paragraph;

(ii) The CPA has compared the data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements; and

(iii) The CPA's comparison of data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements revealed nothing to cause the CPA to believe that the data in the Letter from the Chief Executive Officer or the Chief Financial Officer should be adjusted.

(g) To use the Financial Test of Self Assurance - Alternative II as a financial assurance mechanism, the tank owner or operator shall meet each of the following conditions:

1. The tank owner or operator shall have a tangible net worth of at least ~~ten million dollars (~~$10,000,000~~)~~ plus the dollar amount of all financial assurance covered by a financial test.

2. The tank owner or operator shall have a tangible net worth of at least six ~~(6)~~ times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six ~~(6)~~ times the sum of all other amounts covered by a financial test of the owner or operator for other environmental programs or agencies of the State of Tennessee, other states, and/or federal agencies.

3. Assets of the tank owner or operator located in the United States shall amount to at least ~~ninety percent (~~90%~~)~~ of the total assets of the owner or operator or at least six ~~(6)~~ times the current amounts of financial assurance covered by the owner or operator through the use of this Financial Test of Self-Assurance – Alternative II.

4. The tank owner or operator shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.

5. For purposes of the Financial Test of Self Assurance – Alternative II, bond ratings shall apply to outstanding, rated bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, and that have been issued directly by the owner or operator. Ratings on revenue bonds shall not be used in the financial test. In order to pass the Financial Test of Self-Assurance - Alternative II, the owner or operator shall have at least one class of equity securities registered under the Securities Exchange Act of 1934.

6. The owner or operator shall file financial statements annually with the U.S. Securities and Exchange Commission.

7. The fiscal year-end financial statements of the owner or operator shall be examined by an independent certified public accountant (CPA) and shall be accompanied by the CPA's report of the examination. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

8. The owner or operator shall obtain and submit to the Commissioner a special report by a CPA stating that:

   (i) The CPA has compared the data that the Letter from the Chief Executive Officer or the Chief Financial Officer specifies as having been derived from the latest year-end financial statements of the owner or operator with the amounts in such financial statements; and

   (ii) In connection with the comparison in subpart (i) of this part, no matters came to the attention of the CPA which caused the CPA to believe that the specified data should be adjusted.

(h) In accordance with subparagraph (i) of this paragraph an owner or operator shall guarantee that the owner or operator can pay for and carry out corrective actions and/or compensate third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

(i) Annually, the owner or operator shall complete and submit a notarized written guarantee stating that the said owner or operator shall comply with all of the terms set forth in this paragraph as requirements governing the use of the Financial Test of Self-Assurance. Such Financial Test of Self-Assurance Guarantee Agreement shall:

1. Be in a format established by the Commissioner and completed in accordance with guidance provided by the Commissioner;

2. Commit the owner or operator to carrying out the required corrective actions and/or compensation to third parties in response to a judgment enforceable in Tennessee;

3. Commit the owner or operator to setting up and funding a standby trust in the amount required in an order issued by the Commissioner, up to the amount set forth in paragraph (3) of this rule;

4. Commit the owner or operator to notifying the Commissioner within ten ~~(10)~~ days following a filing to seek bankruptcy protection from creditors under Title 11 U.S. Code; and

5. Commit the owner or operator to notifying the Commissioner within ~~seventy-two (~~72~~)~~ hours following of any reasonable determination that the owner or operator can no longer satisfy the requirement of the Financial Test of Self-Assurance, whether Alternative I or Alternative II; and

6. Commit the owner or operator to complying with one of the following within ~~thirty (~~30~~)~~ days of determination that the owner or operator no longer meets the requirement of the Financial Test of Self-Assurance, whether Alternative I or Alternative II:

   (i) Submittal to the ~~Department~~ Commissioner of an alternative financial assurance mechanism; or

   (ii) Establishment of and funding of an irrevocable standby trust in accordance with paragraph (15) of this rule to assure the performance of corrective action and/or compensation of third parties for bodily injury and property damage due to accidental releases arising from the operation of petroleum underground storage tank.

(7) Corporate Parent Financial Test Guarantee.

An owner or operator may satisfy the requirements of paragraph (3) of this rule if a direct or higher tier corporate parent of that owner or operator, through a Corporate Parent Financial Test Guarantee, which complies with the requirements of this paragraph, assumes the responsibility of the owner or operator to fund and carry out corrective action and compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

(a) A Corporate Parent Financial Test Guarantee shall not be used in combination with other financial assurance mechanisms, and shall not be used in cases where a corporate parent itself has a higher parent corporation holding majority control of its voting stock.

(b) The financial statements of the corporate parent of the owner or operator shall be prepared in accordance with generally accepted accounting principles applicable to the United States, and an independent certified public accountant shall verify the accuracy of the financial test data relative to the financial statements.

(c) In order to demonstrate that the corporate parent of the owner or operator meets the requirements of the Corporate Parent Financial Test Guarantee as set forth in this paragraph, the Chief Executive Officer or the Chief Financial Officer of the parent company of the owner or operator shall complete and submit a notarized letter, including a Corporate Parent Financial Test as required in subparagraph (d) of this paragraph, to the ~~Department~~ Commissioner both initially and within ~~ninety (~~90~~)~~ days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Executive Officer or the Chief Financial Officer shall be in accordance with guidance provided by the ~~division~~ Division and in a format established by the ~~division~~ Division.

(d) Both initially and annually, within ~~ninety (~~90~~)~~ days after the close of each succeeding fiscal year, the corporate parent of the owner or operator shall demonstrate that the corporate parent guarantor has adequate financial strength to provide the guarantee required by subparagraph (i) of this paragraph by passing the applicable financial test, either the Corporate Parent Financial Test – Alternative I, completed in accordance with subparagraph (f) of this paragraph, or Corporate Parent Financial Test – Alternative II, completed in accordance with subparagraph (g) of this paragraph.

(e) The financial test alternatives, a comparison of accounting ratios, net worth, assets, operating revenues, and bond ratings relative to fixed criteria, shall be in a format established by the division and completed in accordance with guidance provided by the division.

(f) To use the Corporate Parent Financial Test - Alternative I as a financial assurance mechanism, the corporate parent guarantor shall meet the following conditions:

1. The corporate parent guarantor shall have a tangible net worth of at least ~~ten million dollars (~~$10,000,000~~)~~ plus the dollar amount of all financial assurance covered by a financial test.

2. The corporate parent guarantor shall have a tangible net worth at least six ~~(6)~~ times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six ~~(6)~~ times the sum of all other amounts covered by a financial test of the corporate parent guarantor for all other environmental programs or agencies in the State of Tennessee, other states, and/or federal agencies.

3. The corporate parent guarantor shall have assets located in the United States which shall amount to at least ~~ninety percent (~~90%~~)~~ of the total assets of the corporate parent or at least six ~~(6)~~ times the current amounts of financial assurance covered by the corporate parent guarantor through the use of the Corporate Parent Financial Test - Alternative I.

4. The corporate parent guarantor shall satisfy at least two ~~(2)~~ of the three ~~(3)~~ ratio standards in subparts (i) through (iii) of this part:

(i) The ratio of total liabilities to net worth shall equate to less than 1.5;

(ii) The ratio of the sum of net income plus depreciation, depletion, and amortization minus ~~ten million dollars (~~$10,000,000~~)~~ to the total liabilities shall equate to greater than 0.10; and/or

(iii) The ratio of current assets to current liabilities shall equate to greater than 1.5.

5. The corporate parent guarantor shall report the firm's financial position to Dun and Bradstreet annually and have a financial strength rating of 4A or 5A and a composite credit appraisal of 1 by Dun and Bradstreet.

6. The corporate parent guarantor shall comply with one of the following:

(i) The corporate parent guarantor shall file financial statements with the U.S. Securities and Exchange Commission annually; or

(ii) The corporate parent guarantor shall file complete financial statements with the Energy Information Administration annually.

7. The fiscal year-end financial statements of the corporate parent guarantor:

(i) Shall be examined by an independent certified public accountant (CPA);

(ii) Shall be accompanied by the CPA's report of the examination; and

(iii) Shall not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

8. Annually, the corporate parent guarantor shall submit a special report prepared by a CPA. The report shall include statements by the CPA that:

(i) The CPA has reviewed the data, specified as having been derived from the latest year-end financial statements of the corporate parent guarantor, in the Letter from the Chief Executive Officer or the Chief Financial Officer;

(ii) The CPA has compared the data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements; and

(iii) The CPA's comparison of data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements revealed nothing to cause the CPA to believe that the data in the Letter from the Chief Executive Officer or the Chief Financial Officer should be adjusted.

(g) To use the Corporate Parent Financial Test - Alternative II as a financial assurance mechanism, the corporate parent guarantor shall meet each of the following conditions:

1. The corporate parent guarantor shall have a tangible net worth of at least ~~ten million dollars (~~$10,000,000~~)~~ plus the dollar amount of all financial assurance covered by a financial test.

2. The corporate parent guarantor shall have a tangible net worth of at least six ~~(6)~~ times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six ~~(6)~~ times the sum of all other amounts covered by a financial test of the corporate parent guarantor for other environmental programs or agencies of the State of Tennessee, other states, and/or Federal agencies.

3. Assets of the corporate parent guarantor located in the United States shall amount to at least ~~ninety percent (~~90%~~)~~ of the total assets of the corporate parent guarantor or at least six ~~(6)~~ times the current amounts of financial assurance covered by the corporate parent guarantor through the use of this Corporate Parent Financial Test – Alternative II.

4. The corporate parent guarantor shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.

5. For purposes of the Corporate Parent Financial Test, bond ratings shall apply to outstanding, rated bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, and that have been issued directly by the corporate parent guarantor. Ratings on revenue bonds shall not be used in the financial test. In order to pass this Corporate Parent Financial Test - Alternative II, the corporate parent guarantor shall have at least one class of equity securities registered under the Securities Exchange Act of 1934.

6. The corporate parent guarantor shall file financial statements annually with the U.S. Securities and Exchange Commission.

7. The fiscal year-end financial statements of the corporate parent guarantor shall be examined by an independent certified public accountant (CPA) and shall be accompanied by the CPA's report of the examination. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

8. The corporate parent guarantor shall obtain and submit to the Commissioner a special report by a CPA stating that:

   (i) The CPA has compared the data that the Letter from the Chief Executive Officer or the Chief Financial Officer specifies as having been derived from the latest year-end financial statements of the corporate parent guarantor with the amounts in such financial statements; and

   (ii) In connection with the comparison in subpart (i) of this part, no matters came to the attention of the CPA which caused the CPA to believe that the specified data should be adjusted.

(h) In accordance with subparagraph (i) of this paragraph the corporate parent guarantor shall commit to paying for and carrying out the required corrective action and compensation to third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

(i) Annually, the corporate parent shall complete and submit a notarized written guarantee stating that the corporate parent will comply with all of the terms set forth in this paragraph as requirements governing the use of the Corporate Parent Financial Test Guarantee. Such Corporate Parent Financial Test Guarantee Agreement shall:

1. Be in a format established by the ~~division~~ Division and in accordance with guidance provided by the ~~division~~ Division;

2. Commit the corporate parent guarantor to carrying out the required corrective actions and/or compensation of third parties in response to a judgment enforceable in Tennessee;

3. Commit the corporate parent guarantor to setting up and funding a standby trust in the amount required in an order issued by the Commissioner, up to the amount set forth in paragraph (3) of this rule;

4. Commit the corporate parent guarantor to notifying the Commissioner within ten ~~(10)~~ days following the filing to seek bankruptcy protection from creditors under Title 11 U.S. Code; and

5. Commit the corporate parent guarantor to notifying the Commissioner within ~~seventy-two (72)~~ hours following of any reasonable determination that the corporate parent guarantor can no longer satisfy the requirement of the Corporate Parent Financial Test of Self-Assurance, whether Alternative I or Alternative II; and

6. Commit the corporate parent guarantor to complying with one of the following within ~~thirty (30)~~ days of determination that the corporate parent guarantor no longer meets the requirement of the Corporate Parent Financial Test of Self-Assurance, whether Alternative I or Alternative II:

   (i) Submittal to the ~~division~~ Division of an alternative financial assurance mechanism; or

   (ii) Establishment of and funding of an irrevocable standby trust in accordance with paragraph (15) of this rule to assure the performance of corrective action and/or compensation of third parties for bodily injury and property damage due to accidental releases arising from the operation of petroleum underground storage tank systems in the amount required in an order issued by the Commissioner; up to the amount set forth in paragraph (3) of this rule.

(8) Liability Insurance.

A tank owner or operator may satisfy the requirement of paragraph (3) of this rule by obtaining liability insurance that meets the requirements of this paragraph.

(a) Standby Trust Fund.

1. A tank owner or operator who uses an insurance policy as financial assurance to meet the requirements of paragraph (3) of this rule for taking corrective action and/or compensating third parties for bodily injury and/or property damage due to accidental releases arising from the operation of petroleum underground storage tank systems shall establish a standby trust fund when the policy is issued.

2. The trust agreement governing the trust fund shall satisfy the requirements of paragraph (15) of this rule. The trust agreement shall be in a format established by the ~~division~~ Division and worded in accordance with guidance provided by the ~~division~~ Division.

(b) Qualified Insurer.

The tank owner or operator shall obtain insurance from a qualified insurer:

1. The insurer shall be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the ~~State~~ state of Tennessee and have an A.M. Best rating of at least "A."

2. The insurer shall not be a "captive insurance company" as defined in T.C.A. § 56-13-102.

(c) Insurance Policies, UST Certificates of Insurance, and UST Insurance Endorsements.

1. Liability insurance may be in the form of an endorsement to an existing insurance policy or a separate insurance policy.

2. An original UST Certificate of Insurance or UST Insurance Endorsement shall be submitted to the Commissioner.

(i) The UST Certificate of Insurance shall be in a format established by the ~~division~~ Division and worded in accordance with guidance provided by the ~~division~~ Division.

(ii) The UST Insurance Endorsement shall be in a format established by the ~~division~~ Division and worded in accordance with guidance provided by the ~~division~~ Division.

3. A duplicate original of the insurance policy shall be provided to the Commissioner within ~~thirty (30)~~ days of the issuance of a UST Certificate of Insurance or a UST Insurance Endorsement. The insurance policy is subject to review and approval by the Commissioner prior to final acceptance of insurance as financial assurance for the tank owner or operator as required by paragraph (3) of this rule.

4. Each policy shall contain a provision allowing the assignment of the policy to a successor tank owner or operator. Such assignment may be conditional upon the consent of the insurer, provided such consent is not unreasonably withheld.

5. The tank owner or operator shall maintain the insurance policy in full force and effect until the Commissioner releases the tank owner or operator from the requirements for financial assurance as specified in paragraph (21) of this rule or until the owner or operator has substituted an acceptable alternate financial assurance mechanism in accordance with paragraphs (4) and (17) of this rule.

6. The insurance policy shall be issued for a face amount at least equal to the amount required by paragraph (3) of this rule. Actual payment by the insurer shall not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

7. The insurance policy shall guarantee that funds shall be available for taking corrective action in accordance with Rule 0400-18-01-.06 and/or for compensating third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

8. The insurance policy shall guarantee that the Commissioner is authorized to draw on the policy through claim or forfeiture up to the limits of liability or face value of the policy in the event the insured fails to take corrective action and/or compensate third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

9. Under the terms of the policy, all amounts forfeited by the insurance company, as ordered by the Commissioner, shall be paid to the ~~division~~ Division in accordance with subparagraph (20)(e) of this rules or shall be paid directly into the standby trust fund.

10. The policy shall provide that the insurer shall comply with any Order of Forfeiture issued by the Commissioner as a result of the occurrence of any of the events or conditions itemized in items 11(v)(I) through (IV) of this subparagraph.

11. Cancellation, Termination, or Failure to Renew by the Insurer.

(i) The policy shall provide that the insurer shall not cancel, terminate, or fail to renew the policy except for failure to pay the premium in which case the policy is still subject to forfeiture pursuant to subparts (v) and (vi) of this part.

(ii) If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy. If the insurer so elects, the insurer shall send notice by certified mail to the insured tank owner or operator and to the Commissioner.

(iii) Cancellation, termination, or failure to renew shall not occur until at least ~~one hundred eighty (~~180~~)~~ days after the date of receipt of the notice by the tank owner or operator, as evidenced by the certified mail return receipt.

(iv) Cancellation, termination, or failure to renew shall not occur until the Commissioner has received notice as evidenced by certified mail return receipt.

(v) Cancellation, termination, or failure to renew shall not occur during the period of coverage of the policy nor at the end of the ~~one hundred eighty (~~180~~)~~ days reference in subpart (iii) of this part and the policy shall remain in force and effect in the event that on or before the date of expiration:

(I) The Commissioner deems the facility abandoned; or

(II) Closure of the facility is ordered by the Commissioner, the ~~board~~ Board, or a court of competent jurisdiction; or

(III) The tank owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code; or

(IV) The premium due is paid; or

(V) The Commissioner issues an Order of Forfeiture as a result of the occurrence of conditions itemized in items (I) through (III) of this subpart.

(vi) Cancellation of the policy for any reason, without the insured's substitution of alternate financial assurance as specified in paragraph (17) of this rule may result in a demand by the Commissioner to the insurer to pay the face value of the policy into a standby trust fund at the end of the ~~one hundred eighty (~~180~~)~~ day period of cancellation notification. If the policy is not renewed or replaced by an approved alternative financial assurance mechanism within one ~~(1)~~ year of the funding of the trust, the funds of the standby trust shall be forfeited to the ~~division~~ Division in accordance with subparagraph (20)(e) of this rule due to the failure of the insured to maintain financial assurance.

(9) Surety Bond or Performance Bond.

A tank owner or operator may satisfy the requirement of paragraph (3) of this rule by obtaining a surety bond that meets the requirements of this paragraph.

(a) Standby Trust Fund.

1. A tank owner or operator who uses a surety bond or performance bond as financial assurance to meet the requirements of paragraph (3) of this rule for taking corrective action and/or compensating third parties for bodily injury and/or property damage due to accidental releases arising from the operation of petroleum underground storage tank systems shall establish a standby trust fund when the surety bond is acquired.

2. The trust agreement governing the trust fund shall satisfy the requirements of paragraph (15) of this rule. The trust agreement shall be in a format established by the ~~division~~ Division and worded in accordance with guidance provided by the ~~division~~ Division.

(b) Qualified Surety Company.

The tank owner or operator shall obtain the surety bond or performance bond from a qualified surety company:

1. The surety company issuing the bond shall be licensed to do business as a surety in the ~~State~~ state of Tennessee; and

2. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(c) Surety Bond or Performance Bond.

1. The surety bond or performance bond shall be in a format established by the ~~division~~ Division and worded in accordance with guidance provided by the ~~division~~ Division.

2. The original of the bond shall be submitted to the Commissioner.

3. The bond shall guarantee that the tank owner or operator shall assume financial responsibility for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

4. The bond shall set forth the per occurrence amount and the annual aggregate amount for taking corrective action, and the per occurrence amount and the annual aggregate amount for third party claims.

5. The penal sum of the bond shall be in an amount at least equal to the amount required for the tank owner or operator as determined by paragraph (3) of this rule.

6. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination by the Commissioner that the owner or operator has failed to so perform, under the terms of the bond, the surety shall perform corrective action in accordance with Rule 0400-18-01-.06 and/or provide third-party liability compensation or shall forfeit the amount of the penal sum as ordered by the Commissioner.

7. Under the terms of the bond, all amounts forfeited by the surety, as ordered by the Commissioner, shall be paid to the ~~division~~ Division in accordance with subparagraph (20)(e) of this rules or shall be paid directly into the standby trust fund.

8. Cancellation.

(i) To effect cancellation under the terms of the bond, the surety shall issue notification of cancellation of the bond by sending the notice by certified mail to the owner or operator and to the Commissioner as evidenced by return receipt.

(ii) The notice of cancellation shall be received by the Commissioner by no later than ~~one hundred eighty (~~180~~)~~ days prior to the anniversary date of the bond. Cancellation of the bond shall not occur during the ~~one hundred eighty (~~180~~)~~ day period.

(iii) The tank owner or operator shall submit alternate financial assurance to the Commissioner as specified in paragraph (17) of this rule and obtain the Commissioner's written approval of the alternate financial assurance by no later than ~~sixty-one (~~61~~)~~ days prior to the date of cancellation of the bond.

(iv) Cancellation, termination, or failure to renew shall not occur at the end of the ~~one hundred eighty (~~180~~)~~ days specified in subpart (ii) of this part or at any other time during the period of coverage of the bond and the bond shall remain in force and effect in the event that on or before the date of expiration:

(I) The Commissioner deems the facility abandoned; or

(II) Closure of the facility is ordered by the Commissioner, the ~~board~~ Board, or a court of competent jurisdiction; or

(III) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code; or

(IV) The premium is paid; or

(V) The Commissioner issues an Order of Forfeiture as a result of the occurrence of one or more of the conditions set forth in items (I) through (III) of this subpart.

(v) Upon notification by the Commissioner that the principal has failed to provide alternative financial assurance within ~~one hundred twenty (~~120~~)~~ days after the date of notice of cancellation is received by the principal, the surety(ies) shall at the direction of the Commissioner, by no later than the ~~one hundred seventy ninth (~~179th~~)~~ day following the date of the notice of cancellation, pay the amount of the penal sum of the bond into a standby trust fund. If the bond is not renewed or replaced by an alternative instrument within one ~~(1)~~ year of the funding of the trust, the funds of the standby trust will be forfeited to the ~~division~~ Division in accordance with subparagraph (20)(e) of this rule due to the failure of the tank owner or operator to maintain financial assurance.

(vii) The tank owner or operator may cancel the bond if the Commissioner has given prior written consent. The Commissioner will provide such written consent when:

(I) The tank owner or operator substitutes alternative financial assurance as specified in paragraphs (4) and (17) of this rule; or

(II) The Commissioner releases the owner or operator from the requirements of this paragraph in accordance with paragraph (21) of this rule.

(viii) The surety will not be liable for deficiencies in the performance of corrective action and/or third party liability compensation by the tank owner or operator after the Commissioner releases the tank owner or operator from the requirements of this paragraph in accordance with paragraph (21) of this rule.

(10) Irrevocable Standby Letter of Credit.

A tank owner or operator may satisfy the requirements of paragraph (3) of this rule by obtaining an irrevocable standby letter of credit that meets the requirements of this paragraph.

(a) Standby Trust Fund

1. A tank owner or operator who uses an irrevocable letter of credit as financial assurance to meet the requirements of paragraph (3) of this rule for taking corrective action and/or compensating third parties for bodily injury and/or property damage due to accidental releases arising from the operation of petroleum underground storage tank systems shall establish a standby trust fund when the surety bond is acquired.

2. The trust agreement governing the trust fund shall satisfy the requirements of paragraph (15) of this rule. The trust agreement shall be in a format established by the division and worded in accordance with guidance provided by the division.

(b) The issuing institution shall be an entity that has the authority to issue letters of credit in the ~~State~~ state of Tennessee and whose letter of credit operations are regulated and examined by the U.S. Federal Reserve or the Tennessee Department of Financial Institutions.

(c) Letter of Credit.

1. The letter of credit shall be in a format established by the ~~division~~ Division and worded in accordance with guidance provided by the ~~division~~ Division.

2. The original of the letter of credit shall be submitted to the Commissioner. The letter of credit shall be accompanied by a letter from the tank owner or operator to the Commissioner referring to the letter of credit by number, issuing institution, and date, and providing the following information:

   (i) The facility identification number assigned by the ~~division~~ Division to each facility covered by the letter of credit;

   (ii) The address of the location for each facility covered by the letter of credit; and

   (iii) The specified amount of financial responsibility for taking corrective action and for third party liability compensation provided by the letter of credit.

3. The letter of credit shall be irrevocable.

4. The letter of credit shall be issued for a period of at least one ~~(1)~~ year and shall provide that the expiration date shall be automatically extended each year for a period of at least one ~~(1)~~ year unless, at least ~~one hundred eighty (~~180~~)~~ days before the expiration date of the current one ~~(1)~~ year period, the issuing institution notifies both the tank owner or operator and the Commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the ~~one hundred eighty (~~180~~)~~ days shall begin on the date when the owner or operator has received the notice, as evidenced by the return receipt of certification of delivery. However, expiration shall not occur unless the Commissioner has received the notice, as evidenced by the return receipt of certification of delivery.

5. The letter of credit shall be issued in an amount at least equal to the amount specified in accordance with paragraph (3) of this rule.

6. The letter of credit may be drawn on by the Commissioner in the event the tank owner or operator fails to take corrective action in accordance with Rule 0400-18-01-.06 and/or compensate third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

7. The letter of credit may be drawn on by the Commissioner in the event of the occurrence of the following events:

   (i) The Commissioner deems the facility abandoned;

   (ii) Closure of the facility is ordered by the Commissioner, the ~~board~~ Board, or a court of competent jurisdiction; or

   (iii) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code.

8. The Commissioner may draw on the letter of credit upon forfeiture as provided in paragraph (20) of this rule if the tank owner or operator does not establish alternate financial responsibility as specified in paragraphs (4) and (17) of this rule and obtain written approval of such alternate financial responsibility from the Commissioner within ~~one hundred twenty (~~120~~)~~ days after receipt by the tank owner or operator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the expiration date of the current one ~~(1)~~ year period. The Commissioner may delay the drawing if the issuing institution grants a one ~~(1)~~ year extension of the terms of the credit by no later than ~~one hundred twenty (~~120~~)~~ days prior to the stated cancellation date. During the last ~~sixty (~~60~~)~~ days of any such extension, the Commissioner may draw on the letter of credit if the owner or operator has failed to provide alternate financial responsibility as specified in paragraphs (4) and (17) of this rule and obtain written approval of such financial responsibility from the Commissioner.

9. Under the terms of the letter of credit, all amounts forfeited by the financial institution issuing the letter of credit shall be paid directly to the Division in accordance with subparagraph (20)(e) of this rule.

10. The Commissioner will return the letter of credit to the issuing institution for termination when:

(i) A tank owner or operator substitutes alternative financial assurance as specified in paragraphs (4) and (17) of this rule; or

(ii) The Commissioner releases the owner or operator from the requirements of this paragraph in accordance with paragraph (21) of this rule.

(11) Personal Bond Supported by Certificate of Deposit.

A tank owner or operator may satisfy the requirements of paragraph (3) of this rule by obtaining a personal bond supported by a certificate of deposit that meets the requirements of this paragraph.

(a) The financial institution holding the funds shall be a commercial financial institution governed by the Federal Reserve and the U.S. Comptroller of the Currency or regulated by the Tennessee Department of Financial Institutions.

(b) Statement of Personal Bond.

1. The owner or operator shall submit the Statement of Personal Bond Supported by Certificate of Deposit to the ~~Department~~ Commissioner concurrent with the issuance of the certificate of deposit.

2. The Statement of Personal Bond Supported by Certification of Deposit shall be in a format established by the ~~division~~ Division and worded in accordance with guidance provided by the ~~division~~ Division.

(c) Certificate of Deposit.

1. The funds of the account shall be pledged irrevocable to the Tennessee Department of Environment and Conservation.

2. The ownership of the certificate of deposit shall be registered as follows:

(i) The name of the tank owner or operator and the Tennessee Department of Environment and Conservation; or

(ii) The Tennessee Department of Environment and Conservation.

3. The certificate of deposit shall be automatically renewed annually with the earned interest maintained with the principal.

4. The original certificate of deposit or safekeeping receipt shall be submitted to and held by the Department.

(d) Accompanying the original certificate of deposit or safekeeping receipt shall be a letter from an officer of the issuing financial institution which attests to the following:

1. No liens or assignments exist on the deposited funds;

2. The certificate of deposit shall be automatically renewed each year;

3. The initial funds of the deposit plus the accrued interest are irrevocably assigned to the Department;

4. The funds shall not be released to the owner or operator without the written consent of the Commissioner or his/her designee; and

5. The issuing financial institution shall honor the right of the Department to unilaterally redeem the certificate(s) of deposit for cash in the event the Commissioner executes an Order of Forfeiture due to the failure of the owner or operator to take corrective action in accordance with Rule 0400-18-01-.06 and/or to compensate third-parties for bodily injury and property damage.

(12) Trust Fund and Agreement.

A tank owner or operator may satisfy the requirement of paragraph (3) of this rule by establishing a trust fund and an associated trust agreement that meets the requirements of this paragraph.

(a) Trust Fund.

1. Trustee.

(i) The trustee shall be an entity that has the authority to act as a trustee.

(ii) The operations of the trustee shall be regulated and examined by the State of Tennessee or a federal agency.

(iii) The trustee shall invest and reinvest the principal and income of the trust fund, keeping the trust fund as a single fund.

2. Funding.

(i) The trust fund shall be fully funded on its effective date.

(ii) If at any point in time the value of the fund drops below the financial assurance amount covered by this mechanism, the grantor (the tank owner or operator) shall make a payment into the fund to return the value of the trust fund to the required amount.

(iii) If at any point in time the value of the fund increases above the financial assurance amount covered by this mechanism, the grantor may submit a written request to the Commissioner for release of the excess funds.

(iv) Within ~~sixty (~~60~~)~~ days of receipt of a written request for release of excess funds submitted in accordance with subpart (iii) of this part, the Commissioner shall review the request and shall decide whether such release of funds is appropriate at the time of the request.

(I) If the Commissioner determines that a release of funds in the amount requested by the grantor or in a lesser amount is appropriate, the Commissioner shall instruct the trustee to release the funds.

(II) If the Commissioner determines that a release of the funds is not appropriate, the Commissioner shall notify the grantor and the trustee of that decision.

3. The Division of Underground Storage Tanks of the Department of Environment and Conservation shall be designated as the beneficiary of the trust fund.

4. The trust fund shall not be used for any of the following:

(i) Any obligation of the grantor (the tank owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;

(ii) Bodily injury to an employee of the grantor arising from and/or in the course of employment by the grantor;

(iii) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

(iv) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the grantor that is not the direct result of a release from a petroleum underground storage tank system; or

(v) Bodily injury or property damage for which the grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of paragraph (3) of this rule.

5. The trust fund shall be irrevocable and shall continue until terminated at the written direction of both the grantor (the tank owner or operator) and the trustee with the written approval of the Commissioner or by the trustee acting upon written direction by the Commissioner.

(b) The trust agreement shall be in a format established by the ~~division~~ Division and worded in accordance with guidance provided by the ~~division~~ Division.

(13) Local Government Bond Rating Test.

A local government tank owner or operator and/or a guarantor may satisfy the requirements of paragraph (3) of this rule by having a currently outstanding issue(s) of bonds that meets the requirements of this paragraph.

(a) A local government bond rating test shall not be used in combination with other financial assurance mechanisms.

(b) A general purpose local government owner or operator and/or a local government serving as a guarantor shall have a currently outstanding issue(s) of general obligation bonds of ~~one million dollars (~~$1,000,000~~)~~ or more, excluding refunded obligations.

1. The local government shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.

2. Where the local government has multiple outstanding issues, or where the local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility.

3. Bonds that are backed by credit enhancements other than municipal bond insurance shall not be considered in determining the amount of applicable bonds outstanding.

(c) A local government owner or operator and/or a local government serving as a guarantor that is not a general purpose government and does not have the legal authority to issue general purpose bonds shall have a currently outstanding issue(s) of revenue bonds of ~~one million dollars (~~$1,000,000~~)~~ or more, excluding refunded issues.

1. The local government shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.

2. Where the local government has multiple outstanding issues, or where the local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility.

3. Bonds that are backed by credit enhancements shall not be considered in determining the amount of applicable bonds outstanding.

(d) The local government owner or operator and/or guarantor shall submit to the ~~Department~~ Commissioner an original or certified copy of its most recent bond rating published within the last ~~twelve (~~12~~)~~ months by Moody's or Standard and Poor's.

(e) The local government owner or operator and/or guarantor, using the local government bond rating test, shall annually report to the Commissioner the applicable bond ratings within ~~ninety (~~90~~)~~ days following the end of the fiscal year of the owner or operator and/or guarantor.

(f) To demonstrate that the local government tank owner or operator and/or guarantor meets the local government bond rating test, the chief financial officer of the local government owner or operator and/or guarantor shall complete and submit a notarized letter, both initially and within ~~ninety (~~90~~)~~ days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Financial Officer, whether for a general purpose local government or for a non-general purpose government, shall be in accordance with guidance provided by the ~~division~~ Division. The letter shall be in format established by the ~~division~~ Division.

(g) If a local government owner or operator and/or guarantor, using the bond rating test to provide financial assurance, finds that it no longer meets the requirements of the financial bond rating test, it shall obtain and submit to the Commissioner alternate financial assurance within ~~thirty (~~30~~)~~ days of its determination that it no longer meets the requirements. The local government owner or operator and/or guarantor must notify the Commissioner within ten days of its failure to obtain alternate insurance.

(h) If the Commissioner has reason to believe that the local government owner or operator and/or guarantor no longer meets the requirements of the local government bond rating test, the Commissioner may require the local government tank owner or operator and/or guarantor to submit reports of its financial condition. The local government owner or operator and/or guarantor shall submit the required financial reports to the ~~Department~~ Commissioner in accordance with the schedule established by the Commissioner.

(i) Upon determination by the Commissioner that the local government owner or operator and/or guarantor no longer meets the local government bond rating test requirements, the local government owner or operator and/or guarantor shall either:

1. Obtain and submit an alternate financial assurance mechanism in accordance with paragraphs (4) and (17) of this rule within ~~thirty (~~30~~)~~ days after notification of such a determination by the Commissioner; or

2. Fund a standby trust in accordance with paragraph (15) of this rule in the amount required by paragraph (3) of this rule for corrective action and for compensating third parties for bodily injury and property damage. The trust shall be funded by no later than ~~thirty (~~30~~)~~ days after notification of such a determination by the Commissioner.

(14) Local Government Financial Test.

A local government tank owner or operator may satisfy the requirements of paragraph (3) of this rule by passing a financial test that meets the requirements of this paragraph.

(a) A local government financial test shall not be used in combination with other financial assurance mechanisms.

(b) The local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges.

(c) The local government owner or operator shall have the following information available, as shown in the year end financial statements for the latest completed fiscal year:

1. Total revenues: consisting of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, and others), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but not excluding revenues to funds held in a trust or agency capacity. For purposes of this local government financial test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using this financial test (interfund transfers), liquidation of investments, and issuance of debt.

2. Total expenditures: consisting of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this local government financial test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).

3. Local revenues: consisting of total revenues, as set forth in part 1 of this subparagraph, minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.

4. Debt service: consisting of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Debt service includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Debt service excludes payments on non-interest bearing short term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.

5. Total funds: consisting of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Total funds includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this local government financial test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.

6. Population: consisting of the number of people in the area served by the local government.

(d) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation bonds that are rated at less ~~that~~ than investment grade.

(e) To demonstrate that it meets the local government financial test, the local government owner or operator shall complete and submit a notarized letter, both initially and within ~~one hundred twenty (~~120~~)~~ days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Financial Officer shall be in accordance with guidance provided by the ~~division~~ Division. The letter shall be in format established by the ~~division~~ Division.

(f) If a local government owner or operator, using the local government financial test to provide financial assurance, finds that it no longer meets the requirements of the financial test, it shall obtain and submit to the Commissioner alternate financial assurance within ~~thirty (30)~~ days of its determination that it no longer meets the requirements.

(g) If the Commissioner has reason to believe that the local government owner or operator no longer meets the requirements of the local government financial test, the Commissioner may require the local government tank owner or operator to submit reports of its financial condition. The local government owner or operator shall submit the required financial reports to the ~~Department~~ Commissioner in accordance with the schedule established by the Commissioner.

(h) Upon the Commissioner's determination that the local government owner or operator no longer meets the local government financial test requirements, the local government owner or operator shall either:

1. Obtain and submit an alternate financial assurance mechanism in accordance with paragraphs (4) and (17) of this rule within ~~thirty (30)~~ days after notification of such a determination by the Commissioner; or

2. Fund a standby trust in accordance with paragraph (15) of this rule in the amount required by paragraph (3) of this rule for corrective action and for compensating third parties for bodily injury and property damage. The trust shall be funded by no later than ~~thirty (30)~~ days after notification of such a determination by the Commissioner.

(15) Standby Trust Fund.

(a) A tank owner or operator using the financial assurance mechanisms set forth in paragraphs (8), (9) and (10) of this rule shall establish a Standby Trust Fund and Agreement in accordance with this paragraph.

(b) A tank owner or operator using the financial assurance mechanisms set forth in paragraphs (6), (7), (13) and (14) of this rule shall establish a Standby Trust Fund and Agreement in accordance with this paragraph if the requirements of the financial test can no longer be met and the owner or operator or guarantor fails to provide an alternative financial assurance mechanism that meets the requirements of this rule.

(c) Trustee.

1. The trustee shall be an entity that has the authority to act as a trustee.

2. The operations of the trustee shall be regulated and examined by the State of Tennessee or a federal agency.

3. The trustee shall invest and reinvest the principal and income of the trust fund, keeping the trust fund as a single fund.

(d) The Division of Underground Storage Tanks of the Department of Environment and Conservation shall be designated as the beneficiary of the trust fund.

(e) The trust fund shall not be used for any of the following:

1. Any obligation of the grantor (the tank owner or operator) under a workers compensation, disability benefits, or unemployment compensation law or other similar law;

2. Bodily injury to an employee of the grantor arising from and/or in the course of employment by the grantor;

3. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;

4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the grantor that is not the direct result of a release from a petroleum underground storage tank system; or

5. Bodily injury or property damage for which the grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of paragraph (3) of this rule.

(f) The trust fund shall be irrevocable and shall continue until terminated at the written direction of both the grantor (the tank owner or operator) and the trustee with the written approval of the Commissioner or by the trustee acting upon written direction by the Commissioner.

(g) The trust agreement shall be in a format established by the ~~division~~ Division and worded in accordance with guidance provided by the ~~division~~ Division.

(16) Record Keeping.

A tank owner or operator shall maintain, on site at each facility or at the place of business of the owner or operator, a copy of all financial assurance documents submitted to the ~~Department~~ Commissioner demonstrating compliance with this rule. This documentation shall be maintained until the owner or operator is released from the financial responsibility requirements by the Commissioner in accordance with paragraph (21) of this rule.

(17) Substitution of Financial Assurance Mechanisms by the Owner or Operator.

In satisfying the requirements of paragraph (3) of this rule, an owner or operator may substitute an alternative financial assurance mechanism for the financial mechanism already on file with the ~~Department~~ Commissioner. The alternate financial assurance mechanism shall satisfy the requirements of this rule. The financial assurance mechanism already on file with the ~~Department~~ Commissioner shall not be released and shall be maintained in force until the alternative financial mechanism has been received and approved by the Commissioner. By no later than ten ~~(10)~~ business days following the date of the approval of the alternate financial assurance mechanism by the Commissioner, the prior financial assurance mechanism shall be released to the tank owner or operator.

(18) Changes of Ownership or Operational Control of UST Facilities.

Changes in or the replacement of an existing financial assurance mechanism due to changes of ownership or operational control of a UST facility shall be submitted to the Commissioner concurrent with the change of ownership or operational control of the facility. All submittals shall comply with the requirements of this rule.

(19) Bankruptcy or Other Incapacity of the Owner or Operator or the Issuer of the Financial Assurance Mechanism.

(a) Within ten ~~(10)~~ days after the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code, naming a tank owner or operator as debtor, the owner or operator shall notify the Commissioner by certified mail of such commencement.

(b) An owner or operator who obtains financial assurance by a mechanism other than the Financial Test of Self-Assurance as set forth in paragraph (6) of this rule will be deemed to be without the financial responsibility required by this rule in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of its financial assurance to issue a guarantee, an insurance policy, a surety bond, or a letter of credit. Within ten ~~(10)~~ business days of receiving notice of such bankruptcy or incapacity, the tank owner or operator shall notify the Commissioner, by certified mail, of the same. By no later than ~~thirty (30)~~ days subsequent to the date of receiving notice of such bankruptcy or incapacity, the tank owner or operator shall obtain alternate financial assurance and shall submit the original financial assurance documents comprising or associated with the alternate financial assurance mechanism to the Commissioner in accordance with the provisions of this rule.

(20) Procedures Governing the Forfeiture of the Financial Assurance of UST Owners and Operators.

(a) Upon the Commissioner's determination that a tank owner or operator has failed to pay for taking corrective action in accordance with Rule 0400-18-01-.06 and/or compensate third parties for bodily injury and property damage caused by an accidental release arising from the operation of a petroleum underground storage tank system, the Commissioner may provide notice of such non-compliance, to be served on the tank owner or operator by hand delivery or by certified mail. The Notice of Non-Compliance shall establish a schedule for coming into compliance with the regulatory requirements.

(b) If the Commissioner determines that the owner or operator has failed to perform as specified in the Notice of Non-Compliance, or as specified in any subsequent compliance agreement which may have been reached by the owner or operator and the Commissioner, the Commissioner may cause a Notice of Show Cause Meeting to be served upon the owner or operator. The Notice of Show Cause Meeting shall establish the date, the time, and the location of a meeting scheduled to provide the owner or operator with the opportunity to "show cause" why the Commissioner should not pursue forfeiture of the financial assurance filed to guarantee such performance.

(c) If no mutual compliance agreement is reached at a show cause meeting, or upon the Commissioner's determination that the owner or operator failed to perform as specified in an agreement that was reached, or in lieu of a show cause meeting, the Commissioner may order forfeiture of the financial assurance filed to guarantee such performance. Upon the Commissioner's determination that the procedures of this paragraph have been followed, the Commissioner, at his or her discretion may issue such an order of forfeiture. Upon issuance, a copy of the Order of Forfeiture shall be hand delivered or forwarded by certified mail to the owner or operator and to the issuer of the financial assurance mechanism or guarantor of financial assurance. Any such order issued by the Commissioner shall become effective ~~thirty (~~30~~)~~ days after the receipt by the owner or operator unless it is appealed to the Board as provided in Rule 0400-18-01-.11.

(d) If necessary, upon the effective date of the Order of Forfeiture, the Commissioner may give notice to the Attorney General of the State of Tennessee who shall collect the forfeiture.

(e) Funds from forfeitures shall be deposited in the Tennessee Petroleum Underground Storage Tank Fund. The forfeited funds shall be earmarked for use in the performance of corrective action or the compensation of third parties due to bodily injury or property damage in connection with the operation of the underground storage tank systems of the owner or operator forfeiting the financial assurance.

(21) Release of Financial Assurance Mechanisms.

The original financial assurance mechanism document(s) shall be held by the Commissioner until replaced by an alternate instrument or until the owner or operator is released by the Commissioner. The Commissioner shall release the financial assurance mechanism to the tank owner or operator or to the issuing financial institution after one of the following has occurred:

(a) The underground storage tank systems have been closed to the satisfaction of the ~~division~~ Division pursuant to paragraphs (4) and (5) of Rule 0400-18-01-.07; or

(b) An alternative financial assurance mechanism has been received and approved by the Commissioner in accordance with paragraph (17) of this rule.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.09 Petroleum Underground Storage Tank Fund.

(1) Purpose.

This rule establishes the manner in which disbursements are made from the Tennessee Petroleum Underground Storage Tank Fund and implements the purposes and objectives of the Tennessee Petroleum Underground Storage Tank Act.

(2) Applicability.

(a) Requirements of this rule apply to all owners and/or operators of an underground storage tank system as defined in paragraph (4) of Rule 0400-18-01-.01 except as otherwise provided for in subparagraph (2)(b) of Rule 0400-18-01-.01. However, the requirements of this rule do not apply to those tanks owned by state and federal entities whose debts and liabilities are the debts and liabilities of a state or the United States.

(b) Petroleum site owners eligible for fund reimbursement shall only be reimbursed for those fund eligible and reasonable costs which accrued on or after July 1, 2002.

(3) Fund Eligibility Requirements.

(a) ~~Establishment of fund eligibility for release occurrences prior to July 1, 2008. Owners~~ Except as provided for in subparagraph (c) of this paragraph, owners and/or operators satisfying the requirements of this subparagraph will have established fund eligibility for release occurrences prior to July 1, 2008.

1. Registration of each petroleum underground storage tank:

(i) For tanks installed on or after July 1, 1988, within ~~thirty (~~30~~)~~ days of the installation of that tank; or

(ii) For tanks installed prior to July 1, 1988, by June 30, 1989.

2. Payment of the annual fee for the tank and/or tank compartments for the first year for which fees were required in accordance with Rule 0400-18-01-.10.

(b) ~~Establishment of fund eligibility for~~ Except as provided for in subparagraph (c) of this paragraph, release occurrences ~~on or after July 1, 2008. Releases~~ on or after July 1, 2008, will be fund eligible if the division has received notification registering the tank prior to the release occurrence.

(c) For airport hydrant fuel distribution systems and UST systems with field-constructed tanks required to meet the requirements of Rule 0400-18-01-.17, satisfying the requirements of this subparagraph will establish fund eligibility for release occurrences three years after the effective date of this rule:

1. Comply with subparagraph (1)(c) of Rule 0400-18-01-.17;

2. Demonstrate through a division approved site check, conducted in accordance with Division guidance, that there have been no releases from the UST system(s) at this site or that prior releases at the site would not interfere with the discovery of a new release at the site; and

3. The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division, any noted deficiencies or violations discovered by Division personnel during this inspection within 45 days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator.

(d) Within 30 days of the date the Division determines that the owner or operator meets the requirements to establish fund eligibility in accordance with subparagraph (c) of this paragraph, the Division will notify the owner and/or operator of the date that fund eligibility was established. The fund will not cover either investigative or corrective action costs or third party liability claims associated with a release which occurred during the time of fund ineligibility.

~~(c)~~(e) Except as provided for in subparagraph (5)(d) of this rule, before the owner and/or operator or petroleum site owner will receive fund benefit, the applicable entry level amount to the fund shall be expended as approved costs by the owner and/or operator or petroleum site owner. The applicable entry level is the entry level in effect on the date of the release as set forth in subparagraph (6)(b) of this rule.

~~(d)~~(f) An Application for Fund Eligibility shall be timely submitted to the ~~division~~ Division before the applicable deadline set forth in T.C.A. § ~~68-215-111(f)(6)~~ 68-215-111(f)(7) and in subparagraph (4)(d) of this rule. Failure to comply with the applicable deadline shall make the release ineligible for reimbursement from the fund.

(4) Fund Ineligibility

(a) If at the time of discovery of a release, the ~~division~~ Division determines that an owner and/or operator has failed to establish fund eligibility in accordance with subparagraph (3)(a) or (b) of this rule, corrective action costs and/or third party damages associated with that release are not eligible for coverage by the fund.

(b) An owner and/or operator who has failed to establish fund eligibility in accordance with the provisions of subparagraph (3)(a) or (b) of this rule shall comply with the following in order to establish fund eligibility:

1. Pay all annual tank fees and late payment penalties owed;

2. Pay all civil penalties owed;

3. Perform and pass a systems tightness test in accordance with subparagraphs ~~(3)(c)~~ (3)(b) and (4)(b) of Rule 0400-18-01-.04 for each UST system in operation at the site;

4. Demonstrate through a division approved site check, conducted in accordance with division guidance, there have been no releases from the UST system(s) at this site or that prior releases at the site would not interfere with the discovery of a new release at the site; and

5. The ~~division~~ Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the ~~division~~ Division, any noted deficiencies or violations discovered by the ~~division~~ Division personnel during this inspection within ~~forty-five (~~45~~)~~ days, or such other time period as the ~~division~~ Division may allow, of the date of the notice of such deficiencies to the owner and/or operator.

(c) Within ~~thirty (~~30~~)~~ days of ~~meeting~~ the date the Division determines that the owner or operator meets the requirements to establish fund eligibility in accordance with subparagraph (b) of this paragraph, the division will notify the owner and/or operator of the date that fund eligibility was established. The fund will not cover either investigative or corrective action costs or third party liability claims associated with a release which occurred during the time of fund ineligibility.

(d) If there is evidence of a suspected release or a confirmed release on or after July 1, 2004, that release shall be ineligible for reimbursement from the fund if an Application for Fund Eligibility is not timely filed in accordance with the following:

1. An Application for Fund Eligibility shall be filed with the ~~division~~ Division within ~~ninety (~~90~~)~~ days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with Rules 0400-18-01-.04 and/or 0400-18-01-.05. The ~~ninety (~~90~~)~~ days shall start on the day the evidence of the suspected release is discovered.

2. An Application for Fund Eligibility shall be filed with the division within ~~sixty (~~60~~)~~ days of a release which was identified in any manner other than the process for confirmation of a suspected release in accordance with Rules 0400-18-01-.04 and/or 0400-18-01-.05, for example, during closure activities performed in accordance with Rule 0400-18-01-.07.

(5) Authorized disbursements from the fund.

(a) Whenever, in the ~~commissioner~~ Commissioner's determination, an eligible owner and/or operator or petroleum site owner has a release of petroleum from an underground storage tank and the owner and/or operator or petroleum site owner has been found to qualify for fund coverage in accordance with paragraphs (10) and (11) of this rule, the ~~division~~ Division shall, subject to the provisions of this rule, disburse monies available in the fund to provide for:

1. Emergency response activities, investigation, and assessment of sites contaminated by a release of petroleum in accordance with the requirements of Rules 0400-18-01-.05 through 0400-18-01-.06;

2. The rehabilitation of sites contaminated by a release of petroleum, which may consist of ~~clean-up~~ cleanup of affected soil and groundwater, using cost effective alternatives that are technologically feasible and reliable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage, in accordance with release response, remediation and risk management requirements of Rule 0400-18-01-.06;

3. The interim replacement and permanent restoration of potable water supplies.

(b) Monies held in the fund may be disbursed for making payments to third parties who bring suit relative to an UST release against an eligible owner and/or operator of an UST or petroleum site owner who is qualified for fund coverage when such third party obtains a final judgment in that action enforceable in Tennessee.

(c) Costs incurred by the ~~division~~ Division in the administration of the provisions of this rule or authorized under T.C.A. §68-215-101 et seq. shall be charged to the fund.

(d) The fund shall be available to the ~~board~~ Board and the Commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance of petroleum sites and for third party claims within the state as provided in T.C.A. §68-215-101 et seq., in this rule and in paragraph (5) of Rule 0400-18-01-.08.

1. If a fund eligible tank owner or operator claims financial inability to pay the corrective action entry level or deductible set forth in paragraph (6) of Rule 0400-18-01-.09 at the time an Application for Fund Eligibility is submitted to the ~~division~~ Division, the fund may be utilized to pay the deductible for taking corrective action.

(i) The tank owner or operator shall supply documentation of inability to pay the fund entry level or deductible for taking corrective action to the division upon request.

(ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action.

2. If a fund eligible tank owner or operator fails, without sufficient cause, to perform the release response, remediation, and/or risk management actions required in Rule 0400-18-01-.06 on order of the Commissioner and fails, without sufficient cause to pay the amount of the applicable fund entry level or deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the ~~division~~ Division, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action. In addition, pursuant to T.C.A. § 68-215-116, the Commissioner may seek a penalty in the amount of ~~one hundred fifty percent (~~150%~~)~~ of the costs expended by the fund as the result of the failure to take proper action.

3. If a fund eligible tank owner or operator has been denied fund coverage of corrective action costs under the provisions of subparagraph (10)(c) of this rule and the owner or operator claims financial inability to pay for part or all of the necessary corrective action, the fund may be utilized to pay for taking corrective action.

   (i) The tank owner or operator shall supply documentation of inability to pay for corrective action to the ~~division~~ Division upon request.

   (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount paid by the fund for taking corrective action.

4. If a fund eligible tank owner or operator cannot pay the amount of the applicable fund entry level or deductible amount for third party claims at the time an application for payment accompanied by the original or a certified copy of a final judgment is submitted to the ~~division~~ Division in accordance with subparagraph (12)(h) of Rule 0400-18-01-.09, the fund may be utilized to pay the deductible for satisfying the third party claim.

   (i) The tank owner or operator shall supply documentation of ~~their~~ inability to pay the fund entry level or deductible for third party claims to the ~~division~~ Division upon request.

   (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for satisfying the third party claim.

5. If a fund eligible tank owner or operator fails, without sufficient cause, to pay the amount of the applicable fund entry level or deductible amount for a third party claim, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for third party damages.

(e) The ~~commissioner~~ Commissioner may enter into contracts and use the fund for those purposes directly associated with identification, investigation, containment, and cleanup, including monitoring and maintenance prescribed above including:

1. Hiring consultants and personnel;

2. Purchase, lease or rental of necessary equipment; and

3. Other necessary expenses.

(f) The ~~commissioner~~ Commissioner will pay each approved claim of the fund in chronological order based upon the date the claim is submitted for payment.

(g) The ~~commissioner~~ Commissioner will not authorize any disbursement from the fund for costs for which the owner and/or operator or petroleum site owner receives payment from another insurance carrier or other source. ~~Further, the division shall acquire by subrogation the right of the owner and/or operator or petroleum site owner to recover the amount of damages paid to the third party from any person, other than the owner and/or operator of the underground storage tank system from which the release occurred or the petroleum site owner, responsible or liable for the release.~~

(h) If fund dollars have been expended in accordance with the provisions of subparagraph (d) and/or (e) of this paragraph for the fund deductible for corrective action or third party claims for a fund eligible release occurrence or for the entire cost for non-fund eligible release occurrence, the Commissioner may seek cost recovery and/or assess a penalty in accordance with the provisions of paragraphs (16) and (17) of this rule and paragraph (5) of Rule 0400-18-01-.08.

(6) Scope of fund reimbursement.

(a) The fund will reimburse eligible owners and/or operators or petroleum site owners, who qualify for fund coverage in accordance with paragraphs (10) and (11) of this rule, for the cost of investigation and corrective action resulting from the accidental release of petroleum from an UST storing petroleum in accordance with the provisions of this rule.

(b) Owners and/or operators of USTs or petroleum site owners who qualify for fund reimbursement shall meet the per site per occurrence fund entry level or deductible requirements specified in parts 1 through 6 and illustrated in Table 3.

1. If the date of the release was after January 1, 1974 and before July 1, 1988, and the release was reported to the Department before April 11, 1990, and eligible expenditures for assessment or remediation were incurred before April 11, 1990, the deductible requirements for eligible UST owners and/or operators or petroleum site owners for taking corrective action will be ~~seventy-five thousand dollars (~~$75,000~~)~~ and compensation of third parties will be ~~one hundred fifty thousand dollars (~~$150,000~~)~~.

2. If the date of release was between July 1, 1988 and June 30, 1989, the deductible requirements for eligible UST owners and/or operators or petroleum site owners for taking corrective action will be ~~seventy-five thousand dollars (~~$75,000~~)~~ and compensation of third parties will be ~~one hundred fifty thousand dollars (~~$150,000~~)~~.

3. If the date of release was between July 1, 1989 and April 30, 1990, the deductible requirements for eligible UST owners and/or operators or petroleum site owners for taking corrective action will be ~~fifty thousand dollars (~~$50,000~~)~~ and compensation of third parties will be ~~one hundred fifty thousand dollars (~~$150,000~~)~~.

4. If the date of release was between May 1, 1990 and April 4, 1995, the deductible requirements for eligible UST owners and/or operators or petroleum site owners for corrective action and for compensation for third party claims will be as follows based on the number of tanks owned or operated:

(i) 1 to 12 tanks, ~~ten thousand dollars (~~$10,000~~)~~ for taking corrective actions and ten thousand dollars ($10,000~~)~~ for compensation of third parties;

(ii) 13 to 999 tanks, ~~twenty thousand dollars (~~$20,000~~)~~ for taking corrective actions and ~~thirty-seven thousand five hundred dollars (~~$37,500~~)~~ for compensation of third parties; or

(iii) 1,000 or more tanks, ~~fifty thousand dollars (~~$50,000~~)~~ for taking corrective actions and ~~two hundred twenty-five thousand dollars (~~$225,000~~)~~ for compensation of third parties.

5. If the date of release was between April 5, 1995 and ~~July 1~~ June 30, 2005, the deductible requirements for eligible UST owners and/or operators or petroleum site owners shall be as follows based on the number of tanks owned or operated by the tank owner at the time of the release:

(i) For corrective action costs:

(I) 1 to 12 tanks, ~~ten percent (~~10%~~)~~ of the total corrective action costs expended in an amount not to exceed ~~ten thousand dollars (~~$10,000~~)~~;

(II) 13 to 999 tanks, ~~twenty percent (~~20%~~)~~ of the total corrective action costs expended in an amount not to exceed ~~twenty thousand dollars (~~$20,000~~)~~; or

(III) 1,000 or more tanks, ~~fifty thousand dollars (~~$50,000~~)~~;

(ii) For compensation of third party claims:

(I) 1 to 12 tanks, ~~ten thousand dollars (~~$10,000~~)~~ for compensation of third parties;

(II) 13 to 999 tanks, ~~thirty-seven thousand five hundred dollars (~~$37,500~~)~~ for compensation of third parties; or

(III) 1,000 or more tanks, ~~two hundred twenty-five thousand dollars (~~$225,000~~)~~ for compensation of third parties.

6. If the date of the release was on or after July 1, 2005, the deductible for eligible UST owners and/or operators or petroleum site owners for taking corrective action will be ~~twenty thousand dollars (~~$20,000~~)~~ and compensation of third parties will be ~~twenty thousand dollars (~~$20,000~~)~~.

Table 3

Owner And/Or Operator Or Petroleum Site Owner Deductible Per Site Per Occurrence

Date Of Release	Number Of Tanks		
	1 - 12 Tanks	13 - 999 Tanks	1000+ Tanks
After January 1, 1974 and Before July 1, 1988 *	$75,000 ~~Clean-up~~ Cleanup/ $150,000 third party	$75,000 ~~Clean-up~~ Cleanup/ $150,000 third party	$75,000 ~~Clean-up~~ Cleanup/ $150,000 third party
Between July 1, 1988 and June 30, 1989	$75,000 ~~Clean-up~~ Cleanup/ $150,000 third party	$75,000 ~~Clean-up~~ Cleanup/ $150,000 third party	$75,000 ~~Clean-up~~ Cleanup/ $150,000 third party
Between July 1, 1989 and April 30, 1990	$50,000 ~~Clean-up~~ Cleanup/ $150,000 third party	$50,000 ~~Clean-up~~ Cleanup/ $150,000 third party	$50,000 ~~Clean-up~~ Cleanup/ $150,000 third party
Between May 1, 1990 And April 4, 1995	$10,000 ~~Clean-up~~ Cleanup/ $10,000 third party	$20,000 ~~Clean-up~~ Cleanup/ $37,500 third party	$50,000 ~~Clean-up~~ Cleanup/ $225,000 third party
Between April 5, 1995 And June 30, 2005	10% of ~~Clean-up~~ Cleanup Cost not to exceed $10,000/ $10,000 third party	20% of ~~Clean-up~~ Cleanup cost not to exceed $20,000/ $37,500 third party	$50,000 ~~Clean-up~~ Cleanup/ $225,000 third party
On or after July 1, 2005	$20,000 ~~Clean-up~~ Cleanup/ $20,000 third party	$20,000 ~~Clean-up~~ Cleanup/ $20,000 third party	$20,000 ~~Clean-up~~ Cleanup/ $20,000 third party

* Releases which occurred during this time period are only eligible for reimbursement if, prior to April 11, 1990, the release was reported to the ~~division~~ Division and the owner and/or operator incurred eligible expenses for assessment or remediation.

(c) The fund shall ~~be responsible to~~ reimburse eligible UST owners and/or operators or petroleum site owners, who qualify for fund coverage in accordance with paragraphs (10) and (11) of this rule, for eligible corrective action costs above the entry level to the fund in an amount not to exceed:

1. ~~one million dollars ($1,000,000)~~ $2,000,000 per site per occurrence for sites still undergoing corrective action on July 1, 2015, or releases that occur on or after July 1,

2015;~~. Likewise, the fund shall be responsible to eligible UST owners and/or operators or petroleum site owners for court awards involving third party claims above the entry level into the fund in an amount not to exceed one million dollars ($1,000,000) per site per occurrence.~~

2. $1,000,000 per site per occurrence for site cleanups closed on or before June 30, 2015; or

3. $1,000,000 per site per occurrence for court awards involving third party claims.

(d) If the date of the release is on or after September 1, 2005, the owner and/or operator may apply for a reduction of the deductible requirement for corrective action set forth in part (b)6 of this paragraph. Application shall be made using a format established by the ~~division~~ Division and in accordance with instructions provided by the ~~division~~ Division.

1. The tank owner and/or operator shall demonstrate to the satisfaction of the ~~division~~ Division that each UST system at the facility meets or exceeds the criteria for reduction of the deductible set forth in the table in this subparagraph. Such demonstration may include, but not be limited to:

(i) Submittal of verifying documentation to the ~~division~~ Division; and/or

(ii) On-site verification by the ~~division~~ Division.

2. For each criterion met there shall be an associated reduction in the deductible. However, the maximum percentage reduction in the deductible per occurrence shall not exceed ~~fifty percent (~~50%~~)~~.

Criteria	Percentage Reduction
Double Wall Tank(s)	10 %
Secondary Containment Chase Piping Enclosing Fiberglass Primary Piping or Flexible Plastic Piping with Containment Sumps at Piping Joints	10 %
Containment Sumps at Submersible Turbine Pumps	10 %
Containment Sumps under Dispensers	10 %
Continuous In-Tank Leak Detection System	10 %

3. If a criterion is not applicable to one or more of the UST systems at the facility, then the conditions of part 1 of this subparagraph shall have been met if every UST ~~systems~~ system at the facility for which the criterion is applicable meets that criterion. For example, the criterion for a containment sump under a dispenser is not applicable to a UST system used to store waste oil or used oil.

4. Upon confirmation by the ~~division~~ Division that a tank owner and/or operator has met one or more of the criteria for reduction of the deductible set forth in the table in this subparagraph, the tank owner and/or operator will be sent correspondence setting forth the new reduced deductible.

5. However, if one or more of the criteria in part 2 of this subparagraph was met on or after July 24, 2007, in accordance with the requirements of ~~part (2)(c)2 or 3 of Rule 0400-18-01-.01 or~~ paragraph (2) or (6) of Rule 0400-18-01-.02, there shall be no reduction in the deductible.

(7) Removal, Replacement or Repair of Property Improvements.

(a) In accordance with paragraph (7) of Rule 0400-18-01-.06, a recommendation of an option for removal and either disposal, replacement or repair of a property improvement may be made as a part of site remediation using fund dollars.

1. Division approval to pursue this option shall be obtained prior to taking the action in part 2 of this subparagraph.

2. Two cost proposals shall be submitted to the ~~division~~ Division. The two cost proposals shall be prepared in accordance with guidance provided by the ~~division~~ Division and submitted in a format established by the ~~division~~ Division.

(i) One proposal shall be for the cost of remediation without the removal, disposal, replacement or repair of the property improvement.

(ii) One proposal shall be for the cost of the removal and either the disposal, replacement or repair of the property improvement plus the cost of remediation without the impediment of the property improvement.

3. A recommendation that includes replacement or repair shall be consistent with the requirements of Rule 0400-18-01-.02.

(b) If the ~~division~~ Division evaluation of the cost proposals submitted in accordance with part (a)2 of this paragraph as well as any other pertinent information, that the expenditure of fund dollars for removal and either disposal, replacement or repair of property improvements would result in a substantial reduction of the total cost of cleanup activities at the petroleum site, the ~~division~~ Division may approve reimbursement from the fund for removal and either disposal, replacement or repair of property improvements.

(c) Prior to removal of a property improvement approved for removal in accordance with the provisions of subparagraph (b) of this paragraph, documentation of the condition and location of the property improvement, including, but not limited to, photographs and a scaled site map, shall be provided to the ~~division~~ Division in a format and in accordance with guidance provided by the ~~division~~ Division.

(d) Prior to reimbursement by the fund for replacement or repair of a property improvement approved by the ~~division~~ Division in accordance with subparagraph (b) of this paragraph, documentation of the condition and location of the property improvement, including, but not limited to, photographs, shall be provided to the ~~division~~ Division.

(e) Unless division approval has been granted in accordance with subparagraph (b) of this paragraph, the fund shall not reimburse tank owners, tank operators or petroleum site owners for the cost of property improvements.

(8) Fund ineligible costs.

(a) Costs of maintenance and/or retrofitting of affected tanks and associated piping and any costs not integral to site rehabilitation shall not be eligible for payment or reimbursement by the fund.

(b) The cost of equipment purchases other than routinely required supplies which are expended at a given site or equipment which shall be installed at a site to implement a Corrective Action Plan shall not be charged as a lump sum to the cost of rehabilitating any given site at which funds are being claimed for containment, investigative, or corrective action costs. Examples of equipment which could not be charged to a specific site would include: drilling rigs, earth moving equipment, ~~ground water~~ groundwater sampling pumps, and photoionization detectors. Examples of equipment which could be charged to a specific site would include: bailers, sample containers, etc. Hourly charges for equipment may be established in the cost proposal submitted for each major phase of work. These hourly rates shall be competitive with similar charges by other approved contractors, or they may be rejected by the ~~division~~ Division if they are determined to represent unreasonable costs.

(c) The owner and/or operator or petroleum site owner fund deductible amounts as specified in subparagraph (6)(b) of this rule are not eligible for reimbursement from the fund. Proof of payment of these initial amounts is required prior to reimbursement of any costs. The owner and/or operator or petroleum site owner fund deductible for taking corrective action cannot include any cost defined as fund ineligible in subparagraphs (a) and (b) of this paragraph.

(d) Costs of removing underground storage tanks, other than those costs approved in accordance with the provisions of paragraph (7) of this rule, including any expenditure associated with the proper closure of a tank in compliance with Rule 0400-18-01-.07 shall not be eligible for fund payment or reimbursement.

(e) Corrective action costs associated with a release of petroleum caused by overt actions taken by the tank owner or his employee(s) will not be eligible for reimbursement from the fund, for example, an overfill release caused by the disabling of an overfill prevention device.

(9) Fund obligations.

(a) Contingent upon availability of funds, the ~~commissioner~~ Commissioner will make obligations from the fund when:

1. A cost proposal for containment, investigative, or corrective actions, submitted in accordance with paragraph (10) of this rule, is approved by the ~~division~~ Division;

2. A judgment for a third party claim is submitted for payment in accordance with paragraphs (6), (11) and (12) of this rule;

3. A payment application is received for containment, investigative, or corrective action work performed from July 1, 1988 until April 15, 1990, subject to a determination of reasonable costs by the ~~division~~ Division. Fund eligibility from July 1, 1988 until April 15, 1990 shall be determined by fee payment as required by the Tennessee Petroleum Underground Storage Tank Act;

4. A payment application is received for initial release response, abatement measures, and initial free product removal under the terms of subparagraph (10)(d) of this rule;

5. A payment application is received and approved by the ~~division~~ Division for costs associated with providing an alternate water supply to a person whose water supply has been contaminated by a release of petroleum; or

6. The ~~commissioner~~ Commissioner or ~~board~~ Board determines it is necessary to provide for containment, investigation, identification, reasonable and safe cleanup, and as otherwise provided in the Tennessee Petroleum Underground Storage Tank Act.

(b) If the unobligated balance of the fund is less than the total amount associated with payment applications, cost proposals, and third party judgments which have been accepted by the ~~commissioner~~ Commissioner, to the extent allowed by available funds, funds will be obligated in the chronological order in which the claims were submitted, except for the provisions of subparagraph (c) of this paragraph.

(c) Obligations of funds required for satisfying fund eligible payment applications for work performed under part (a)3 of this paragraph or judgments for third party claims which were rendered prior to April 15, 1990, for releases discovered from July 1, 1988 until April 15, 1990, will be given priority over payment applications and cost proposals for releases which occur after April 15, 1990.

(d) All claims against the fund are clearly obligations only of the fund and not of the State, and any amounts required to be paid under this part are subject to the availability of sufficient monies in the fund. The full faith and credit of the State shall not in any way be pledged or considered to be available to guarantee payment from such fund.

(10) Requirements for fund coverage of corrective action costs.

An eligible owner and/or operator or petroleum site owner conducting UST corrective actions is entitled to coverage of reasonable costs from the fund, subject to the provisions set forth in this paragraph. ~~The division shall acquire by subrogation the right of the owner and/or operator or petroleum site owner to recover from any person responsible or liable for the release, other than the owner and/or operator of the underground storage tank system from which the release occurred, the amount paid by the fund to the owner and/or operator or petroleum site owner.~~

(a) Upon confirmation of a release in accordance with paragraph (3) of Rule 0400-18-01-.05 or after a release from the UST system is identified in any other manner, owners and/or operators or petroleum site owners shall comply with the requirements of Rule 0400-18-01-.06 as necessary to investigate the release, characterize the site and control any hazards posed by the release in order to stabilize the site, prevent significant risk to human health and safety, and/or continuing damage to the environment.

(b) Upon confirmation and reporting of a release in accordance with the requirements of paragraphs (1) through (3) of Rule 0400-18-01-.05 or after a release from the UST system is identified in any other manner, the owner and/or operator or petroleum site owner shall select a contractor from the ~~division~~ Division's list of approved contractors if the owner and/or operator or petroleum site owner expects to apply for fund benefits. The ~~division~~ Division shall be notified in writing of such a selection within ~~thirty (~~30~~)~~ days or other time frame specified by the ~~division~~ Division. A contractual agreement shall be established between the owner and/or operator or petroleum site owner and the contractor in accordance with the requirements of T.C.A. § 68-215-129. The ~~division~~ Division shall be provided a copy of the contractual agreement.

(c) Upon confirmation and reporting of a release in accordance with the requirements of paragraphs (1) through (3) of Rule 0400-18-01-.05 or after a release from the UST system is identified in any other manner,

1. Effective December 22, 1998, the owner and/or operator shall submit documentation to the ~~division~~ Division verifying that the ~~tanks are~~ underground storage tank system is in compliance with ~~the upgrading and performance standards set forth in~~ paragraphs (3) and (4) of Rule 0400-18-01-.02;

2. On or after April 20, 1998, the owner and/or operator shall submit documentation to the division verifying the performance of release detection as required by Rule 0400-18-01-.04 at the time of the release; and

3. On or after ~~the effective date of these rules~~ November 17, 2009, the owner or operator shall submit documentation to the ~~division~~ Division verifying compliance with applicable secondary containment requirements as set forth in ~~parts (1)(c)2 and 3 of Rule 0400-18-01-.01,~~ subparagraph (1)(c) of Rule 0400-18-01-.02 and paragraphs (2) and (6) of Rule 0400-18-01-.02.

The owner and/or operator shall submit this documentation to the ~~division~~ Division within ~~thirty (~~30~~)~~ days of the date the release is confirmed.

(d) If initial response or hazard control measures conducted in accordance with paragraphs (3) and (4) of Rule 0400-18-01-.06 are required to properly stabilize a site and prevent significant continuing damage to the environment or risk to human health, and the cost of such required measures is expected to exceed ~~ten thousand dollars (~~$10,000~~)~~, then the owner and/or operator or petroleum site owner or the approved corrective action contractor may contact the ~~division~~ Division to obtain verbal or written approval to allow additional expenditures prior to the submittal of a cost proposal. Additional expenditures may be authorized by the Commissioner which may be reimbursable from the fund to achieve site stabilization and immediate protection of human health or the environment. Such approval may be given following the actual expenditures if immediate actions were necessary to protect human health or the environment and ~~division~~ Division personnel were unavailable. In such a case, the Commissioner shall be notified of the actions taken by no later than one ~~(1)~~ working day after any such actions.

(e) Following completion of necessary site stabilization actions as described in subparagraph (d) of this paragraph, subsequent investigation, risk evaluation, and remediation shall be performed by approved contractors and in accordance with the requirements of Rule 0400-18-01-.06. Unless directed to do otherwise by the ~~division~~ Division, prior to initiating any subsequent investigation, risk evaluation or remediation, the owner and/or operator or the petroleum site owner shall, through the assistance of the selected approved contractor, prepare and submit to the ~~division~~ Division a cost proposal for conducting the proposed investigation, risk evaluation or remediation. Cost proposals shall be prepared in accordance with guidance provided by the ~~division~~ Division and in a format established by the ~~division~~ Division.

(f) Upon review of a cost proposal submitted in accordance with subparagraph (e) of this paragraph the ~~division~~ Division may:

1. Accept the cost proposal and authorize work to be initiated; or

2. Request a modification to or clarification of the cost proposal if projected costs are determined not to be reasonable.

(g) Unless directed to do otherwise by the ~~division~~ Division, in addition to the requirements of subparagraphs (d) and (e) of this paragraph, the owner and/or operator or petroleum site owner shall upon submittal of a cost proposal for a site investigation, also submit an estimate of the total cost of remediation for the site in a format required by the ~~division~~ Division, which shall be used solely for the purpose of the ~~board~~ Board and the ~~division~~ Division in projecting future funding requirements for the fund. The total estimated cost of remediation for a site shall be updated by the owner and/or operator or petroleum site owner in accordance with a schedule required by the ~~division~~ Division and as more complete information regarding a site becomes available.

(h) Upon acceptance of a cost proposal by the ~~division~~ Division, sufficient monies will be obligated from the fund for completion of the particular phase of work for which the cost proposal was submitted and authorization will be provided for the initiation of the proposed action. Obligation of funds shall be subject to the availability of funds at the time of acceptance of the cost proposal.

(i) Corrective actions performed prior to acceptance of an associated cost proposal may not be eligible for reimbursement.

(j) If the cost of completing any of the corrective actions of subparagraph (e) of this paragraph is expected to exceed the amount of an accepted cost proposal, an amended cost proposal shall be submitted and accepted to allow additional funds to be obligated.

(k) Any corrective action which is carried out in response to any discharge, release, or threatened release of petroleum from an UST shall be conducted in accordance with the requirements of Rules 0400-18-01-.06 and subparagraphs (a) through (e) of this paragraph.

(l) The owner and/or operator or petroleum site owner or the selected corrective action contractor shall keep and preserve detailed records demonstrating compliance with approved investigative and corrective action plans and all invoices and financial records associated with costs for which reimbursement will be requested. These records shall be kept for at least three ~~(3)~~ years after corrective action has been completed for a site.

(m) Any approved corrective action shall be implemented in a manner acceptable to the ~~division~~ Division in accordance with an approved ~~corrective action plan~~ Corrective Action Plan, if applicable, in order for the owner and/or operator or petroleum site owner to be eligible for the reimbursement of costs.

(n) An eligible owner and/or operator conducting UST response actions from July 1, 1988 until April 15, 1990, relative to any discharge, release or threatened release of petroleum from an UST, is entitled to reimbursement of reasonable costs above entry level from the fund but is exempted from the requirements of subparagraphs (b) through (j) of this paragraph, provided that corrective actions were carried out in accordance with a plan approved by the Division.

(o) If corrective actions which were initiated during the time period referenced in subparagraph (n) of this paragraph are still continuing on April 15, 1990, the ~~division~~ Division may require submittal of cost proposals for any remaining phases of work and for the total projected cost of the remediation.

(p) If the contractor performing corrective actions as described in subparagraph (o) of this paragraph is not an approved contractor, the ~~division~~ Division may authorize the continued use of that contractor.

(q) If a contractor is performing corrective action at a site prior to development of an approved contractor list, the ~~division~~ Division may authorize the continued use of that contractor.

(r) The tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall gather and maintain documentation and records necessary to verify the necessity for any implemented corrective action and any claim for reimbursement from the fund. Further, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall fully cooperate with any audit which the ~~commissioner~~ Commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the ~~department~~ Division for reimbursement from the fund. Therefore, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall produce any records, data, documents, information, and personnel for interviews as necessary in the ~~commissioner~~ Commissioner's determination to fully and completely conduct an audit.

(s) To avoid a conflict of interest, if the tank owner and/or operator or the petroleum site owner expects to be reimbursed from the fund for the cost of laboratory analysis of environmental samples, the approved CAC hired by the tank owner and/or operator or petroleum site owner shall not be in control of or controlled by the laboratory performing analysis of environmental samples nor controlled by the same parent company.

(11) Requirements for fund coverage of third party claims.

An eligible owner and/or operator or petroleum site owner is entitled to fund coverage for third party damages caused by the release of petroleum from an underground storage tank system, subject to the requirements set forth in this paragraph. ~~The division shall acquire by subrogation the right of the owner and/or operator or petroleum site owner to recover the amount of damages paid to any third party from any person responsible or liable for the release, other than the owner and/or operator of the underground storage tank system from which the release occurred.~~

To assert a claim for payment or reimbursement of a third party claim, an eligible owner and/or operator or petroleum site owner shall comply with each of the following:

(a) Notify the ~~division~~ Division in writing within ~~twenty-one (~~21~~)~~ days upon the receipt of written notice of the third party liability suit. Thereafter, the owner and/or operator or petroleum site owner shall submit to the ~~division~~ Division a report which accurately reflects the status of the lawsuit every four ~~(4)~~ months, until the litigation is resolved. The owner and/or operator or petroleum site owner shall also notify the ~~division~~ Division in writing ~~fourteen (~~14~~)~~ days in advance of any settlement conference or settlement agreement;

(b) The owner and/or operator is fund eligible at the time the release occurred;

(c) Copies of all available documents used to support the claim(s) of property damage(s) or bodily injury(ies), including, but not limited to, invoices, cost estimates or bid proposals, appraisals, medical evaluations, and medical bills.

(d) The third party obtains a final judgment enforceable in Tennessee or pursuant to a settlement reviewed and approved by the ~~division~~ Division. The underground storage tank system owner and/or operator or petroleum site owner shall file a motion with the court requesting that the final judgment specify the type and amount of all damages awarded to the third party(ies);

(e) The final judgment is for an amount greater than the fund entry level in effect on the date of release.

(f) The tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall gather and maintain documentation and records necessary to verify any claim for reimbursement from the fund. Further, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall fully cooperate with any audit which the ~~commissioner~~ Commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the ~~division~~ Division for reimbursement from the fund. Therefore, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall produce any records, data, documents, information and personnel for interviews as necessary in the commissioner's determination to fully and completely conduct an audit.

(12) Applications for payment.

(a) Applications for reimbursement for costs of corrective actions shall be submitted on a form established by the ~~division~~ Division which shall include an itemization of all charges according to labor hours and rates, analytical charges, equipment charges, and other categories which may be identified by the division, or which the applicant may wish to provide.

(b) The following statement shall be signed in accordance with the requirements of either part 1 or 2 of this subparagraph:

"I certify to the best of my knowledge and belief: that the costs presented therein represent actual costs incurred in the performance of response actions at this site during the period of time indicated on this application; that an accidental release has occurred from a petroleum underground storage tank system at this site; and that no charges are presented as part of this application that do not directly relate to the performance of corrective actions related to the release of petroleum at this site."

1. The owner and/or operator or petroleum site owner and the approved CAC or an authorized representative of the approved CAC shall sign the application for payment containing the statement in this subparagraph if authorized payments from the fund will be made in accordance with the provisions of subparagraph (14)(a) of this rule.

2. The owner and/or operator or petroleum site owner shall sign the application for payment containing the statement in this subparagraph if authorized payments from the fund will be made in accordance with the provisions of subparagraph (14)(b) of this rule.

(c) Applications for payments may be submitted following acceptance by the ~~division~~ Division of completed corrective actions. Such corrective actions may include but are not limited to the following:

1. Completion of hazard management activities, which were authorized by the division, including, but not limited to, provision of an alternate water supply;

2. Completion and submittal of a Hazard Management Report;

3. Development and submittal of an Initial Site Characterization Report;

4. Development and submittal of a Risk Analysis Report;

5. Implementation of interim remediation and/or risk management activities which were authorized by the ~~division~~ Division;

6. Advanced risk-based modeling development which was authorized by the ~~division~~ Division; and/or

7. Development and/or implementation of a Corrective Action Plan which was authorized by the ~~division~~ Division.

(d) Applications for payments for the implementation of corrective action may be submitted ~~sixty (60)~~ days following initiation of work to implement the Corrective Action Plan and at ~~sixty (60)~~ day intervals thereafter until completion of the authorized activities. Upon request, the ~~division~~ Division may approve interim payments at more frequent intervals.

(e) All payments shall be subject to approval by the ~~division~~ Division. Should a site inspection or other information available to the ~~division~~ Division reveal a discrepancy between the work performed and the work addressed by a payment application, the ~~division~~ Division may deny payment or may require the fund to be reimbursed.

(f) All applications for payment of costs of cleanup shall be received by the division within one ~~(1)~~ year of performance of the task or tasks covered by that application in order to be eligible for payment from the fund.

(g) Except for the situations provided for in subparagraph (10)(a) of this rule, payment shall not be made for corrective actions performed at a site until the ~~division~~ Division has reviewed and accepted a cost proposal for that work and until funds have been obligated from the fund for completion of that particular stage of work.

(h) For payment of third party claims, the UST owner and/or operator or petroleum site owner shall submit an application to the ~~division~~ Division, using the approved form, attaching the original or a certified copy of a final judgment (enforceable in Tennessee) with proof of payment of the applicable fund deductible for compensation of third parties as specified in subparagraph (6)(b) of this rule. The UST owner and/or operator or petroleum site owner shall submit proof that a motion was submitted to the court on their behalf requesting that the type and amounts of all damages awarded to the third party(ies) in the final judgment be specifically listed. This application shall be received by the ~~division~~ Division no later than ~~thirty (30)~~ days after notification of judgment.

1. The ~~division~~ Division may require additional information to determine the eligibility of a cost for payment.

2. If the application is determined to be incomplete, the ~~division~~ Division shall notify the applicant of the deficiencies. The applicant shall submit supplemental information to correct the deficiencies within ~~forty-five (45)~~ days of receipt of notice. The applicant may submit a written request for an extension of time for submittal of information to the ~~division~~ Division. The applicant shall state and the ~~division~~ Division shall approve the conditions which warrant an extension of submittal time.

3. Only the following costs shall be eligible for payment or reimbursement from the fund:

(i) Awards for property damage to third parties made by a court of suitable jurisdiction in Tennessee; and

(ii) Awards for bodily injury to third parties made by a court of suitable jurisdiction in Tennessee.

(13) Settlement of third party claims.

(a) No settlement of a third party claim shall be made by an owner and/or operator or petroleum site owner without the prior approval of the ~~division~~ Division. The fund shall not be obligated to pay any claim for reimbursement if the owner and/or operator or petroleum site owner enters into a settlement without the prior approval of the ~~division~~ Division.

(b) The fund shall not be obligated to pay any final and enforceable third party judgment or reimburse an owner and/or operator or petroleum site owner for payment of the judgment in any amount exceeding a settlement offer rejected by the owner and/or operator or petroleum site owner which

was submitted to the ~~division~~ Division, reviewed and approved by the ~~division~~ Division for payment.

(14) Fund payment procedures.

(a) Where the owner and/or operator or petroleum site owner has submitted an acceptable application for payment for corrective actions or third party claims, but has not paid for these activities or claims, payments will be made by a check written to both the eligible owner and/or operator or petroleum site owner and the provider of the corrective action services or third party.

(b) Payments from the fund will be made directly to the eligible owner and/or operator or petroleum site owner in cases where the owner and/or operator or petroleum site owner submits documentation verifying the owner and/or operator or petroleum site owner has paid in excess of the applicable fund deductible for taking corrective actions as specified in subparagraph (6)(b) of this rule.

(c) The owner and/or operator or petroleum site owner is responsible for final payment to the contractor who performed the corrective actions and for payment of judgments to third parties.

(d) Contingent upon availability of funds, the ~~division~~ Division shall process all applications for payment as soon as possible upon receipt of application. If all costs are considered to be reasonable and eligible for reimbursement, payment will be issued within ~~ninety (90)~~ days once costs have been determined to be reasonable and eligible for reimbursement. If certain costs are considered as not being reasonable or eligible for reimbursement, the ~~division~~ Division may issue a check for the amount of the application not in question and provide a ~~forty-five (45)~~ day period in which the owner and/or operator or petroleum site owner or contractor may present such information as is necessary to justify the disallowed costs. Following review of such information, the ~~division~~ Division may agree to pay the previously disallowed costs, or any portion thereof, or may again disallow the costs for payment. If the ~~division~~ Division disallows costs upon a second review, the owner and/or operator or petroleum site owner may petition the ~~board~~ Board for a hearing on the disallowance pursuant to Rule 0400-18-01-.11.

(15) Approval of corrective action contractors.

(a) The CAC is the person responsible for conducting and overseeing the corrective action at a petroleum underground storage tank site. There shall be only one CAC for each site.

1. The CAC shall be either:

(i) A properly licensed contractor, licensed engineer, registered geologist, or other licensed environmental professional; or

(ii) An owner and/or operator of the petroleum underground storage tank(s) which caused the release of petroleum to the environment or petroleum site owner, provided that each contractor/subcontractor working for the owner and/or operator or petroleum site owner shall be a properly licensed contractor pursuant to T.C.A. §§ 62-6-101 et seq.

(b) CACs will be approved to perform fund eligible work upon satisfaction of the following:

1. The CAC files a written application to become an approved corrective action contractor with the ~~division~~ Division via certified mail or personal service.

(i) The application shall be updated by April 1 of each year; and

(ii) The application shall include the following information:

(I) The name of the CAC;

(II) The principal(s) of CAC;

(III) The name of a contact person for the CAC;

(IV) Address(es) of CAC's office;

(V) Office phone number(s) of CAC;

(VI) Office facsimile number;

(VII) Electronic mail address; and

(VIII) Other information requested by the ~~division~~ Division.

2. The CAC submits a sworn statement with the written application in part 1 of this subparagraph, including the following provisions:

(i) The CAC shall abide by and comply with the ~~Rules and Regulations of the Department of Finance and Administration, Chapter 0620-03-03, Personal, Professional and Consulting Services Contracts.~~ Comprehensive Rules and Regulations of the Central Procurement Office, Chapter 0690-03-01;

(ii) The CAC shall have written contract(s) with all contractors/subcontractors, and contract(s) shall contain provisions that contractors/subcontractors will abide by and comply with the Rules and Regulations of the Department of ~~Finance and Administration, Chapter 0620-03-03, Personal, Professional and Consulting Services Contracts~~ General Services, Chapter 0690-03-01, Comprehensive Rules and Regulations of the Central Procurement Office. Contract(s) between the CAC and contractors/subcontractors shall also contain provisions that all site workers working under authority of contractors/subcontractors shall have applicable health and safety training when required by the Tennessee Department of Labor and Workforce Development;

(iii) Site workers working under authority of the CAC shall have the applicable health and safety training when required by the Tennessee Department of Labor and Workforce Development;

(iv) The CAC understands that reimbursement from the fund shall be in accordance with the reasonable rate schedule as established by the ~~division~~ Division;

(v) If the CAC is not the owner and/or operator of the tank that caused the release or petroleum site owner, the CAC shall have a written contract with the UST owner and/or operator or petroleum site owner, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The corrective action contractor will/will not (mark one) use the ~~division~~ Division's reasonable rate schedule when invoicing the owner and/or operator or petroleum site owner for the expenses incurred in the investigation and cleanup of this site.

(vi) If the CAC is the owner and/or operator of the tank which caused the release or petroleum site owner, the CAC shall have a written contract with all contractors/subcontractors, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The contractor/subcontractor (mark one) will/will not (mark one) use the ~~division~~ Division's reasonable rate schedule when invoicing the owner and/or operator or petroleum site owner for the expenses incurred in the investigation and cleanup of this site;

(vii) The CACs services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of their profession practicing in

the ~~State~~ state of Tennessee, under similar conditions, and at the time the services were rendered. The CAC shall not knowingly or willfully cause the spread of contamination nor inhibit corrective action at the site;

(viii) The CAC shall gather and maintain documentation and records necessary for filing a claim with the Tennessee Petroleum Underground Storage Tank Fund;

(ix) The CAC shall, at a minimum, follow Quality Assurance/Quality Control Standard Operating Procedures supplied by the ~~division~~ Division, unless alternate Quality Assurance/Quality Control is approved in writing in advance by the ~~division~~ Division;

(x) The CAC shall assure that the CAC and/or any person the CAC employs or contracts with to engage in the practice of engineering shall be appropriately licensed/registered under ~~the Tennessee Architects, Engineers, Landscape Architects and Interior Designers Law and Rules~~ T.C.A. ~~§ 62-2-101 et seq.~~ Title 62, Chapter 2, and rules promulgated thereunder;

(xi) The CAC shall assure that any and all work defined as contracting in Tennessee Contractor's ~~License Law~~ Licensing Act (T.C.A. §§ 62-6-101 et seq.) shall be performed by a licensed contractor(s) with appropriate classification and monetary limitation;

(xii) The CAC shall assure that the CAC and/or any person the CAC employs or contracts with to perform professional geologic work shall be appropriately registered under the ~~Tennessee Geologists~~ Geologist Licensing Act (T.C.A. §§ 62-36-101 et seq.); and

(xiii) The CAC shall assure that all work done by the CAC had the prior approval of a ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance, and the work was done as specified in this Chapter~~, that is Chapter~~ 0400-18-01, and/or according to a plan approved by the ~~division~~ Division. The CAC shall assure that all plans and reports submitted to the ~~division~~ Division were prepared and signed by the ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist who prepared or is responsible for the plan or report. The CAC shall further assure that a ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist shall make periodic site visits to verify whether or not the work performed was as specified by the ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist, and as specified in this ~~Chapter~~ chapter, and/or according to a plan approved by the division Division. The CAC shall require a ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist to submit a signed certification based on their personal observation and review of job site records stating whether or not the work was performed as directed by the ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist, and whether or not the work has been performed in accordance with this ~~Chapter~~ chapter, and/or a plan approved by the ~~division~~ Division. If the work was not performed according to the above specifications, the certification shall include a listing of how the work which was performed varies from this ~~Chapter~~ chapter, the approved plan, and/or the authorization of the ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist and the specific reason for each variation. The certification shall be submitted according to a schedule and format determined by the ~~division~~ Division.

(xiv) The CAC shall fully and completely cooperate with the Commissioner during any audit by the Commissioner or his authorized representative, and comply with subparagraphs (10)(r) and (11)(f) of this rule.

3. The CAC has any applicable license(s) and registration(s) required in the State of Tennessee; and

(i) If the CAC is a licensed contractor, the ~~contractor~~ CAC shall be properly licensed with an S-Underground Tank Installers, Removal, and Remediation of Pollutants or other applicable classification with a monetary limitation as required under ~~rule~~ Rule 0680-01-.13 and established by the board for Licensing Contractors of the Tennessee Department of Commerce and Insurance in the amount of at least ~~three hundred fifty thousand dollars (~~$350,000~~)~~. Date of license expiration shall be included. The CAC shall submit requirements of this part with the application required in part 1 of this subparagraph and shall submit documentation of any changes, renewals, renovations, etc. of the CAC's Tennessee license. (There shall be no fund reimbursement for those expenses which exceed the contractor's monetary limitation.)

(ii) All contractors and their subcontractors and employees shall have other applicable license(s) and registration(s).

4. The CAC shall maintain liability insurance coverage of the types and in the amounts described in the Table below, or the equivalent, and shall provide certification, with the ~~division~~ Division listed as a certificate holder, to the ~~division~~ Division of such coverage with the application described in part 1 of this subparagraph on April 1 of each year thereafter, or more frequently if necessary, to keep the ~~division~~ Division updated as to the CAC's current insurance coverage.

TYPE OF POLICY	Limits of Liability	Description
~~Worker's~~ Workers' Compensation	Statutory	All states
Employer's Liability	$500,000	
Automobile Liability	$1,000,000 combined single limit (bodily injury and property damages)	All owned, non-owned, and hired vehicles
General Liability	$1,000,000 combined single limit	Broad Form Comprehensive General Liability

5. The CAC shall submit a list of the CAC's employees which will be utilized by the CAC as a part of the assessment and remediation of UST sites in the ~~State~~ state of Tennessee.

(i) For each employee the list shall include, but not necessarily be limited to, the following information for each employee on the list:

(I) Job description;

(II) Job title;

(III) Level of education, including any college degrees, and date(s) of graduation;

(IV) Professional registration(s) and license number(s);

(V) Office location; and

(VI) Telephone number(s).

(ii) The list of employees shall be submitted with the application described in part 1 of this subparagraph and annually with a due date of April 1 of each year thereafter.

(iii) When a new employee begins working for a CAC, within ~~fifteen (~~15~~)~~ days of the first day of employment or as soon as their work time will be submitted to the division for reimbursement, the CAC shall submit the employee information required in subpart (i) of this part to the division.

(c) For those CACs not approved by the ~~division~~ Division for placement on the list of Approved CACs:

1. CACs who submitted applications but did not meet the requirements of parts (b)1 through 5 of this paragraph may submit a subsequent application for review at such time they feel that the requirements of (b)1 through 5 of this paragraph may have been met.

2. If the ~~division~~ Division does not approve a CAC and does not place the CAC on the list of Approved CACs, the decision of the review committee may be appealed to the ~~board~~ Board in accordance with Rule 0400-18-01-.11.

(d) At any time other than when the ~~division~~ Division compiles the new year's ~~approved~~ Approved CAC list after the submission of information each April 1, a CAC will be removed from the ~~division~~ Division's ~~approved~~ Approved CAC list when it has been determined that the CAC has failed to satisfactorily maintain the requirements of subparagraph (b) of this paragraph or has committed one or more of the violations listed in subparagraph (e) of this paragraph.

1. The removal process shall be initiated when a complaint is referred to the ~~division~~ Division's review committee consisting of division staff members;

2. ~~The~~ Within ten days of receipt of a complaint, the review committee shall inform the CAC via certified mail of receipt of ~~a~~ the complaint and identify whether the complaint was filed by a person in accordance with T.C.A. § 68-215-123 or by the Board, Department, or its officials and employees acting in their official capacity;

3. The ~~division~~ Division's review committee may request the CAC to appear at a meeting to show cause why the ~~department~~ Department should not remove the CAC from the list of approved CACs;

4. The CAC may request a meeting with the review committee;

5. The review committee shall notify the CAC of its decision via certified mail within ~~sixty (~~60~~)~~ days of dispatch of the certified letter referenced in part 2 of this subparagraph;

6. If the review committee decides to remove the CAC from the list of ~~approved~~ Approved CACs, removal shall be effective ~~thirty (~~30~~)~~ days after dispatch to the last known address on file with the ~~division~~ Division unless:

(i) The CAC corrects the non-compliance to the satisfaction of the review committee during the ~~thirty (~~30~~)~~ day period; or

(ii) The CAC files a written appeal or petition for declaratory order with the ~~division~~ Division within the ~~thirty (~~30~~)~~ day period requesting a hearing to appeal the decision of the review committee to, or obtain a declaratory order from, the ~~board~~ Board.

7. If the ~~division~~ Division removes a CAC from the list of ~~approved~~ Approved CAC's the CAC may either:

(i) ~~petition~~ Petition the ~~board~~ Board for a hearing on its removal pursuant to Rule 0400-18-01-.11, if the complaint against the CAC was filed by a person in accordance with T.C.A. § 68-215-123. The filing of an appeal will postpone actions to remove a CAC from the list of ~~approved~~ Approved CACs until the appeal is heard by the board; or

(ii) Petition the Board for a declaratory order on its removal pursuant to T.C.A. §§ 4-5-223 to -225 if the complaint against the CAC was filed by the Board, Department, or its officials and employees acting in their official capacity. The filing of a petition will postpone actions to remove a CAC from the list of Approved CACs until the petition is heard by the Board.

8. If the Division does not remove a CAC from the list of Approved CAC's, the complainant may petition the Board for a hearing on the decision pursuant to T.C.A. § 68-215-123;

~~8.~~9. Once the review committee has dispatched a Notice of Removal to a CAC via certified mail, the division will approve no additional plans, scopes of work, or cost proposals if such approval will cause division personnel to violate T.C.A. § 62-6-120(c)(1);

~~9.~~10. If an appeal, referenced in subpart 7(i) of this subparagraph, is not filed during the ~~sixty (60)~~ thirty (30) day period, the decision of the review committee will be final;

~~10.~~11. A CAC removed from the approved CAC list may reapply for approval as provided for in subparts (i) or (ii) of this part:

(i) A CAC who was removed from the ~~approved~~ Approved CAC list due to failure to satisfactorily maintain the requirements of subparagraph (b) of this paragraph may reapply under subparagraphs (b) and (c) of this paragraph once the requirements of subparagraph (b) of this paragraph have been met;

(ii) A CAC who was removed from the ~~approved~~ Approved CAC list due to one or more of the violations listed in (e) below may reapply after one ~~(1)~~ year. The CAC shall submit evidence showing the reasons why the CAC should be reinstated for evaluation by the review committee. The CAC shall reapply under the provisions of subparagraphs (15)(b) and (c) of this rule.

(e) A CAC may be removed from the list of Approved Corrective Action Contractors if it is determined by ~~a~~ the review committee ~~consisting of division staff members~~ that the CAC has done any of the following:

1. The CAC charged the ~~state~~ State or owner and/or operator for unnecessary or unapproved work or work which was not performed;

2. The CAC filed false information with the ~~department~~ Department;

3. The CAC has been found guilty of violating any of the following or a comparable law in another jurisdiction:

(i) T.C.A. § 39-16-503 Tampering with or fabricating evidence~~;~~.

(ii) T.C.A. § 39-16-504 Destruction of and tampering with governmental records~~;~~.

(iii) T.C.A. § 39-14-130 Destruction of valuable papers with intent to defraud~~;~~.

(iv) T.C.A. § 39-14-114 Forgery~~;~~.

(v) T.C.A. § 39-14-104 Theft of services~~, or~~.

(vi) T.C.A. § 39-14-103 Theft of property~~;~~.

(vii) T.C.A. § 68-211-101 et seq. Solid Waste Disposal Act~~;~~.

(viii) T.C.A. § 68-212-101 et seq. Hazardous Waste Management Act~~;~~.

(ix) T.C.A. § 69-3-101 et seq. Water Quality Control Act~~;~~.

(x) Other environmental regulatory legislation.

4. The CACs or an employee(s), principal(s), or officer(s) of the CAC is found to have engaged in the unauthorized practice of engineering, contracting, or geology under T.C.A. §§ 62-2-101 et seq., §§ 62-6-101 et seq., and §§ 62-36-101 et seq., or a comparable law in another jurisdiction by the appropriate regulatory agency or court.

5. Due to the quality of work performed by the CAC, the CAC has significantly delayed or inhibited progress in achieving appropriate corrective action at a site(s). This shall include, but shall not be limited to, the following:

(i) The CAC performs a non-approved action which spreads contamination in the environment;

(ii) The CAC files a plan, including, but not limited to, a Free Product Investigation Plan and/or a Corrective Action Plan, which is rejected by the ~~division~~ Division as deficient, followed by three subsequent revisions, each of which is rejected by the ~~division~~ Division as deficient; or

(iii) The CAC fails to supply recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions supported by the following:

(I) The physical and chemical characteristics of petroleum, including its toxicity, persistence, and potential for migration;

(II) The hydrogeologic characteristics of the petroleum site and the surrounding land;

(III) The proximity, quality, and current and future uses of groundwater;

(IV) An exposure assessment;

(V) The proximity, quality, and current and future uses of surface waters;

(VI) Applicable ~~regulations~~ rules in Chapter 0400-18-01; and

(VII) The magnitude and extent of petroleum contamination at the petroleum site and the surrounding land.

(iv) The CAC supplies recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions not supported by items (iii)(I) through (VII) of this part.

6. The CAC filed plan(s) or report(s) which do not bear the appropriate signature and Tennessee license/registration number of a ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist.

7. The CAC performed work which did not have the prior approval of a ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance.

8. The CAC has deviated from an approved plan or scope of work without the approval of the ~~division~~ Division. This includes, but is not limited to, the following:

   (i) Failure to follow Quality Assurance and Quality Control approved in the plan, or

   (ii) Failure to follow the schedule for implementation approved in the plan.

9. The CAC has failed to follow Quality Assurance/Quality Control (QA/QC) procedures supplied by the ~~division~~ Division without having alternate QA/QC approved in advance in writing by the ~~division~~ Division.

10. The CAC has failed to follow ~~UST regulations promulgated~~ a rule in Chapter 0400-18-01.

11. The CAC failed to have a ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist file a signed certification according to a schedule and format required by the ~~division~~ Division. Said certification shall be based on the ~~Registered Professional Engineer~~ registered professional engineer's or ~~Professional Geologist~~ professional geologist's personal observation and review of job site records. The certification shall state whether or not the work was performed as directed by a ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist, and whether or not the work has been performed in accordance with this Chapter 0400-18-01, and/or a plan approved by the ~~division~~ Division. The certification shall include a listing of how the work performed varies from this ~~Chapter~~ chapter, the approved plan, and/or the work approved of the ~~Registered Professional Engineer~~ registered professional engineer or ~~Professional Geologist~~ professional geologist and the specific reason for each variation.

(f) A CAC that fails to comply with the requirements of parts (b)1, 4, or 5 of this paragraph on April 1 of any year will not be eligible to remain on the list of ~~approved contractors~~ Approved CACs.

1. The review committee shall inform the CAC via certified mail that removal shall be seven ~~(7)~~ days after dispatch to the last known address on file with the ~~division~~ Division unless the CAC corrects the non-compliance to the satisfaction of the review committee during the seven ~~(7)~~ day period.

2. A CAC that fails to correct this noncompliance as provided in part 1 of this subparagraph, may reapply to be on the ~~approved~~ Approved CAC list under subparagraphs (b) and (c) of this rule once ~~it~~ the CAC can meet all ~~of those~~ the requirements.

(g) No CAC shall be placed on the Approved Corrective Action Contractors list if the CAC is on a list of contractors banned from usage on federally funded projects. If a CAC on the Approved Corrective Action Contractors list is placed on the list of contractors banned from usage on federally funded projects, that CAC will be removed from the Approved Corrective Action Contractors list. When the CAC is removed from the list of contractors banned from usage on federally funded projects, the CAC may apply to be added to the Approved Corrective Action Contractors list according to procedures outlined in subparagraphs (b) and (c) of this paragraph. A CAC on a list of contractors banned from usage on federally funded projects cannot work as a subcontractor to an approved corrective action contractor.

(h) The appearance of a CAC on the ~~division~~ Division's list of Approved Corrective Action Contractors shall in no way establish liability or responsibility on the part of the ~~division~~ Division, the fund, or the ~~State~~ state of Tennessee in regards to the services provided by the CAC or circumstances which may occur as a result of such services.

(i) An owner and/or operator may perform corrective actions for releases of petroleum from USTs ~~he~~ the owner or operator owns and/or operates provided that ~~he~~ the owner or operator submits an application with documentation as described in subparagraphs (b) and (c) of this paragraph and the application is approved by the ~~division~~ Division. The owner and/or operator may use qualifications of subcontractor(s) in addition to qualifications of the owner and/or operator in applying for approved corrective action contractor status. If an owner and/or operator uses a

subcontractor(s) in qualifying for an approved corrective action contractor classification and there is a change of a subcontractor whose qualifications were used in the application or documentation, then the owner and/or operator shall notify the ~~division~~ Division; the owner and/or operator shall be removed from approved corrective action contractor status. The owner and/or operator shall submit a new application with documentation and be approved as discussed in subparagraphs (b) and (c) of this paragraph to continue work as an approved corrective action contractor.

(j) A CAC working as a subcontractor under contract to an approved CAC is not required to be classified as an approved CAC. The subcontractor shall maintain all applicable license(s) and/or registration(s) required in the ~~State~~ state of Tennessee for work performed.

(16) Recovery of costs by state - apportionment of liability.

(a) Making use of any and all appropriate existing state legal remedies, the Commissioner may commence court action to recover the amount expended by the ~~state~~ State from any and all responsible parties for each site investigated, identified, contained or cleaned up, including up to the limits of the deductible for owners and/or operators of petroleum underground storage tanks covered by the fund and the entire amount from owners and/or operators of petroleum underground storage tanks not covered by the fund.

(b) In any action under this rule, no responsible party shall be liable for more than that party's apportioned share of the amount expended by the ~~state~~ State for such site. The responsible party has the burden of proving ~~his~~ the party's apportioned share. Such apportioned share shall be based solely on the liable party's portion of the total volume of the petroleum at the petroleum site at the time of action under this chapter. Any expenditures required by the provisions of this chapter made by a responsible party (before or after suit) shall be credited toward any such apportioned share.

(c) In no event shall the total moneys recovered from the responsible party or parties exceed the total expenditure by the ~~state~~ State for each site.

(d) Any party found liable for any costs or expenditures recoverable under this chapter who establishes by a preponderance of evidence that only a portion of such costs or expenditures are attributable to ~~his or her~~ the party's actions shall be required to pay only for such portion.

(e) If the trier of the fact finds evidence insufficient to establish such party's portion of costs or expenditures in such a cost recovery, the court shall apportion such costs or expenditures among the defendants, to the extent practicable, according to equitable principles.

(17) Failure to take proper action.

Any responsible party who fails without sufficient cause to properly provide for removal of petroleum or remedial action upon order of the ~~commissioner~~ Commissioner pursuant to this chapter may be liable to the state for a penalty in an amount equal to ~~one hundred fifty percent (~~150%~~)~~ of the amount of any costs incurred by the ~~state~~ State as a result of such failure to take proper action. The ~~commissioner~~ Commissioner may recover this penalty in an action commenced under T.C.A. § 68-215-115, paragraph (16) of this rule, or in a separate civil action, and such penalty shall be in addition to any costs recovered from such responsible party pursuant to this chapter.

(18) Severability.

If any paragraph, subparagraph, part, subpart, item or subitem, section or subsection of this rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this rule shall not be affected thereby.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.10 Fee Collection.

(1) Purpose.

The purpose of this rule is to establish a system and schedule for collection of underground storage tank fees.

(2) Applicability.

Requirements of this rule apply to the following persons:

(a) Owners and/or operators of petroleum underground storage tanks and/or tank compartments required to be reported under the requirements of T.C.A. §§ 68-215-101 et seq., as follows:

1. All petroleum underground storage tanks and/or tank compartments that are actively storing petroleum;

2. All petroleum underground storage tanks and/or tank compartments that are reported as in service at the start of the annual billing cycle (July 1 for underground storage tanks and/or tank compartments in East Tennessee, October 1 for underground storage tanks and/or tank compartments in Middle Tennessee, and January 1 for underground storage tanks and/or tank compartments in West Tennessee); and

3. All petroleum underground storage tanks and/or tank compartments taken temporarily out of service after June 30, 1988, and not properly closed in accordance with paragraphs (3) through (5) of Rule 0400-18-01-.07.

(b) Any person electing to pay annual fees on behalf of a tank owner and/or operator, including, but not limited to the owner of the petroleum site.

(3) Annual petroleum underground storage tank fees.

(a) The required fee shall be submitted in the specified amount, with checks made payable to the Tennessee State Treasurer.

(b) Any person who is an owner and/or operator of a petroleum underground storage tank subject to annual fees shall pay the required annual fee unless the fee is paid by another person on behalf of the tank owner and/or operator.

(c) The amount of the annual petroleum underground storage tanks fee shall be either:

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	$100.00	Per Tank
July 1, 1990 to June 30, 2005	$125.00	Per Tank
July 1, 2005 to June 30, 2013	$250.00	Per Tank Compartment
July 1, 2013 forward	$125.00	Per Tank Compartment

(d) The amount of the annual administrative service fee for agencies and functions of the U.S. Government shall be:

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	$25.00	Per Tank
July 1, 1990 to June 30, 2005	$25.00	Per Tank
July 1, 2005 to June 30, 2013	$250.00	Per Tank Compartment
July 1, 2013 forward	$125.00	Per Tank Compartment

Agencies and functions of the U.S. Government are not eligible for benefit or financial assistance from the Tennessee Petroleum Underground Storage Tank Fund.

(e) If an annual fee is paid on an existing underground storage tank which is subsequently permanently closed in accordance with Rule 0400-18-01-.07 and replaced by a new underground storage tank installed at the same site in accordance with paragraph (1) or (6) of Rule 0400-18-

01-.02 no additional annual fee will be required, provided that the replacement tank has the same number of tank compartments as the existing tank. If the replacement tank has more tank compartments than the existing tank, an additional annual fee of:

1. ~~Two hundred fifty dollars (~~$250~~)~~ per compartment shall be paid if the tank was replaced before July 1, 2013; or

2. ~~One hundred twenty five dollars (~~$125~~)~~ per compartment shall be paid if the tank was replaced on or after July 1, 2013.

If the replacement tank has fewer tank compartments than the existing tank, no refund of the annual fee or any portion thereof is due, as stated in subparagraph (f) of this paragraph.

(f) Payment of the entire amount of the annual fee is required for underground storage tanks and/or tank compartments in service or temporarily out of service during any portion of the current billing year. ~~Tanks~~ Except as provided in T.C.A. § 68-215-109(g), tanks and/or tank compartments placed into service after the current billing year begins or tanks and/or tank compartments which are permanently closed before the current billing year ends are not due a refund of the annual fee or any portion thereof.

(4) Failure to pay the annual petroleum underground storage tank fee.

(a) Any petroleum underground storage tank owner and/or operator of tanks for which the lawfully levied petroleum underground storage tank fee is owed will be assessed a monthly late payment penalty of ~~five percent (~~5%~~)~~ of the amount owed. Such penalty shall be assessed monthly until the fee and all associated penalties are paid; however, the total of the late payment penalties shall not exceed three ~~(3)~~ times the amount of the original fee. The tank owner and/or operator may file with the ~~commissioner~~ Commissioner a written petition requesting a reduction in the penalties assessed under this subparagraph, setting forth in the petition the grounds and reasons for such a request. At the ~~commissioner~~ Commissioner's sole discretion, the ~~commissioner~~ Commissioner may reduce the penalties that otherwise accrue if, in the ~~commissioner~~ Commissioner's opinion, the failure to pay fees was due to inadvertent error or excusable neglect. However, in no event shall the penalties be reduced to an amount less than ten percent (10%~~)~~ per annum, plus statutory interest.

(b) To refuse or fail to pay the annual fee per tank and/or tank compartment to the ~~division~~ Division is an unlawful action as described in T.C.A. § 68-215-104(3). The ~~division~~ Division may take one or more of the following actions to prohibit delivery to any facility at which there is a petroleum underground storage tank for which annual fees or penalties have not been paid:

1. Affix a tag or notice to the dispensers;

2. Affix a tag to the fill ports; or

3. Give notice on the ~~department~~ Department's web site.

(c) If a lawfully levied fee has not been paid within a reasonable time allowed by the Commissioner, the ~~commissioner~~ Commissioner may proceed in the Chancery Court of Davidson County to obtain judgment and seek execution of such judgment against the tank owner and/or operator.

(5) Petroleum underground storage tank annual fee notices.

(a) Prior to the due date of the annual underground storage tanks fee, the ~~division~~ Division shall issue fee notices to the owner or operator of the petroleum underground storage tanks. Fee notices and due dates shall be staggered using the three grand divisions of the ~~State~~ state of Tennessee.

1. Tank fees for underground storage tanks and/or tank compartments in the following East Tennessee counties shall be due on July 31 of each year:

Johnson, Sullivan, Carter, Washington, Unicoi, Hancock, Hawkins, Greene, Claiborne, Grainger, Hamblen, Cocke, Scott, Campbell, Union, Anderson, Knox, Jefferson, Sevier, Morgan, Roane, Loudon, Blount, Bledsoe, Rhea, Meigs, McMinn, Monroe, Grundy, Sequatchie, Hamilton, Bradley, Polk, Franklin, and Marion.

2. Tank fees for underground storage tanks and/or tank compartments in the following Middle Tennessee counties shall be due October 31 of each year:

   Stewart, Montgomery, Robertson, Sumner, Macon, Clay, Pickett, Houston, Hickman, Cheatham, Davidson, Wilson, Trousdale, Smith, Jackson, Overton, Fentress, Putnam, Cumberland, White, DeKalb, Van Buren, Warren, Cannon, Rutherford, Williamson, Dickson, Humphreys, Perry, Wayne, Lewis, Lawrence, Maury, Giles, Marshall, Lincoln, Moore, Bedford, and Coffee.

3. Tank fees for underground storage tanks and/or tank compartments in the following West Tennessee counties shall be due January 31 of each year:

   Lake, Obion, Weakley, Henry, Dyer, Crockett, Gibson, Carroll, Benton, Lauderdale, Tipton, Shelby, Haywood, Fayette, Madison, Hardeman, Henderson, Chester, McNairy, Decatur, and Hardin.

(b) The annual fee shall be paid on or before the due date.

(c) For any underground storage tank system brought into use after the effective date of this rule, the current year's annual fee shall be submitted with the notice of existence of such tank system required in part (1)(a)2 of Rule 0400-18-01-.02.

(d) For any underground storage tank system not previously reported to the ~~division~~ Division, the current year's annual fee shall be submitted with the required notice of existence of such tank system.

(6) Unlawful Action.

(a) It shall be unlawful to put petroleum into underground storage tanks and/or tank compartments at a facility if the ~~division~~ Division has taken one or more of the following actions:

1. A tag or notice has been affixed to the dispensers;

2. A tag has been affixed to the fill ports; or

3. Notice has been given on the department's web site.

(b) Placing petroleum into a tank and/or tank compartment at a facility when the ~~division~~ Division has taken one or more of the actions listed in parts (a)1 through 3 of this paragraph is a violation for the person putting petroleum into the underground storage tank and/or tank compartment as well as for the person having product put into the underground storage tank and/or tank compartment.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.11 Appeals.

(1) Any responsible party, tank owner, tank operator, CAC or person who has a right to appeal a determination of the Commissioner by these Rules shall comply with the procedure set forth in this ~~part~~ paragraph to perfect an appeal. Such responsible party, tank owner, tank operator, CAC, or person may petition the Board for a hearing provided a written petition is submitted to and received by the Commissioner within ~~thirty (~~30~~)~~ days of receipt of the ~~division~~ Division's determination. The ~~division~~ Division's determination and action shall be final and not subject to review unless the written petition for hearing is submitted and received by the Commissioner within this time frame. The written petition shall set forth the basis for the appeal as required by the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et seq. and the rules promulgated thereunder, in particular, Rule 1360-04-01-.05.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.12 Indicia of Ownership.

(1) Applicability.

(a) This rule applies to holders of security interests in petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located.

(b) Holders are subject to these requirements if they became holders on or after April 12, 1996.

(2) Notification by the Holder.

(a) Within ~~thirty (30)~~ days after foreclosure or its equivalent is completed, the holder shall notify the Department of the foreclosure. The holder shall use a notification form prescribed by the ~~division~~ Division. Holders shall complete the notification form accurately and in its entirety.

(b) If at any time after foreclosure, the holder causes a change in the status of the tanks at a petroleum UST facility, the holder shall report the change within ~~thirty (30)~~ days. This includes but is not limited to change of ownership, upgrading, or replacement of tanks, changes in mailing address and changes in service. Such reports shall be made using an amended notification form prescribed by the ~~division~~ Division.

(c) In the case of a sale of petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located or the sale of the security interest in such petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located, which occurs at any time after foreclosure, the holder must submit the notification form prescribed by the Division and must also inform the buyer of the notification requirements.

(3) Fund Eligibility Requirements.

(a) If a release from a petroleum underground storage tank system would have been eligible for reimbursement from the UST ~~Fund~~ fund under the provisions of Rule 0400-18-01-.09 had there been no foreclosure, then the holder shall be able to take full advantage of the Petroleum Underground Storage Tank Fund. Reimbursement from the ~~Fund~~ fund shall be in accordance with the provisions of Rule 0400-18-01-.09.

(b) A holder who is eligible for reimbursement from the state ~~Fund~~ fund must satisfy the deductible requirements as required by subparagraph (6)(b) of Rule 0400-18-01-.09.

(c) If a release occurred prior to the time of foreclosure and assessment and remediation activities have been initiated in accordance with the requirements of Rule 0400-18-01-.06, then assessment and remediation, in accordance with the requirements of Rule 0400-18-01-.06, must be continued for the site to remain ~~Fund Eligible~~ fund eligible after the holder has sold or otherwise disposed of his interest in it.

(d) If it is determined that the tanks are not fund eligible due to failure to timely register the tanks, the purchaser of such tanks from a holder must follow the requirements of subparagraph (4)(b) of Rule 0400-18-01-.09 to establish ~~Fund Eligible~~ fund eligible for the UST systems.

(4) Fee Payment.

Annual tank fees may be paid after foreclosure either by the holder or by an operator who is in charge of the daily operation of the UST systems provided that the holder has properly registered the tanks in accordance with paragraph (2) of this rule.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.13 ~~Voluntary Registry~~ Reserved.

~~(1) Registration.~~

~~(a) Any person that owns an interest in a petroleum site, including without limitation, owners in fee simple and holders, as defined in paragraph (4) of Rule 0400-18-01-.01, may register with the voluntary registry maintained by the division.~~

~~(b) Any person intending to become a registrant shall register by completing and submitting to the division the registration form designated by the division. The form shall be completed accurately and in its entirety in accordance with instructions provided by the division. At a minimum the registration form shall provide:~~

~~1. Name, address and phone number of the person submitting the registration form, and~~

~~2. The facility identification number assigned to the UST facility by the division and the location and/or the address of the facility.~~

~~(c) Notification of Registration in the Voluntary Registry shall be dispatched as set forth in parts 1 and 2 of this subparagraph.~~

~~1. The registrant shall be notified by the division of current registration in the Voluntary Registry. This notification shall also set forth the due date for the annual fee for renewal of registration.~~

~~2. The owner of the tanks at the facility provided in the registration form shall be sent notification of the registration in the Voluntary Registry. The notification shall inform the tank owner that the registrant shall be sent copies of all notices sent to the tank owner in accordance with paragraph 3 of this rule.~~

~~(d) Registration shall be amended by the registrant whenever the pertinent information contained in the registration form has changed by re-submitting to the division a registration form with revised information.~~

~~(2) Fees~~

~~(a) All registrants shall pay an annual fee of $500 per site.~~

~~(b) The annual fee shall be paid upon initial registration and annually thereafter by the first day of July until the registration is removed or withdrawn as provided in this rule.~~

~~1. Each year, the department shall send the registrant an invoice at least sixty (60) days prior to the annual fee due date.~~

~~2. If the registrant has not renewed the annual registration for the subsequent year, the department shall send the registrant a second invoice by certified mail at least thirty (30) days prior to the fee due date.~~

~~(c) Payment of the entire amount of the annual fee is required for any portion of the current year, which extends from July 1 through June 30. Initial registration after the current year begins or withdrawal of registration before the current year ends shall not result in a refund of the annual fee or any portion thereof.~~

~~(d) The division may remove a registrant from the Voluntary Registry in the event that the annual fee is not paid when due. The registrant shall be notified that he has been removed from the Voluntary Registry. Restoration to the Voluntary Registry shall be accomplished by fee payment and submittal of a new registration form.~~

~~(3) Notices to Registrants~~

~~(a) A copy of each notice issued to the tank owner, tank operator or petroleum site owner by the division, which concerns the underground storage tank facility provided in the registration form in accordance with part (1)(b)2 of this rule, shall be sent to the registrant.~~

~~(b) Each copy of a notice to the registrant shall be sent by the division simultaneously with the original notice to the owner and/or operator or petroleum site owner, and delivered in the same manner as the original notice.~~

~~(c) Notices to be copied to the registrant include, but are not limited to, invoices for tank and/or compartment fees, letters establishing deadlines for compliance with release response requirements, notices of violation and notices relating to loss of fund eligibility.~~

~~(d) Copies of notices sent to the registrant shall be sent to the current address appearing in the registration, as amended by the registrant due to change of address.~~

~~(4) Withdrawal of Registration~~

~~(a) A registrant may have their name removed from the Voluntary Registry at any time by requesting removal in writing.~~

~~(b) An owner and/or operator of a UST on a petroleum site or the owner of the petroleum site may petition the division for removal of a registration if such owner and/or operator or petroleum site owner can demonstrate that the registrant does not have a current interest in that petroleum site. Prior to making any determination on the removal of a registration based on the petition of the owner or operator or petroleum site owner, the division shall notify the registrant and the registrant shall have an opportunity to confirm its current interest in the petroleum site.~~

~~(c) A registrant whose only interest in a petroleum site is as a holder shall withdraw or otherwise approve the removal of its registration no later than thirty (30) days following the satisfaction of the secured debt.~~

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.14 Record Retention by the Division.

(1) Notification and tank ownership records.

The ~~division~~ Division shall maintain both tank registration/notification information and responsible party information that has been provided to the ~~division~~ Division or otherwise obtained by the ~~division~~ Division. Documents containing notification, tank registration and/or responsible party information shall be maintained as permanent records by the Division ~~of Underground Storage Tanks~~ due to the following factors:

(a) Tank ownership records must be available should petroleum contamination be discovered sometime in the future, requiring the ~~division~~ Division to make determinations concerning fund eligibility and/or responsible parties, because:

1. Timely registration or notification, in accordance with Rule 0400-18-01-.03, is required for establishment of fund eligibility in accordance with subparagraphs (3)(a) and (b) of Rule 0400-18-01-.09;

2. The tank owner at the time of a release is a responsible party in accordance with T.C.A. § 68-215-103(17)(A);

3. There may be some residual petroleum contamination that is not discovered during the site assessment at closure required by subparagraph (5)(a) of Rule 0400-18-01-.07; and/or

4. Some petroleum underground storage tanks regulated under T.C.A. §§ 68-215-101 et seq. were permanently closed, and in some cases removed from the ground, prior to the

promulgation of regulatory requirements to perform a site assessment at closure. Residual petroleum contamination may exist at such sites; and

(b) Some of these records include copies of deeds to real property, causing them to have permanent value.

(2) Fee payment records.

The ~~division~~ Division shall maintain fee payment information that has been provided to the ~~division~~ Division or otherwise obtained by the ~~division~~ Division. Records documenting the fee payment history associated with a petroleum site shall be maintained as permanent records by the Division ~~of Underground Storage Tanks~~ due to the following factors:

(a) Fee payment records must be available should petroleum contamination be discovered sometime in the future, requiring the ~~division~~ Division to make determinations concerning fund eligibility, because:

1. For releases which occurred prior to July 1, 2008, fee payment was required for establishment and maintenance of fund eligibility;

2. For releases which occurred prior to July 1, 2008, the determination of fund eligibility is based, in part, on fee payment records; and/or

3. There may be some residual petroleum contamination that is not discovered during the site assessment at closure required by subparagraph (5)(a) of Rule 0400-18-01-.07.

(3) Release response, remediation, and risk management records.

Records documenting the actions taken to assess, remediate and/or manage petroleum contamination at a petroleum site caused by a release from a UST system shall be maintained as permanent records by the Division ~~of Underground Storage Tanks~~ due to the following factors:

(a) These records pertain to real property, causing them to have permanent value.

1. These records may contain copies of Notices of Land Use Restrictions, which have been attached to the deed to real property, in accordance with subparagraph (8)(c) of Rule 0400-18-01-.06 and T.C.A. § 68-212-225.

2. Reserved.

(b) Risk based cleanup levels are required to be based on current and reasonably anticipated use of the property and location of receptors in accordance with part (5)(b)4 of Rule 0400-18-01-.06.

1. If a person is contemplating a future use that was not anticipated at the time the site assessment and remediation was done in accordance with Rule 0400-18-01-.06, new risk calculations may need to be made taking into consideration the historical documents; and

2. If a person is contemplating the future location of receptors that were not anticipated at the time the site assessment and remediation was done in accordance with Rule 0400-18-01-.06, new risk calculations, including the risk of human exposure to carcinogens, may need to be made taking into consideration the historical documents.

(4) Reimbursement records.

Records documenting fund eligibility determinations and/or fund reimbursement payment history associated with a petroleum site shall be maintained as permanent records by the Division ~~of Underground Storage Tanks~~ due to the following factors:

(a) These records have fiscal value, causing them to have permanent value.

(b) ~~For any fund eligible release there is a~~ The per site per occurrence maximum reimbursable amount ~~of one million dollars ($1,000,000) less the deductible for that release, as~~ is set forth in paragraph (6) of Rule 0400-18-01-.09, for taking corrective actions. Reimbursement records contain information concerning the portion of this reimbursement amount which has been expended and the balance, if any, available for future reimbursement for corrective actions which might need to be taken in the future for previously undetected contamination.

1. Post tank closure discovery of residual contamination.

(i) There may be some residual petroleum contamination that is not discovered during the site assessment at tank closure required by subparagraph (5)(a) of Rule 0400-18-01-.07.

(ii) Some petroleum underground storage tanks regulated under T.C.A. §§ 68-215-101 et seq. were permanently closed, and in some cases removed from the ground, prior to the promulgation of regulatory requirements to perform a site assessment at closure. Residual petroleum contamination may exist at such sites and may be discovered many years after the tanks were permanently closed.

2. Discovery of residual contamination post closure of a contamination case.

(i) Previously undetected residual petroleum contamination may be discovered years after assessment and remediation activities have been completed in accordance with Rule 0400-18-01-.06.

(ii) Additional remediation activities may be needed after assessment and remediation activities have been completed in accordance with Rule 0400-18-01-.06 if the risk at the site has changed, as described in subparagraph (3)(b) of this rule.

(5) Tank closure records.

The ~~division~~ Division shall maintain tank closure information that has been provided to the ~~division~~ Division or otherwise obtained by the ~~division~~ Division. Records documenting tank closure as well as the site assessment records associated with tank closure shall be maintained as permanent records by the Division ~~of Underground Storage Tanks~~ due to the following factors:

(a) These records pertain to real property, causing them to have permanent value; and

(b) In accordance with subparagraph (4)(b) of Rule 0400-18-01-.07 petroleum underground storage tanks may be closed in place if they are filled with an inert substance or removed from the ground. It is important, when future use of the petroleum site is being considered, to know which tank closure option was utilized.

(6) Orders for correction and/or assessment, and cost recovery actions.

Records documenting enforcement actions that result in the issuance of an administrative order, under the provisions of T.C.A. § 68-215-114, and/or the issuance of an administrative order for the assessment of civil penalties, under the provisions of T.C.A. § 68-215-121, and records relating to cost recovery actions, under the provisions of T.C.A. § 68-215-115, shall be maintained as permanent records by the Division ~~of Underground Storage Tanks~~ due to the following factors:

(a) These records have legal value; and

(b) These records have fiscal value. These records may contain information concerning uncollected debts owed to the State of Tennessee, for example, when a respondent moves after being served with an administrative order and leaves no forwarding address.

(7) Maintenance of records.

(a) All ~~division~~ Division records, including the permanent records specified in this rule, may be maintained as paper records, compact disks, microfilm records, electronic records, photographic records, and/or other forms that allow access for review and duplication.

(b) The form of the record at the time of submittal to the ~~division~~ Division shall not limit or otherwise prescribe the form in which that record may be permanently maintained.

(c) Nothing in this rule shall be construed to mean that the ~~division~~ Division is required to accept record submittals in any form other than that prescribed by the ~~division~~ Division.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.15 Petroleum Product Delivery.

(1) Delivery prohibition.

(a) It shall be unlawful for any person to place or cause to be placed, petroleum substances in a petroleum underground storage tank or to dispense petroleum from a tank, if the division has taken one or more of the following actions:

~~(a)~~1. A tag or notice has been affixed to the dispensers;

~~(b)~~2. A tag has been affixed to the fill ports; or

~~(c)~~3. Notice has been given on the Department's web site.

(b) It is unlawful for any person to place, or cause to be placed, petroleum substances in a petroleum underground storage tank or to dispense petroleum from a petroleum underground storage tank when the owner of the tank is required to notify the Commissioner under T.C.A. § 68-215-106(a) or (b) and the owner has not notified the Commissioner of the existence or ownership of the tank. This subparagraph applies even if no physical notice or tag is placed on the dispenser or fill port or no notice is placed on the department web site pursuant to T.C.A. § 68-215-106(c).

(2) Dispensing prohibition.

It shall be unlawful for any person to dispense petroleum from a petroleum underground storage tank if the ~~division~~ Division has taken one or more of the actions in subparagraphs (1)(a) ~~through (c)~~ or (b) of this rule.

(3) If the ~~division~~ Division has prohibited delivery and dispensing of petroleum products in accordance with paragraphs (1) and (2) of this rule, resumption of deliveries of petroleum and dispensing of petroleum shall not occur until:

(a) The ~~division~~ Division has notified the tank owner and/or operator that the tag may be removed; and

(b) The ~~division~~ Division has removed the facility from the delivery prohibition list on the ~~division~~ Division's section of the Department's website.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

0400-18-01-.16 Certified Operator Program.

(1) Operator Designation Requirements.

(a) Effective August 8, 2012, every facility having one or more petroleum UST systems subject to the requirements of Chapter 0400-18-01 must have one or more persons who have been designated by the tank owner as Class A, Class B, and Class C Operator(s).

(b) A Class A, Class B, or Class C Operator is not necessarily considered the same as "operator" defined in paragraph (4) of Rule 0400-18-01-.01, although the same individual may hold both positions.

(c) A Class A, Class B, or Class C Operator is not necessarily the same as "owner" as defined in paragraph (4) of Rule 0400-18-01-.01, unless such a person also owns these petroleum underground storage tanks.

(2) Operator Training Requirements

(a) Persons to be classified as Class A, Class B, or Class C Operators must log on to the ~~division~~ Division's ~~web-based~~ web-based training database and indicate how operator training requirements are met for each applicable classification by indicating successful completion of at least one of the following:

1. Applicable portions of the ~~division~~ Division's web-based operator training program designed to meet Class A, Class B, and/or Class C Operator training requirements, or

2. Obtaining a passing score on the applicable UST System Operator Examination administered by the International Code Council and submitting the records to the ~~division~~ Division every two years, or

3. Obtaining a passing score on a UST operator training program examination administered by the ~~division~~ Division.

(b) Class C Operator training may be provided by the tank owner, a trained Class A or Class B Operator in accordance with guidance published by the ~~division~~ Division, or by successful completion of Class C Operator training using the ~~division~~ Division's web-based operator training program.

(c) Class C Operators must be trained before assuming responsibility for responding to emergencies.

(3) Tank Owner Responsibilities.

(a) Tank owners must register a Class A, and Class B Operator(s) for each facility where petroleum UST systems are located using the ~~division~~ Division's web-based operator training database ~~on or before August 8, 2012~~ within 30 days of tank installation or a change in Class A or Class B operator.

(b) Tank owners must verify in the ~~division~~ Division's web-based operator training database that a trained individual meeting the requirements for a Class C Operator will be ~~on site~~ on-site whenever the facility is operating.

(c) If a UST facility has a person(s) on site, at least one person on site must be a Class C Operator whenever the facility is operating. ~~No later than August 8, 2012 a~~ A sign or instruction manual must be placed where the Class C operator would be expected to see it during the normal course of their work. At a minimum, it must include the following:

1. Employee's role in responding to spills and ~~overfills, and~~ overfills;

2. Procedures for handling warnings, alarms, and response from leak detection console (if ~~applicable), and~~ applicable);

3. Name and number of contact person for emergencies and monitoring equipment ~~alarms, and~~ alarms;

4. Local emergency ~~numbers,~~ numbers; and

5. An instruction to maintain a safe distance from any potential hazards.

(d) ~~Unmanned~~ Unattended facilities, as defined in paragraph (4) of Rule 0400-18-01-.01, must have a designated Class A and Class B Operator, but are not required to have designated operators on site. Class C Operator requirements for ~~unmanned~~ unattended facilities may be met by the designated Class B Operator who is also trained as the designated Class C Operator. The designated Class B/C Operator must respond to all emergencies and alarms caused by spills or releases from the underground storage tank facility.

(e) A facility that is ~~unmanned~~ unattended part of the time will be required to follow subparagraph (c) of this paragraph during the times the facility is ~~manned~~ attended and subparagraph (d) of this paragraph during the time the facility is ~~unmanned~~ unattended.

(f) Tank owners may elect to replace Class A or Class B Operators at any time by providing proper notice to the ~~division~~ Division in accordance with subparagraph (1)(h) of Rule 0400-18-01-.03. Notice to the ~~division~~ Division is not required when replacing a designated Class C Operator.

(g) It ~~will be~~ is unlawful to operate a petroleum UST facility without ~~a~~ Class A, Class B, and Class C Operator designations ~~after August 8, 2012~~.

(4) Retraining

If ~~a significant operational compliance violation is discovered~~ the division determines that the UST system is out of compliance at any time, then successful completion of operator retraining appropriate to the level of the operator Class must be completed within ~~a time frame determined by the division~~ 30 days from the date the division determines that the UST system is out of compliance.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

Chapter 0400-18-01
Underground Storage Tank Program

New Rule

A new rule is added to Chapter 0400-18-01 Underground Storage Tank Program to read as follows:

0400-18-01-.17 UST Systems with Field-Constructed Tanks and Airport Hydrant Systems.

(1) General requirements.

(a) Except as provided in paragraph (2) of this rule, owners and/or operators of UST systems with field-constructed tanks and airport hydrant systems installed on or before the effective date of this rule must comply with the requirements of:

1. Rules 0400-18-01-.02 through 0400-18-01-.04 and 0400-18-01-.06 and 0400-18-01-.08 and 0400-18-01-.16 and 0400-18-01-.17 no later than three years after the effective date of this rule except owners and/or operators may comply prior to such date; and

2. Rules 0400-18-01-.05 and 0400-18-01-.07 no later than the effective date of this rule.

(b) For owners and/or operators of UST systems with field-constructed tanks and airport hydrant systems installed after the effective date of this rule, the requirements of the rules listed in subparagraph (a) of this rule apply at installation.

(c) No later than three years after the effective date of this rule, all owners of UST systems with field-constructed tanks and airport hydrant systems in use as of the effective date of this rule must submit a one-time notice of tank system existence to the Division in accordance with subparagraphs (1)(b) and (c) of Rule 0400-18-01-.03 in a format established by the Division and in accordance with instructions provided by the Division. Owners and/or operators of UST systems in use as of the effective date of this rule must demonstrate financial responsibility at the time of submission of the notification form.

(d) Owners and/or operators of UST systems with field-constructed tanks and airport hydrant systems may use military construction criteria, such as Unified Facilities Criteria (UFC) 3–460–01, *Petroleum Fuel Facilities,* when designing, constructing, and installing airport hydrant systems and UST systems with field-constructed tanks.

(2) Additions, exceptions, and alternatives for UST systems with field-constructed tanks and airport hydrant systems.

(a) Exception to piping secondary containment requirements. Owners and/or operators may use single walled piping when installing or replacing piping associated with UST systems with field-constructed tanks greater than 50,000 gallons and piping associated with airport hydrant systems. Piping associated with UST systems with field-constructed tanks less than or equal to 50,000 gallons not part of an airport hydrant system must meet the secondary containment requirement when installed or replaced.

(b) Upgrade requirements. No later than three years after the effective date of this rule, airport hydrant systems and UST systems with field-constructed tanks where installation commenced on or before the effective date of this rule must be in compliance with the following requirements or be permanently closed in accordance with the closure procedures in Rule 0400-18-01-.07:

1. Corrosion protection. UST system components in contact with the ground that routinely contain petroleum substances must meet one of the following:

(i) Except as provided in subparagraph (a) of this paragraph, the new UST system performance standards for tanks in subparagraph (4)(a) of Rule 0400-18-01-.02 and for piping in subparagraph (4)(b) of Rule 0400-18-01-.02; or

(ii) Be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory and meets the following:

(I) Cathodic protection must meet the requirements of subparts (4)(a)2(ii), (iii) and (iv) of Rule 0400-18-01-.02 for tanks and subparts (4)(b)2(ii), (iii), and (iv) of Rule 0400-18-01-.02 for piping.

(II) Tanks greater than ten years old without cathodic protection must be assessed to ensure the tank is structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment must be by internal inspection or another method determined by the division to adequately assess the tank for structural soundness and corrosion holes.

2. Spill and overfill prevention equipment. To prevent spilling and overfilling associated with product transfer to the UST system, all UST systems with field-constructed tanks and airport hydrant systems must comply with new UST system spill and overfill prevention equipment requirements specified in paragraph (3) of Rule 0400-18-01-.02.

(c) Walkthrough inspections. In addition to the walkthrough inspection requirements in paragraph (8) of Rule 0400-18-01-.02, owners and/or operators must inspect the following additional areas for airport hydrant systems at least once every thirty (30) days if confined space entry according to the Occupational Safety and Health Administration (see 29 CFR part 1910) is not required or at least annually if confined space entry is required and keep documentation of the inspection according to paragraph (8) of Rule 0400-18-01-.02.

1. Hydrant pits – visually check for any damage; remove any liquid or debris; and check for any leaks, and

2. Hydrant piping vaults – check for any hydrant piping leaks.

(d) Release detection. On or before three years after the effective date of this rule, owners and/or operators of UST systems with field-constructed tanks and airport hydrant systems must begin meeting the release detection requirements described in this subparagraph.

1. Methods of release detection for field-constructed tanks. Owners and/or operators of field-constructed tanks with a capacity less than or equal to 50,000 gallons must meet the release detection requirements in Rule 0400-18-01-.04. Owners and/or operators of field-constructed tanks with a capacity greater than 50,000 gallons must meet either the requirements in Rule 0400-18-01-.04 or use one or a combination of the following alternative methods of release detection:

(i) Conduct an annual tank tightness test that can detect a 0.5 gallon per hour leak rate;

(ii) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to one gallon per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every three years;

(iii) Use an automatic tank gauging system to perform release detection at least every 30 days that can detect a leak rate less than or equal to two gallons per hour. This method must be combined with a tank tightness test that can detect a 0.2 gallon per hour leak rate performed at least every two years;

(iv) Another method approved by the Division if the owner and/or operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in part (d)1(i) through (iii) of this paragraph. In comparing methods, the Division shall consider the size of release that the method can detect and the frequency and reliability of detection.

2. Methods of release detection for piping. Owners and/or operators of underground piping associated with field-constructed tanks less than or equal to 50,000 gallons must meet the release detection requirements in Rule 0400-18-01-.04. Owners and/or operators of underground piping associated with airport hydrant systems and field-constructed tanks greater than 50,000 gallons must follow either the requirements in Rule 0400-18-01-.04 or use one or a combination of the following alternative methods of release detection:

(i) Perform a semiannual or annual line tightness test at or above the piping operating pressure in accordance with the table below:

MAXIMUM LEAK DETECTION RATE PER TEST SECTION VOLUME		
Test section volume (gallons)	Semiannual test – leak detection rate not to exceed (gallons per hour)	Annual test – leak detection rate not to exceed (gallons per hour)
< 50,000	1.0	0.5
≥50,000 to <75,000	1.5	0.75
≥75,000 to <100,000	2.0	1.0
≥100,000	3.0	1.5

(ii) Piping segment volumes ≥100,000 gallons not capable of meeting the maximum three gallon per hour leak rate for the semiannual test or maximum 1.5 gallon per hour leak rate for the annual test may be tested at a leak rate up to six gallons per hour according to the following schedule:

PHASE IN FOR PIPING SEGMENTS ≥100,000 GALLONS IN VOLUME	
First test	No later than three years after the effective date of this rule (may use up to 6.0 gph leak rate)
Second test	Between three years after the effective date of this rule and six years after the effective date of this rule (may use up to 6.0 gph leak rate)

Third test	Between six years after the effective date of this rule and seven years after the effective date of this rule (must use 3.0 gph for leak rate)
Subsequent tests	After seven years after the effective date of this rule, begin using semiannual or annual line testing according to the Maximum Leak Detection Rate Per Test Section Volume table in subpart (i) of this part.

(iii) Another method approved by the Division if the owner and/or operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in subparts (i) and (ii) of this part. In comparing methods, the Division shall consider the size of release that the method can detect and the frequency and reliability of detection.

3. Recordkeeping for release detection. Owners and/or operators must maintain release detection records according to the recordkeeping requirements in paragraph (5) of Rule 0400-18-01-.04.

(e) Applicability of closure requirements to previously closed UST systems. When directed by the division, the owner and/or operator of an UST system with field-constructed tanks or airport hydrant systems permanently closed before three years after the effective date of this rule must assess the excavation zone and close the UST system in accordance with the closure procedures in Rule 0400-18-01-.07 if releases from the UST may, in the judgment of the division, pose a current or potential threat to human health and the environment.

Authority: T.C.A. §§ 68-215-101 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)
Marty Calloway (Petroleum Business with at least 15 Underground Storage Tanks)	X				
Stacey Cothran (Solid/Hazardous Waste Management Industry)	X				
Kenneth L. Donaldson (Municipal Government)				X	
Dr. George Hyfantis, Jr. (Institution of Higher Learning)				X	
Richard "Ric" Morris (Single Facility with less than 5 Underground Storage Tanks)				X	
Alan M. Leiserson Environmental Interests	X				
Jared L. Lynn (Manufacturing experienced with Solid/Hazardous Waste)	X				
David Martin (Working in a field related to Agriculture)				X	
Beverly Philpot (Manufacturing experienced with Underground Storage Tanks/Hazardous Materials)				X	
DeAnne Redman (Petroleum Management Business)	X				
Mayor Howard Bradley (County Government)				X	
Mark Williams (Small Generator of Solid/Hazardous Materials representing Automotive Interests)	X				
Chuck Head Commissioner's Designee, Dept. of Environment and Conservation	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 Underground Storage Tanks and Solid Waste Disposal Control Board on 02/07/2018, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/13/17

Rulemaking Hearing(s) Conducted on: (add more dates). 12/14/17

CAROL L. GRICE
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY, TENN.

Date: February 7, 2018

Signature:

Name of Officer: Jared L. Lynn

Title of Officer: Chairman

Subscribed and sworn to before me on: February 7, 2018

Notary Public Signature: Carol L. Grice

My commission expires on: March 3, 2020

Agency/Board/Commission: Underground Storage Tanks and Solid Waste Disposal Control Board

Rule Chapter Number(s): 0400-18-01

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

7/2/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/3/18

Effective on: 10/13/18

Tre Hargett
Secretary of State

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PUBLIC ACTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Regulatory Boards; Tennessee Athletic Commission
SUBJECT:	Permits for Professional Contests and Responsibilities of Promoters
STATUTORY AUTHORITY:	The promulgation of this rule is not mandated by any federal or state law or regulation. However, under federal law, 15 U.S.C. § 6304(4), for boxing contests, medical coverage is required. This rule only reduces such coverage, and, therefore, the federal requirements do not apply. Though not mandating this rule, 2015 Public Chapter 351, § 13 amended the statutory requirement found in T.C.A. § 68-115-211, regarding medical insurance for contests, by amending the previous statutory requirement of a minimum of $25,000 of medical coverage to "in an amount to be set by rule, as promulgated by the Commission."
EFFECTIVE DATES:	October 9, 2018 through June 30, 2019
FISCAL IMPACT:	The Tennessee Athletic Commission cannot determine any probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule. It is expected that this rule will increase the number of contests conducted in Tennessee from national promoters; however, the amount of increase in revenue or expenditures to state and local government is unknown.
STAFF RULE ABSTRACT:	The rule being amended in 0145-01-.04 and -.05 sets out the responsibilities of promoters when conducting a contest. This rule mandates that as a prerequisite for a permit, proof must be shown of medical coverage for each combatant for injuries sustained in the contest. The rule as amended will reduce the amount of medical coverage from $50,000 to $20,000.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule;

All promoters applying for a permit for unarmed events or contests will be affected by this rule. Since January 1, 2017, the Commission issued 42 permits.

(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 amendments are not projected to change any recordkeeping costs. This amendment will still require medical insurance be obtained. This amendment is expected to decrease administrative overhead costs associated with medical insurance premiums paid due to the decrease of coverage from $50,000 to $20,000.

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

Small businesses will have a decrease in overhead costs associated with promoting fights in Tennessee. This may increase the number of events and contests held in Tennessee due to the reduction of costs in regulation. Consumers are not expected to be affected by these rule amendments.

(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;

These amendments decrease the current cost requirements for all promoters. Because this rule decreases a current regulation, it is not perceived as intrusive or require a less costly alternative method of achieving the purpose and objectives of the proposed rule. Further, this rule is for the protection of combatants and as such it would not be advisable to allow an exemption for small businesses.

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

There are no federal counterparts that require a specific amount of medical insurance. However, federal law under 15 USC § 6304(4) does require that health insurance be provided for each boxer for any injuries sustained in the match. This requirement relates to boxing only and does not apply to mixed martial arts or kickboxing.

Other surrounding states have similar regulations for such insurance ranging from $2,500 to $20,000, with Virginia being an outlier at $50,000.

(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

This amendment decreases a regulatory requirement and, as such, small businesses would not benefit from this amendment if they were exempted from this change.

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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

These amendments are not projected to have impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The rule being amended in 0145-01-.04 and -.05 sets out the responsibilities of promoters when conducting a contest. This rule mandates that as a prerequisite for a permit, proof must be shown of medical coverage for each combatant for injuries sustained in the contest. The rule as amended will reduce the amount of medical coverage from $50,000 to $20,000.

(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;

There is no federal law or regulation or state law or regulation mandating promulgation of such rule or establishing guidelines. However, under Federal Law, 15 USC § 6304(4), for boxing contests, medical coverage is required. This rule only reduces such coverage, and, therefore, the federal requirements do not apply. Though not mandating this rule, 2015 Public Chapter 351, § 13 amended the statutory requirement found in T.C.A. § 68-115-211, regarding medical insurance for contests, by amending the previous statutory requirement of a minimum of $25,000 of medical coverage to "in an amount to be set by rule, as promulgated by the Commission."

(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 rule will most directly affect any promoter who intends to promote a contest in Tennessee or any promoter who intends to promote a contest in a state in which the medical insurance coverage is below $50,000. This rule will also affect every contestant who engages in unarmed combat in Tennessee. This rule directly affects the Tennessee Athletic Commission, which is statutorily required to partake in management of contests and to provide permits for such.

At the Tennessee Athletic Commission's December 5, 2017, meeting, Tim Loy of Valor Fights, a promoter, voiced his approval of a lowered medical coverage for contests in Tennessee from the current $50,000. Mr. Loy spoke about his past experience regarding medical coverage and has not had a claim above $20,000. Several Commission members noted in agreement that they have not experienced a medical claim above $20,000 for events they have been involved with. It is unknown whether any individual combatant urges adoption or rejection of this rule. The Tennessee Athletic Commission 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 or the necessity to promulgate the rule;

There is no known opinion of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate 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;

The Tennessee Athletic Commission cannot determine any probable increase or decrease in state and local government revenues and expenditures resulting from the promulgation of this rule. It is expected that this rule will increase the number of contests conducted in Tennessee from national promoters; however, the amount of increase in revenue or expenditures to state and local government is unknown.

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

Elizabeth Goldstein – Assistant General Counsel TN Dept. of Commerce and Insurance Anthony Glandorf – Chief Counsel TN Dept. 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;

Elizabeth Goldstein – Assistant General Counsel TN Dept. of Commerce and Insurance Anthony Glandorf – Chief Counsel TN Dept. of Commerce and Insurance

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Elizabeth Goldstein – Assistant General Counsel 500 James Robertson Parkway Nashville, TN 37243 615-770-0089 Elizabeth.goldstein@tn.gov Anthony Glandorf – Chief Counsel 500 James Robertson Parkway Nashville, TN 37243 615-770-0089 Anthony.glandorf@tn.gov

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

None.

Department of State
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For Department of State Use Only

Sequence Number: 07-10-18
Rule ID(s): 7206
File Date: 7/11/18
Effective Date: 10/9/18

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-207, and 4-5-229 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within ninety (90) days of the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by ten (10) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of ten (10) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

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

Agency/Board/Commission: Tennessee Athletic Commission
Division: Regulatory Boards Division
Contact Person: Elizabeth Goldstein
Address: 500 James Robertson Parkway
Zip: 37243
Phone: 615-741-3072
Email: Elizabeth.goldstein@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**
0145-01	General Provisions
Rule Number	**Rule Title**
0145-01-.04	Permits for Professional Contests
0145-01-.05	Responsibilities of Promoters

0145-01 General Provisions
Amendments

Rule 0145-01-.04(2) Permits for Professional Contests is amended by substituting the monetary amount within subsection (e) with the following language:

(1) A promoter of a contest of unarmed combat shall obtain a permit from the Commission not less than thirty (30) days prior to the date of the contest.

(2) Applications for permits shall be submitted on forms prescribed by the Commission. The applicant shall completely and truthfully respond to all questions or requests for information propounded on, or in connection with, the application. Applications for permits shall include, without limitation:

(a) the address where the contest is to be held;

(b) a list of the individual contests to be held, if more than one contest, including the names, addresses, phone numbers and contracted weights of all prospective contestants (i. e. the "contest sheet");

(c) if the program will be broadcasted, each date and network on which the program will be televised;

(d) a list of ring officials from which the Commission or the Commission's administrator may assign to the event. The Commission or the Commission's administrator may assign ring officials not contained in the list. The promoter will be responsible for payment for the ring officials' services; and

(e) proof of medical insurance covering the combatant for any injuries sustained in any contest to be held under the permit in an amount of not less than ~~fifty~~ twenty thousand dollars ~~($50,000.00)~~($20,000.00).

Provided that the promoter has completed the application completely and provided all requested information, an application for permit will be processed within five (5) business days from the date of receipt.

(3) The promoter shall immediately notify the Commission's administrator of any change in the information submitted pursuant to paragraph (2) above. The contest sheet shall be deemed final seven (7) business days prior to the contest.

(4) If the Commission's administrator determines (on the basis of available information) that a proposed contest would not be reasonably and fairly competitive, the administrator shall so advise the promoter within five (5) business days after receipt of the application submitted in accordance with this rule. Unless the administrator is offered evidence or argument which causes him or her to reverse that determination, such contest shall not be held in this state and any permit issued for a program of multiple unarmed combat contests shall not include the same. The applicant may appeal the administrator's decision to the Commission.

(5) If the Commission's administrator determines that a proposed venue would not be appropriate, the administrator shall so advise the promoter within five (5) business days after receipt of the application submitted in accordance with this rule. Unless the administrator is offered evidence or argument which causes him or her to reverse that determination, such venue shall not be utilized. The applicant may appeal the administrator's decision to the Commission.

(6) The fee for the permit shall be three hundred dollars ($300.00).

Authority: Chapter 1149 of the Public Acts of 2008, § 2 and T.C.A. §§68-115-201 and 68-115-205 [effective July 1, 2008].

Rule 0145-01-.05(7) Responsibilities of Promoters is amended by substituting the monetary amount with the following language:

(1) It shall be the responsibility of the promoter of an unarmed combat contest to inform all prospective participants that it will be necessary for them to be duly licensed in accordance with Rule 0145-01-.03 Licensing.

(2) No promoter shall knowingly permit any person to act as a boxer, mixed martial artist, kickboxer, manager or second in any contest if such person is (or would be) prohibited from acting in such capacity by any provision of the Tennessee Athletic Commission Act of 2008 or any rules or regulations of the Tennessee Athletic Commission.

(3) The promoter shall assure that the ringside physician is seated so as to have immediate access to the ring.

(4) The promoter shall provide surgical gloves to all persons working in the ring. No promoter shall knowingly permit any person to act as a second (including a manager acting as a second) or referee in any contest unless such person is supplied with, and uses, such surgical gloves. The promoter is responsible for ensuring that acceptable sanitary standards are met with respect to dressing rooms, water bottles, towels or other equipment. Physicians and commission representatives shall specifically check at every contest or event for violations of these rules. The ring shall be swept, dry-mopped, or otherwise adequately cleaned before the event and prior to each fight.

(5) Prior to the initiation of any contest or event, a commission representative shall inspect the bout area for safety and the promoter of the contest or event shall be required to make whatever changes to such area as are necessary in the judgment of the commission representative.

(6) The promoter shall ensure that the emergency equipment and procedures required by T.C.A. §68-115-404 are provided for at each unarmed combat contest.

(7) No person may arrange, promote, organize, or produce a professional unarmed combat contest without providing health insurance for each combatant to provide medical coverage for any injuries sustained in the contest in an amount not less than ~~fifty~~ twenty-thousand dollars ~~($50,000.00)~~($20,000.00). The promoter shall provide proof of such coverage at the time the promoter applies for a permit for a professional contest.

(8) The promoter shall ensure the venue provides a sufficient ringside area for commission officials and ring officials to carry out their official duties.

(9) The Promoter shall be responsible for the cost of any tests or examinations ordered by the Commission's administrator, or his designee, pursuant to Rule 0145-01-.08.

(10) The promoter shall file with the Commission's administrator a copy of any and all contracts entered into for the sale, lease, or other exploitation of broadcasting, television or motion picture rights for any professional contest.

Authority: Chapter 1149 of the Public Acts of 2008, § 2 and T.C.A. §§68-115-201, 68-115-204, 68-115-211, 68-115-213 and 68-115-214 [effective July 1, 2008].

* 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)
Chad Chilcutt	x				
Donald Mill				x	
Steve Hannah	x				
Tracey Mill Davis				x	
Joe Smith	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commission on December 5, 2017 , 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: May 16, 2018

Signature:

Name of Officer: Elizabeth Goldstein

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: May 16, 2018

Notary Public Signature: Carol McGlynn

My commission expires on: Nov. 5, 2019

CAROL L. McGLYNN
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY
My Commission Expires NOV. 5, 2019

Agency/Board/Commission: Tennessee Athletic Commission

Rule Chapter Number(s): 0145-01

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

Herbert H. Slatery III
Attorney General and Reporter

7/2/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/11/18

Effective on: 10/9/18

Tre Hargett
Secretary of State

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SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Commerce and Insurance
DIVISION:	Tennessee Commission on Fire Fighting Personnel Standards and Education
SUBJECT:	Classifications for Full-Time and Volunteer Fire Fighters / Certification / Educational Incentive Pay
STATUTORY AUTHORITY:	These rules are promulgated pursuant to Tennessee Code Annotated, §§ 4-24-101 et seq. and 4-24-201 et seq.
EFFECTIVE DATES:	October 25, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	This rulemaking hearing rule involves numerous amendments to the Commission rules which may be considered as housekeeping in nature. Amendments to Chapter 0360-01-01 include allowing documents to be submitted to the Commission electronically, allowing the Commission to set meetings in advance of the current meeting, and adoption of the application of the Uniform Administrative Procedures Act ("UAPA"). The amendments will add new certifications in Chapter 0360-03-01 for Fire Inspector II, Fire Inspector III, Plans Reviewer I, Plans Reviewer II, Fire Marshal and Aircraft Recue Firefighting (ARFF) Driver/Operator. These certifications will appear in the most recently adopted editions of the standards and have not been previously issued by the Commission. Another change includes changing Technical Rescuer to Rope Rescuer I, so as to meet the certification of the applicable NFPA standard. Amendments to Chapter 0360-03-01 also include adding the provision for certain certifications that the applicant must also successfully complete a Commission-approved

training program as part of the prerequisites to obtain such certification.

Amendments to Chapter 0360-04-01 include clarifying the existing requirement that an applicant has one (1) year in which to pass both the practical and written examinations for a certification level successfully before having to retake both examinations.

Another amendment to Chapter 0360-04-01 includes adding the requirement that applicants have up to six (6) months from the adoption of a new standard to complete both the practical and written examinations for a certification under the old standard before they will be required to retake both practical and written examinations, which comply with the most recently adopted new standard. Numerous amendments to the rules may be considered as housekeeping in nature and changed for the purposes of uniformity. Such amendments include changing the use of the term "must" to "shall", "test" to "examination" and deleting any references to "hands-on" or "performance examinations", which are uniformly referred to hereafter as "practical examinations" or "practicals".

Amendments to Chapter 0360-05-01 include adding the provision that the Commission may revoke, modify, suspend or condition its certification of an individual, a training course, or a training program if any involvement of a certified individual who engages in fraud, collusion, or conspiracy to subvert the certification qualification process or procure a certification for another person. This chapter is also amended to adopt the UAPA specifically for formal hearings regarding revocation of certifications.

Amendments for Chapter 0360-06-01 include updating the edition of some of the currently adopted certification standards. Some of the performance standards for firefighters currently adopted are out of date since the publication of newer editions. The updated editions to be adopted have been verified with the National Fire Protection Association ("NFPA") and the Commission. The updated standards will ensure that persons participating in approved courses of study and those attending the Tennessee Fire and Codes Academy ("TFACA") are better trained to fight fires and protect the public, and themselves, while fighting fires.

Also, amendments specifically to rule 0360-06-01-.04 Progression will establish a thirty (30) day waiting period for an applicant to challenge a certification level which requires a prerequisite level of certification to be obtained

first. This requirement was adopted by policy and enforced by the Commission for many years. This rule shall only apply to those certifications which a lower level of certification is required before obtaining the next level of certification (e.g. Fire Fighter I and II). The thirty (30) day period allows Commission personnel a minimum amount of time in which to review and grade an applicant's written examination.

Minor amendments to rule 0360-06-01-.05 Reciprocity will clarify the Commission's requirements for granting reciprocity of certifications to out-of-state applicants.

Amendments to Chapter 0360-07-01 include housekeeping and uniformity changes such as utilizing the same term throughout the rule like 'Training Coordinator" instead of "Training Officer".

Amendments to rule 0360-07-01-.05 include revising the number of hours required on specific topics of minimum training courses in order to qualify for the educational incentive pay. Firefighter health and safety has been modified to be included as an acceptable course of training for the incentive pay.

Rule 0360-07-01-.08 Audit is to be amended to require that all new departments entering the incentive pay program will be audited in their first year in the program, and that no department can be audited three (3) years in a row if the previous two (2) consecutive audits were determined to have been in compliance with Commission requirements.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

The Tennessee Fire Fighting Personnel Standards and Education Commission received no written comments and only two (2) public comments which were asked during the rulemaking hearing.

Michael Miranda staff member with the Tennessee Fire Fighting Personnel Standards and Education Commission asked for clarification on the changes to rule 0360-04-01-.01(7) regarding the revised requirement that an applicant must challenge both the practical and written examinations for a certification level within one (1) year of initiating the process and at what point does the clock start on the deadline.

Director Fox, Commissioner Windrow, Commissioner Sorge and Legal Counsel Underwood responded to Mr. Miranda's inquiry on behalf of the Commission. The representatives of the Commission clarified that whichever part is challenged first (the practical or written examination), upon successful completion of that part, the clock will start for the applicant to complete the other examination whichever it may be (the practical or written) unless otherwise provided in the rules. Director Fox explained that the clock for one (1) year only starts once an applicant successfully passes the first examination whichever it may be (the practical or written). Director Fox also pointed out that the time in which an applicant has to complete both the practical and written examinations for a certification level may be reduced to six (6) months after adoption of a new technical standard. This six (6) month deadline is only applicable for those certifications for which the Commission has determined that the new standard is significantly different than the previously adopted standard.

Terri Roshell with TN Fire Training Online also had a question about when the clock started for the one (1) year deadline in which to complete both the practical and written examinations for a certification level. Director Fox clarified that the intent of the rule change is for the clock to begin once an applicant successfully passes either examination (the practical or the written).

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.

Regulatory Flexibility Analysis:

1. The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

It is anticipated that the rules will not overlap, duplicate or conflict with other federal, state or local governmental rules

2. Clarity, conciseness, and lack of ambiguity in the rule.

The rules have been drafted to be clear, concise and unambiguous.

3. The establishment of flexible compliance and reporting requirements for small businesses.

The rules are not anticipated to alter the standard practices of reporting and recordkeeping currently utilized by small business.

4. The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses.

The rules are not anticipated to establish unfriendly schedules or unreasonable deadlines for compliance and reporting requirements for small businesses.

5. The consolidation or simplification of compliance or reporting requirements for small businesses.

The rules are not anticipated to alter the standard practices of reporting and recordkeeping currently utilized by small business.

6. The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

The rules do not establish any performance or operational standards for small businesses.

7. The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

These rules are not anticipated to create any unnecessary entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Economic Impact Statement:

1. Types and estimated number of small businesses directly affected:

It is anticipated that no small businesses will be affected by the promulgation of these rules.

2. Projected reporting, recordkeeping, and other administrative costs:

There is no foreseeable alteration in the existing reporting or recordkeeping utilized by small businesses that will result from the promulgation of these rules.

3. Probable effect on small businesses:

It is anticipated that no small businesses will be affected by the promulgation of these rules.

4. Less burdensome, intrusive, or costly alternative methods:

Since the rules will not impact small businesses, a less burdensome, intrusive or costly alternative method has not been identified or recommended for use.

5. Comparison with federal and state counterparts:

There are no federal counterparts to these rules.

6. Effect of possible exemption of small businesses:

There are no exemptions for small businesses to the requirements contained in the rules because the rules are not anticipated to impact 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The rules will 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;

There are numerous amendments to the Commission rules which may be considered as housekeeping in nature. Amendments to Chapter 0360-01-01 include allowing documents to be submitted to the Commission electronically, allowing the Commission to set meetings in advance of the current meeting, and adoption of the application of the Uniform Administrative Procedures Act ("UAPA"). The amendments will add new certifications in Chapter 0360-03-01 for Fire Inspector II, Fire Inspector III, Plans Reviewer I, Plans Reviewer II, Fire Marshal and Aircraft Recue Firefighting (ARFF) Driver/Operator. These certifications will appear in the most recently adopted editions of the standards and have not been previously issued by the Commission. Another change includes changing Technical Rescuer to Rope Rescuer I, so as to meet the certification of the applicable NFPA standard. Amendments to Chapter 0360-03-01 also include adding the provision for certain certifications that the applicant must also successfully complete a Commission-approved training program as part of the prerequisites to obtain such certification. Amendments to Chapter 0360-04-01 include clarifying the existing requirement that an applicant has one (1) year in which to pass both the practical and written examinations for a certification level successfully before having to retake both examinations. Another amendment to Chapter 0360-04-01 includes adding the requirement that applicants have up to six (6) months from the adoption of a new standard to complete both the practical and written examinations for a certification under the old standard before they will be required to retake both practical and written examinations, which comply with the most recently adopted new standard. Numerous amendments to the rules may be considered as housekeeping in nature and changed for the purposes of uniformity. Such amendments include changing the use of the term "must" to "shall", "test" to "examination" and deleting any references to "hands-on" or "performance examinations", which are uniformly referred to hereafter as "practical examinations" or "practicals". Amendments to Chapter 0360-05-01 include adding the provision that the Commission may revoke, modify, suspend or condition its certification of an individual, a training course, or a training program if any involvement of a certified individual who engages in fraud, collusion, or conspiracy to subvert the certification qualification process or procure a certification for another person. This chapter is also amended to adopt the UAPA specifically for formal hearings regarding revocation of certifications. Amendments for Chapter 0360-06-01 include updating the edition of some of the currently adopted certification standards. Some of the performance standards for firefighters currently adopted are out of date since the publication of newer editions. The updated editions to be adopted have been verified with the National Fire Protection Association ("NFPA") and the Commission. The updated standards will ensure that persons participating in approved courses of study and those attending the Tennessee Fire and Codes Academy ("TFACA") are better trained to fight fires and protect the public, and themselves, while fighting fires. Also, amendments specifically to rule 0360-06-01-.04 Progression will establish a thirty (30) day waiting period for an applicant to challenge a certification level which requires a prerequisite level of certification to be obtained first. This requirement was adopted by policy and enforced by the Commission for many years. This rule shall only apply to those certifications which a lower level of certification is required before obtaining the next level of certification (e.g. Fire Fighter I and II). The thirty (30) day period allows Commission personnel a minimum amount of time in which to review and grade an applicant's written examination. Minor amendments to rule 0360-06-01-.05 Reciprocity will clarify the Commission's requirements for granting reciprocity of certifications to out-of-state applicants. Amendments to Chapter 0360-07-01 include housekeeping and uniformity changes such as utilizing the same term throughout the rule like "Training Coordinator" instead of "Training Officer". Amendments to rule 0360-07-01-.05 include revising the number of hours required on specific topics of minimum training courses in order to qualify for the educational incentive pay. Firefighter health and safety has been modified to be included as an acceptable course of training for the incentive pay. Rule 0360-07-01-.08 Audit is to be amended to require that all new departments entering the incentive pay program will be audited in their first year in the program, and that no department can be audited three (3) years in a row if the previous two (2) consecutive audits were determined to have been in compliance with Commission requirements.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are promulgated pursuant to T.C.A. §§ 4-24-101 et seq. and 4-24-201 et seq.

(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 likely impact those fire departments and the members of those fire departments which participate in the state's educational incentive pay program for fire fighters, and the paid and volunteer fire departments that participate in the commission's certification program.

(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. The department is unaware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to these rules.

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

It is anticipated that these rules will have no impact on state and local government revenues or expenditures.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, and Randy Fox, Executive Director of the Tennessee Firefighting Personnel Standards and Education Commission.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, and Randy Fox, Executive Director of the Tennessee Firefighting Personnel Standards and Education Commission.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Joseph Underwood (joseph.underwood@tn.gov), Chief Counsel for Fire Prevention and Law Enforcement, 500 James Robertson Parkway, Nashville, TN 37243, 615-741-3899; Randy Fox (randy.fox@tn.gov), Executive Director of the Tennessee Firefighting Personnel Standards and Education Commission, 2161 Unionville/Deason Road, Bell Buckle, TN 37020, 931-294-4140.

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

All relevant and requested information has been included in this filing.

Department of State
Division of Publications
312 Rosa L. Parks Ave., 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: 07-17-18
Rule ID(s): 7209-7214
File Date: 7/27/18
Effective Date: 10/25/18

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 Commission on Fire Fighting Personnel Standards and Education
Division:	Department of Commerce and Insurance
Contact Person:	Joseph Underwood
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	(615) 741-3899
Email:	Joseph.Underwood@tn.gov

Revision Type (check all that apply):
X Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0360-01-01	General
Rule Number	**Rule Title**
0360-01-01-.01	Address
0360-01-01-.02	Meetings
0360-01-01-.04	Appeals Process

Chapter Number	**Chapter Title**
0360-03-01	Classifications for Full-Time and Volunteer Fire Fighters
Rule Number	**Rule Title**
0360-03-01-.02	Fire Fighter I
0360-03-01-.03	Fire Fighter II
0360-03-01-.04	Fire Fighter I/II Combined
0360-03-01-.05	Fire Department Instructor I
0360-03-01-.06	Fire Department Instructor II
0360-03-01-.07	Fire Department Instructor I/II Combined
0360-03-01-.08	Fire Department Instructor III
0360-03-01-.09	Fire Officer I
0360-03-01-.10	Fire Officer II

0360-03-01-.11	Fire Officer I/II Combined
0360-03-01-.12	Fire Officer III
0360-03-01-.13	Fire Officer IV
0360-03-01-.14	Hazardous Materials Awareness Certification
0360-03-01-.15	Hazardous Materials Operations Certification
0360-03-01-.16	Airport Firefighter
0360-03-01-.17	Wildland Firefighter I
0360-03-01-.18	Wildland Firefighter II
0360-03-01-.19	Fire and Life Safety Educator I
0360-03-01-.20	Fire and Life Safety Educator II
0360-03-01-.21	Fire Safety Compliance Officer I
0360-03-01-.22	Fire Safety Compliance Officer II
0360-03-01-.23	Fire Apparatus Operator I
0360-03-01-.24	Pumper Driver/Operator II
0360-03-01-.25	Aerial Apparatus Driver/Operator
0360-03-01-.27	Incident Safety Officer I
0360-03-01-.28	Health and Safety Officer I
0360-03-01-.30	Rope Rescuer I
0360-03-01-.31	Rope Rescuer II
0360-03-01-.32	Confined Space Rescuer
0360-03-01-.33	Trench Rescuer
0360-03-01-.34	Structural Collapse Rescuer
0360-03-01-.35	Vehicle Rescuer
0360-03-01-.36	Surface Water Rescuer
0360-03-01-.37	Swiftwater Rescuer I
0360-03-01-.38	Swiftwater Rescuer II
0360-03-01-.39	Dive Rescuer
0360-03-01-.40	Ice Rescuer
0360-03-01-.41	Surf Rescuer
0360-03-01-.42	Wilderness Rescuer
0360-03-01-.43	Mine and Tunnel Rescuer
0360-03-01-.44	Cave Rescuer
0360-03-01-.45	Machinery Rescuer
0360-03-01-.46	Exterior Industrial Fire Brigade Member
0360-03-01-.47	Interior Structural Fire Brigade Member
0360-03-01-.48	Fire Inspector I
0360-03-01-.49	Fire Inspector II
0360-03-01-.50	Fire Inspector III
0360-03-01-.51	Fire Investigator I
0360-03-01-.52	Hazardous Materials Technician
0360-03-01-.53	Hazardous Materials Incident Commander
0360-03-01-.54	Plans Reviewer I
0360-03-01-.55	Plans Reviewer II
0360-03-01-.56	Fire Marshal
0360-03-01-.57	Aircraft Rescue Firefighting (ARFF) Driver/Operator

Chapter Number	**Chapter Title**
0360-04-01	Examinations
Rule Number	**Rule Title**
0360-04-01-.01	General
0360-04-01-.02	Applications
0360-04-01-.03	Character of Examinations
0360-04-01-.04	Grading
0360-04-01-.05	Retesting
0360-04-01-.06	Examination Form
0360-04-01-.08	Written Examinations
0360-04-01-.09	Practical Examinations

Chapter Number	Chapter Title
0360-05-01	Revocation of Certification
Rule Number	**Rule Title**
0360-05-01-.01	Failure to Meet Certain Conditions
0360-05-01-.02	Separation from Active Fire Service
0360-05-01-.03	Applicability of the Uniform Administrative Procedures Act

Chapter Number	Chapter Title
0360-06-01	Miscellaneous Certification Standards
Rule Number	**Rule Title**
0360-06-01-.01	Adoption by Reference
0360-06-01-.03	Domestic Violence Training
0360-06-01-.04	Progression
0360-06-01-.05	Reciprocity

Chapter Number	Chapter Title
0360-07-01	Educational Incentive Pay
Rule Number	**Rule Title**
0360-07-01-.01	Minimum Employment Standards- Definitions
0360-07-01-.02	Fire Fighter Definition
0360-07-01-.04	Entry-Level Personnel
0360-07-01-.05	Requirements for In-Service Training Programs
0360-07-01-.06	Payment Procedures
0360-07-01-.07	Waiver
0360-07-01-.08	Audit

RULES
OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING
PERSONNEL STANDARDS AND EDUCATION

CHAPTER 0360-01-01
GENERAL

TABLE OF CONTENTS

0360-01-01-.01	Address	0360-01-01-.03	Mission Statement
0360-01-01-.02	Meetings	0360-01-01-.04	Appeals Process

0360-01-01-.01 ADDRESS.
Whenever some document is required to be submitted to or filed with the Commission, mailing by first class mail or via electronic mail to the Commission office shall suffice.

***Authority**: T.C.A. § 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-01-01-.02 MEETINGS.

(1) The Commission ~~will~~shall hold at least one (1) regularly scheduled meeting during each calendar quarter. Each grand division of the state shall host at least one (1) of the regularly scheduled meetings annually.

(2) ~~At each meeting, t~~The Commission shall establish the date, time and location for ~~the next~~each meeting.

(3) The meetings ~~will~~shall be conducted in accordance with *Roberts Rules of Order*, as adopted by the Commission, and upon a written agenda.

(4) Minutes ~~will~~shall be made of each meeting and approved at the next meeting unless otherwise authorized.

***Authority**: T.C.A. § 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990.*

0360-01-01-.03 MISSION STATEMENT.

The Commission will endeavor to raise the standards of firefighting personnel who participate in its certification and training programs by enabling Tennessee firefighters to be better prepared through training courses facilitating the skills and knowledge necessary to save lives and property, and by vigorously promoting firefighting safety, efficiency, decorum and ethical considerations throughout the certification process.

***Authority:** T.C.A. § 4-24-107. **Administrative History:** Original rule filed April 25, 2005; effective July 9, 2005.*

0360-01-01-.04 APPEALS PROCESS.

All decisions by the Director and the Commission shall be made in accordance with the Commission's rules and policies. All appeals and contested cases shall be governed by the relevant provisions of the Uniform Administrative Procedures Act, T.C.A. Title 4, Chapter 5.

***Authority:** T.C.A. §§ 4-24-101 and 4-24-107(3). **Administrative History:** Original rule filed December 14, 2009; effective March 14, 2010.*

RULES OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING PERSONNEL STANDARDS AND EDUCATION

CHAPTER 0360-04-01
EXAMINATIONS

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0360-04-01-.03	Character of Examinations	0360-04-01-.08	Written Examinations
0360-04-01-.04	Grading	0360-04-01-.09	Practical Examinations
0360-04-01-.05	Retesting		

0360-04-01-.01 GENERAL.

(1) All training, practicals and examinations ~~will~~shall be based on the performance standards for the appropriate progression level as set forth in these rules and regulations and meet or exceed all applicable NFPA standards, including NFPA 1500. All ~~tests~~practicals and written examinations will be given at a location reasonably proximate to local departments in an effort to make it as convenient as possible for applicants.

(2) Generally, Commission representatives are prohibited from testing personnel from their affiliated department. However, Commission representatives may test personnel from their affiliated department only in a regional test setting and if a majority of the applicants come from other departments.

(3) An applicant ~~must~~shall be at least eighteen (18) years of age in order to take a certification examination.

(4) Applicants ~~must~~shall present a valid government-issued photo identification card prior to being admitted to any examination.

(5) Commission members and Commission Representatives who wish to challenge a Commission-administered practical or written examination shall do so only under the proctoring of a Commission-approved person who shall create an examination that is used only once.

(6) Any individual found cheating on a Commission examination ~~will~~shall be prohibited from participating in the Certification program for a period of two (2) years and ~~will~~shall be required to restart the certification level upon the expiration of the two (2) years. An individual found cheating a second time ~~will~~shall be barred from participating in the Certification program.

(7) Applicants who do not successfully complete ~~all examinations~~both practical and written requirements for a level of certification within one (1) year of the date ~~they~~the applicants first ~~challenge~~successfully passed the practical or written examination for that level of certification~~'s~~ ~~written examination will~~ shall be required to ~~successfully complete another practical/performance examination for that level of certification prior to retaking the written examination~~ start the certification process over and complete both practical and written examinations unless otherwise stipulated in these rules. Individuals called to active military duty shall have the time for which their practical examinations are valid towards a written examination to be extended for the amount of time the applicant was on active military duty. Furthermore, if the applicant is on active military duty for a period greater than six (6) months, the clock will restart on the time allowed for the practical examinations to be valid; the applicant will have one (1) year to complete that level of certification. A letter from the Fire Chief or Training Officer certifying this leave ~~must~~shall accompany the application for

written examination. If an applicant has not completed the practical and written examinations for a level of certification no later than (6) six months after the date the Commission ~~has~~ adopt~~ed~~s a new standard, the applicant ~~will~~shall be required to complete successfully ~~a~~ new practical~~/performance~~ and written examinations which compl~~ies~~y with the latest standard adopted by the Commission unless the newly adopted standard is not significantly different as determined by the Commission from the previously adopted standard.

(8) An applicant may request accommodation for a disability in taking a written examination offered by the Commission. The request for accommodation ~~must~~shall be made on the form provided by the Commission and submitted to the Director along with the ~~test~~ application. Any documentation regarding an applicant's disability and his/her need for accommodation in testing ~~will~~shall be considered ~~strictly~~ confidential.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-04-01-.02 APPLICATIONS.

(1) Any department electing to host an examination shall contact the Commission office or its representative to schedule an examination date. At the time of the examination, each individual applicant ~~must~~shall have a completed application submitted with appropriate documentation of necessary prerequisites.

(a) Except for examinations administered at TFACA at the conclusion of a Commission-approved training course, ~~A~~applications ~~must~~shall be received by the Commission a minimum of two (2) weeks before any anticipated examination date. The "Application for Examination" form ~~must~~shall be completed in its entirety with original signatures.

(b) The Commission office ~~will~~shall schedule the examination date based upon requested examinations.

(c) This ~~test~~examination date shall be open to other applicants unless a specific reason exists to have a closed examination. Approval of the Director ~~must~~shall be obtained in order to have a closed examination.

(d) The Commission Representative ~~will~~shall administer the examination on the examination date. At the end of the examination, the Commission Representative ~~will~~shall collect all ~~testing~~examination materials and answer sheets and send them to the Commission for grading.

***Authority**: T.C.A. §§ §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-04-01-.03 CHARACTER OF EXAMINATIONS.

(1) Written - shall include a written demonstration of each applicant's knowledge and skill in the progression level tested.

(a) The Commission shall validate written examination test banks in the following manner:

1. A Commission representative or designee shall chair a committee of fire service personnel certified at or above the level of certification being validated;

2. The committee ~~will~~shall ensure that:

(i) each ~~test~~examination question is appropriately referenced to the NFPA

(ii) each ~~test~~examination question is properly referenced to the reference manual(s) cited by the Commission;

(iii) terminology used in the question is appropriate for all manuals cited;

(iv) the answer indicated is correct for all manuals cited;

(v) the question is job relevant to Tennessee; and

(vi) there is only one correct answer.

3. The Commission shall review and approve the work of the committee.

(2) Oral - may be used to supplement the written examination to obtain information regarding the abilities of the applicant that are not readily determined in a written examination at a particular progression level.

(3) ~~Performance~~Practical - ~~shall include such tests of performance as shall~~may be used to supplement the written examination to determine the ability, manual skills, and leadership of ~~each~~the applicant to perform the work at ~~the appropriate~~a particular progression level.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107.* ***Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-04-01-.04 GRADING.

(1) Written - The Commission will prepare a list with the correct answer to each question. Commission office personnel will be responsible for the actual grading of each examination. The passing grade shall be seventy percent (70%) ~~of the total point value~~on each section of the examination. Any questions concerning the examination or grading thereof ~~must~~shall be resolved by the Commission.

(a) Disputes over the validity of any ~~test~~ question(s) on the Commission's written examinations ~~must~~shall be submitted to the Commission, in writing, with the proper referencing materials supporting the dispute within thirty (30) calendar days of receipt of the results of the examination. The Commission shall review the dispute and render a decision on the dispute. The decision of the Commission shall be forwarded to the individual.

(b) Individuals wanting to review their ~~tests~~examinations:

1. ~~must~~shall submit to the Commission a written request within thirty (30) days of receipt of their ~~test~~ score which includes the applicant's name, ~~last four (4) digits of applicant's social security~~Public Safety Identification (PSID) number, phone number and ~~test~~examination date;

2. ~~must~~shall make an appointment ~~with the Commission Office~~, for no more than thirty (30) minutes, with the Commission office personnel after submittal of the written request;

3. ~~must~~shall score at least sixty-five percent (65%) on each section of the ~~test~~examination;

4. will be allowed to take notes when reviewing the ~~test~~examination but ~~may~~shall not leave the Commission office with the notes;

5. will be allowed to see the answer sheet; ~~and~~

6. will be allowed to review the ~~test~~examination only one (1) time~~.~~; and

7. will only be allowed to review the most recent examination taken.

(c) ~~Test s~~Scores ~~will~~shall not be released over the telephone.

(2) Oral - The Commission or its designee will conduct the oral examination where applicable. This portion of the examination will be graded on a pass-or-fail basis.

(3) ~~Performance~~Practical - The Commission will designate a qualified individual to conduct the ~~performance~~practical examinations. The Commission will require that each examinee perform these activities and grade that performance on a pass-or-fail basis.

(a) Disputes over the grading/validity of any written practical ~~must~~shall be submitted to the Commission in writing with the proper referencing materials supporting the dispute within thirty (30) calendar days of receipt of the results of the examination. The Commission shall review the dispute, determine the merit of the dispute and determine the appropriate corrective action to be taken, if any is needed, within thirty (30) days of receipt of a dispute. The decision of the Commission shall be forwarded to the individual.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107.* ***Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-04-01-.05 RETESTING.

An applicant failing any examination may retake such examination at the next regularly scheduled examination or any other examination thereafter. An applicant may not retake the examination until at least fifteen (15) days after the initial examination.

***Authority**: T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History**: Original rule filed August 27, 1979; effective October 10, 1990. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-04-01-.06 EXAMINATION FORM.

(1) The examination for Fire Fighter I shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the ~~P~~performance ~~S~~standards for Fire Fighter I as adopted in standards in Chapter 0360-06-01.

(a) The ~~performance~~practical examination requirements for Fire Fighter I shall consist of all of the following:

1. A ~~hands-on performance~~/practical administered on a regional basis. This practical shall be developed by the Commission based on and meeting the standards in NFPA 1001.

2. A live fire practical shall be completed. One (1) of the following options

shall be completed:

(i) Successful completion of the Tennessee Fire Service and Codes Enforcement Academy's Firefighter I Live Burn course or Firefighter I and II Live Burn course. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination"; or

(ii) Successful completion of the live fire objectives in NFPA 1001 for Fire Fighter I during a live fire training. All of the exercises listed on the Live Fire Suppression Verification Sheet for the appropriate level shall be completed through the local department's training program. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination." The department shall provide the Commission with a minimum of fourteen (14) calendar days' notice by submitting an Application for Live Fire Training by e-mail, US mail, or fax. A Commission or staff member may witness any live fire exercises conducted by a department. This option shall be completed during a training exercise; no working fires shall be utilized for this option.

(b) A live fire practical, as part of the Fire Fighter I performance examination requirements, based upon standards of NFPA 1001, 2008 edition shall not be accepted after June 30, 2016. After June 30, 2016, a live fire practical, as part of the Fire Fighter I performance examination requirements, shall be based upon the current standard as adopted by reference in Chapter 0360-06-01-.01.

(c) An applicant shall obtain a Fire Fighter I certification within thirty six (36) months of completing a live fire practical. After thirty six (36) months, successful completion of another live fire practical shall be required in order to obtain a Fire Fighter I certification.

(2) The examination for Fire Fighter II shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the ~~P~~performance ~~S~~standards for Fire Fighter II as adopted in standards in Chapter 0360-06-01.

(a) The ~~performance~~practical examination requirements for Fire Fighter II shall consist of all the following:

1. A ~~hands-on performance~~/practical administered on a regional basis. This practical shall be developed by the Commission based on and meeting the standards in NFPA 1001.

2. A live fire practical shall be completed. One (1) of the following options shall be completed:

(i) Successful completion of the Tennessee Fire Service and Codes Enforcement Academy's Firefighter II Live Burn course or Firefighter I and II Live Burn course. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination"; or

(ii) Successful completion of the live fire objectives in NFPA 1001 for Fire Fighter II during a live fire training. All of the exercises listed on the Live Fire Suppression Verification Sheet for the appropriate level shall be completed through the local department's training program. A Live Fire Suppression Verification Form shall be completed and attached to the "Application for Written Examination." The department shall provide the Commission with a minimum of fourteen (14) working days' notice by submitting an Application for Live Fire Training by e-mail, US mail, or fax. A

Commission or staff member may witness any live fire exercises conducted by a department. This option shall be completed during a training exercise; no working fires shall be utilized for this option.

(b) A live fire practical, as part of the Fire Fighter II performance examination requirements, based upon standards of NFPA 1001, 2008 edition shall not be accepted after June 30, 2016. After June 30, 2016, a live fire practical, as part of the Fire Fighter II performance examination requirements, shall be based upon the current standard as adopted by reference in Chapter 0360-06-01-.01.

(c) An applicant shall obtain a Fire Fighter II certification within thirty six (36) months of successfully completing a live fire practical. After thirty six (36) months, successful completion of another live fire practical shall be required in order to obtain a Fire Fighter II certification.

(3) The examination for Fire Fighter I/II Combined shall consist of a ~~performance~~practical and a written examination. The subjects tested will be substantially derived from the ~~P~~performance ~~S~~standards for Fire Fighter I/II Combined as adopted in standards in Chapter 0360-06-01.

(a) The ~~performance~~practical examination requirements for Fire Fighter I/II Combined shall consist of all the following:

1. A ~~hands-on performance~~/practical administered on a regional basis. This practical shall be developed by the Commission based on and meeting the standards in NFPA 1001.

2. A live fire practical ~~must~~shall be completed. One (1) of the following options ~~must~~shall be completed:

(i) Completion of the Tennessee Fire Service and Codes Enforcement Academy's Firefighter II Live Burn course or Firefighter I and II Live Burn course. A Live Fire Suppression Verification Form ~~must~~shall be completed and attached to the "Application for Written Examination."

(ii) Completion of the live fire objectives in NFPA 1001 for Fire Fighter II during a live fire training. All of the exercises listed on the Live Fire Suppression Verification Sheet for the appropriate level ~~must~~shall be completed through the local department's training program. A Live Fire Suppression Verification Form ~~must~~shall be completed and attached to the "Application for Written Examination." The department ~~must~~shall provide the Commission with a minimum of fourteen (14) calendar days' notice by submitting an Application for Live Fire Training by e-mail, US mail, or fax. A Commission member or staff may witness any live fire exercises conducted by a department. This option ~~must~~shall be completed during a training exercise; no working fires ~~can~~may be utilized for this option.

(4) The examination for Fire Department Instructor I shall consist of a ~~performance~~practical and a written examination. The subjects tested will be substantially derived from the ~~P~~performance ~~S~~standards for Fire Department Instructor I as set forth in Chapter 0360-06-01.

(a) Any applicant challenging the Fire Department Instructor I written examination ~~must~~ shall complete the Fire Department Instructor I Practical Skills Checklist provided by the Commission. This practical is to be graded by an individual certified by the

Tennessee Commission on Fire Fighting as either a Fire Department Instructor I or a Vocational and Higher Education Instructor. A completed copy of the checklist ~~must~~ shall be attached to the "Application for Written Examination."

(5) The examination for Fire Department Instructor II shall consist of a ~~performance~~practical and a written examination. The subjects tested will be substantially derived from the ~~P~~performance ~~S~~standards for Fire Department Instructor II as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for the Fire Department Instructor II shall consist of completing a prescribed Fire Department Instructor II workbook meeting the current standard.

~~(b) After completion of these materials, the applicant shall return them to the Commission Office for grading on a pass/fail basis and will be notified of his/her results in writing. If the applicant is successful, he/she may apply for the written examination through established procedures; should the applicant be unsuccessful, the applicant will be notified of which areas need improvement and the workbook will be returned for revision.~~

(6) The examination for Fire Department Instructor I/II Combined shall consist of a ~~performance~~ practical and a written examination. The subjects tested will be substantially derived from the ~~P~~performance ~~S~~standards for Fire Department Instructor I/II Combined as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for the Fire Department Instructor I/II Combined shall consist of completing a prescribed Fire Department Instructor II workbook meeting the current standard.

~~(b) After completion of these materials, the applicant shall return them to the Commission Office for grading on a pass/fail basis and will be notified of his/her results in writing. If the applicant is successful, he/she may apply for the written examination through established procedures; should the applicant be unsuccessful, the applicant will be notified of which areas need improvement and the workbook will be returned for revision.~~

(7) The examination for Fire Department Instructor III shall consist of a ~~performance~~ practical and a written examination. The subjects tested will be substantially derived from the ~~P~~performance ~~S~~standards for Fire Department Instructor III as set forth in Chapter 0360-06-01.

(8) The examination for Fire Officer I shall consist of a ~~performance~~practical and a written examination. The subjects tested will be substantially derived from the ~~P~~performance ~~S~~standards for Fire Officer I as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for Fire Officer I shall consist of completing projects which shall be administered by the Commission in conjunction with written examinations. The practical requirement shall be completion of two (2) projects assigned to the applicant at random which are derived from NFPA 1021. These projects will be graded by designated Commission representatives.

(9) The examination for Fire Officer II shall consist of a ~~performance~~practical and a written examination. The subjects tested will be substantially derived from the ~~P~~performance ~~S~~standards for Fire Officer II as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for ~~the~~ Fire Officer II shall consist of completing a ~~workbook~~project based on NFPA 1021 for Fire Officer II. The ~~workbook~~project may be obtained from the Commission. This project will be graded

by the Commission.

(10) The examination for Fire Officer I/II Combined shall consist of a ~~performance~~practical and a written examination. The subjects tested will be substantially derived from the ~~P~~performance ~~S~~standards for Fire Officer I/II Combined as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for the Fire Officer I/II Combined shall consist of completing a ~~workbook~~project based on NFPA 1021 for Fire Officer II. The ~~workbook~~project may be obtained from the Commission. This project will be graded by the Commission.

(11) The examination for Fire Officer III shall consist of a ~~performance~~practical and a written examination. The subjects tested will be substantially derived from the ~~P~~performance ~~S~~standards for Fire Officer III as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for the Fire Officer III shall consist of completing a ~~workbook~~project based on NFPA 1021 for Fire Officer III. The ~~workbook~~project may be obtained from the Commission. This project will be graded by the Commission.

(12) The examination for Fire Officer IV shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the ~~P~~performance ~~S~~standards for Fire Officer IV as set forth in Chapter 0360-06-01.

(a) An applicant shall successfully complete the ~~hands-on performance~~/practical examination for Fire Officer IV as promulgated by the Commission utilizing the standards outlined in NFPA 1021, Chapter 7.

(13) The examination for Hazardous Materials Awareness Certification shall consist of a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Awareness as set forth in Chapter 0360-06-01.

(14) The examination for Hazardous Materials Operations Certification shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Operations as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for Hazardous Materials Operations Level Certification shall be part of the Fire Fighter I ~~hands-on~~ practical or administered individually. A minimum of one (1) evolution shall be selected from NFPA 472 Hazardous Materials Operations level.

(b) The written examination for Hazardous Materials Operations level will be administered in conjunction with the Hazardous Materials Awareness written examination or administered individually.

(15) The examination for Airport Firefighter shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Airport Firefighter as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination requirements for Airport Firefighter shall consist of all the following:

1. A ~~hands-on performance~~/practical administered on a regional basis. This practical shall be developed by the Commission based on the standards in NFPA 1003.

2. A live fire practical ~~must~~shall be completed. One (1) of the following

options ~~must~~shall be completed:

(i) Completion of a Federal Aviation Administration training course where, at minimum, all requirements of the Commission's Airport Live Fire Verification Sheet are accomplished~~.~~; or

(ii) All of the exercises listed on the Airport Live Fire Suppression Verification Sheet for the appropriate level ~~must~~shall be completed through the local airport fire department's training program. An Airport Live Fire Suppression Verification Form ~~must~~shall be completed and attached to the "Application for Written Examination". The department ~~must~~shall provide the Commission with a minimum of seventy two (72) hours prior notification of live fire exercises, either by e-mail, US mail, or fax. A Commission member or staff may witness any live fire exercises conducted by a department. This option ~~must~~shall be completed during a training exercise; no working fires ~~can~~may be utilized for this option.

(16) The examination for Wildland Firefighter I shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Wildland Firefighter I as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for Wildland Firefighter I shall consist of one (1) of the following:

~~(i)~~1. Completion of a ~~performance~~practical examination based upon NFPA 1051 which has been submitted to the Commission for approval~~,~~; or

~~(ii)~~2. Completion of the "Task Book for the Position of Firefighter Type 2" offered by the Tennessee Division of Forestry.

(17) The examination for Wildland Firefighter II shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Wildland Firefighter II as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for Wildland Firefighter II shall consist of one (1) of the following:

1. Completion of a ~~performance~~practical examination based upon NFPA 1051 which has been submitted to the Commission for approval~~,~~; or

2. Completion of the "Task Book for the Position of Advanced Firefighter/Squad Boss" offered by the Tennessee Division of Forestry.

(18) The examination for Fire and Life Educator I shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire and Life Safety Educator I as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for Fire and Life Safety Educator I shall consist of completing a ~~workbook~~project based upon NFPA 1035 for the appropriate level and returning it to the Commission for grading. ~~Once the performance examination has been passed, the applicant can submit his/her application for written examination. An applicant has one year from the completion of the workbook to pass the written examination or must redo the workbook.~~ The ~~workbook can~~project may be obtained ~~upon request~~ from the Commission.

(19) The examination for Fire and Life Educator II shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance

standards for Fire and Life Safety Educator II as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for Fire and Life Safety Educator II shall consist of completing a ~~workbook~~project based upon NFPA 1035 for the appropriate level and returning it to the Commission for grading. ~~Once the performance examination has been passed, the applicant can submit his/her application for written examination. An applicant has one (1) year from the completion of the workbook to pass the written examination or must redo the workbook.~~ The ~~workbook can~~project may be obtained ~~upon request~~ from the Commission.

(20) The examination for Fire Safety Compliance Officer I shall consist of a ~~performance~~ practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Safety Compliance Officer I as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for personnel assigned to fire suppression shall consist of:

1. the applicant monitoring a minimum of eight (8) fire safety inspections conducted by a Fire Safety Compliance Officer II or an individual certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113 utilizing ~~S~~standards outlined in NFPA 101 and 1031. Two (2) fire safety inspections of each of the four (4) occupancies, industrial, educational, general business, and institutional, as defined in the NFPA 101 Life Safety Code, are to be conducted; or

2. becoming certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113.

(21) The examination for Fire Safety Compliance Officer II shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Safety Compliance Officer II as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for personnel assigned to fire suppression shall consist of:

1. the applicant conducting a minimum of eight (8) fire safety inspections under the supervision of a Fire Safety Compliance Officer II or an individual certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113 utilizing ~~S~~standards outlined in NFPA 101 and 1031. Two (2) inspections of each of the four (4) occupancies, industrial, educational, general business, and institutional, as defined in the NFPA 101 Life Safety Code, are to be conducted. The evaluator shall evaluate each inspection on a pass/fail basis determining whether the applicant conducted a thorough and complete inspection ensuring compliance with NFPA Standards and any applicable local ordinances. In order to ~~successfully~~ complete successfully the ~~performance~~practical examination, the applicant must shall receive a passing grade for each of the inspections on each of the four (4) occupancies; or

2. becoming certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113.

(22) The examination for Fire Apparatus Operator shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Apparatus Operator as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance~~/practical examination

promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1002, Chapters 4, 5, and 6. In order to challenge this level, the applicant ~~must be able to~~shall perform the evolutions on both pumper and aerial apparatus equipment.

(23) The examination for Pumper Driver/Operator shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Pumper Driver/Operator as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~s h a l l complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1002, Chapters 4 and 5.

(24) The examination for Aerial Apparatus Driver/Operator shall consist of a ~~performance~~ practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Aerial Apparatus Driver/Operator as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~s h a l l complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1002, Chapters 4 and 6.

(25) The examination for Safety Officer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Safety Officer as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for Safety Officer shall be the completion of a written outline of the Safety Officer's role, duties, and responsibilities in accordance with NFPA 1521, OSHA, and other standards given an incident scenario provided by the Commission. The applicant will be provided the incident scenario in a written examination setting. This outline will be evaluated by a Committee of the Commission which will meet in conjunction with a regularly scheduled Commission meeting on an as-needed basis. Successful completion of this outline ~~will~~shall qualify the applicant to take the written examination for Safety Officer.

(26) The examination for Incident Safety Officer I shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Incident Safety Officer I as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for Incident Safety Officer I shall be the completion of a written ~~outline~~project of the Incident Safety Officer I's role, duties, and responsibilities in accordance with NFPA 1521, OSHA, and other standards given an incident scenario provided by the Commission. The applicant will be provided the incident scenario in a written examination setting. This ~~outline~~project will be evaluated by a Committee of the Commission which will meet in conjunction with a regularly scheduled Commission meeting on an as-needed basis. Successful completion of this ~~outline will~~project shall qualify the applicant to take the written examination for Incident Safety Officer I.

(27) The examination for Health ~~&~~and Safety Officer I shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Health ~~&~~and Safety Officer I as set forth in Chapter 0360-06-01.

(a) The ~~performance~~practical examination for Health ~~&~~and Safety Officer I shall be the completion of a written outline of the Health ~~&~~and Safety Officer I's role, duties, and responsibilities in accordance with NFPA 1521, OSHA, and other standards given an incident scenario provided by the Commission. The applicant will be provided the incident scenario in a written examination setting. This outline will be evaluated by a

Committee of the Commission which will meet in conjunction with a regularly scheduled Commission meeting on an as-needed basis. Successful completion of this outline ~~will~~shall qualify the applicant to take the written examination for Health and Safety Officer I.

(28) The examination for ~~Technical~~Rope Rescuer I shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for ~~Technical~~Rope Rescuer I as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance/~~practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 4 and 5.

(29) The examination for Rope Rescuer II shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Rope Rescuer II as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance/~~practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 6.

(30) The examination for Confined Space Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Confined Space Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance/~~practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 7.

(31) The examination for Trench Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Trench Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance/~~practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 8.

(32) The examination for Structural Collapse Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Structural Collapse Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance/~~practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 9.

(33) The examination for Vehicle Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Vehicle Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance/~~practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 10.

(34) The examination for Surface Water Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Surface Water Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~s h a l l complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 11.

(35) The examination for Swiftwater Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Swiftwater Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~s h a l l complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 12.

(36) The examination for Dive Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Dive Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 13.

(37) The examination for Ice Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Ice Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 14.

(38) The examination for Surf Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Surf Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~s h a l l complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 15.

(39) The examination for Wilderness Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Wilderness Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~s h a l l complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 16.

(40) The examination for Mine and Tunnel Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Mine and Tunnel Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~s h a l l complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 17.

(41) The examination for Cave Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Cave Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~s h a l l complete a ~~hands-on performance~~/practical examination

promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 18.

(42) The examination for Machinery Rescuer shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Machinery Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1006, Chapters 5 and 19.

(43) The examination for Exterior Industrial Fire Brigade Member shall consist of a ~~performance~~ practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Exterior Industrial Fire Brigade Member as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1081, Chapters 4 and 6.

(44) The examination for Interior Structural Fire Brigade Member shall consist of a ~~performance~~ practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Interior Structural Fire Brigade Member as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1081, Chapters 4 and 7.

(45) The examination for Fire Inspector I shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Inspector I as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1031, Chapter 4.

(46) The examination for Fire Investigator I shall consist of a ~~performance~~practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Investigator I as set forth in Chapter 0360-06-01.

(a) The applicant ~~must~~shall complete a ~~hands-on performance~~/practical examination promulgated by the Commission utilizing the ~~S~~standards outlined in NFPA 1033.

(47) The examination for Hazardous Materials Technician shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Technician as set forth in Chapter 0360- 06-01.

(a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 472 or NFPA 1072.

(48) The examination for Hazardous Materials Incident Commander shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Incident Commander as set forth in Chapter 0360-06-01.

(a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 472 or NFPA 1072.

(49) The examination for Fire Inspector II shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Inspector II as set forth in Chapter 0360-06-01.

(a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1031.

(50) The examination for Fire Inspector III shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Inspector III as set forth in Chapter 0360-06-01.

(a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1031.

(51) The examination for Plans Reviewer I shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Plans Reviewer I as set forth in Chapter 0360-06-01.

(a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1031.

(52) The examination for Plans Reviewer II shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Plans Reviewer II as set forth in Chapter 0360-06-01.

(a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1031.

(53) The examination for Fire Marshal shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Marshal as set forth in Chapter 0360-06-01.

(a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1037.

(54) The examination for Aircraft Rescue Firefighting (ARFF) Driver/Operator shall consist of a practical and a written examination. The subjects tested shall be substantially derived from the performance standards for Aircraft Rescue Firefighting (ARFF) Driver/Operator as set forth in Chapter 0360-06-01.

(a) The applicant shall complete a practical examination promulgated by the Commission utilizing the standards outlined in NFPA 1002, Chapters 4 and 9.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-110~~, and 68-1-102~~. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Amendments filed October 5, 2010; effective March 31, 2011. Amendments filed August 2, 2011; effective January 29, 2012. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Amendments filed June 3, 2016; effective September 1, 2016.*

0360-04-01-.07 RESERVED.

***Authority**: T.C.A. § 4-24-207. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Repeal filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-04-01-.08 WRITTEN EXAMINATIONS.

(1) Written examinations ~~will~~shall be scheduled by the Commission office.

(2) A ~~test~~ site for a written examination ~~must~~shall:

(a) have sufficient space with tables/desks and chairs for the applicants;

(b) have sufficient lighting;

(c) be sufficiently free of outside noise or other distractions which could interfere with the examination;

(d) be reasonably comfortable with respect to the environment so as ~~to~~ not to provide a distraction from the examination; and

(e) meet all ADA requirements.

(3) The Commission representative shall ensure that the ~~test~~ site meets these requirements prior to the start of the written examination.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-04-01-.09 PRACTICAL EXAMINATIONS.

(1) One department may administer a ~~performance/~~practical examination to another participating department and/or may enroll students from another department in an approved Recruit Training Program provided the following conditions are met:

(a) The administering department's practical~~/performance~~ examination and/or Recruit Training Program have been approved by the Commission;

(b) Both departments have agreed to allow the applicant(s) to utilize the administering department's practical examination; and

(c) Proof of successful completion of the practical examination is sent to the applicant(s)' department and placed on file.

(2) The application for a practical examination shall be submitted by the department of which the applicant is a member and the examination results will be forwarded to that department.

(3) (a) For ~~hands-on~~practical or live burn practical examinations, compliance with 29 CFR 1910.134, Respiratory Protection Standard, is required. An applicant is required to have been SCBA fit tested for within twelve (12) months of the examination and a SCBA Fit Testing Verification form is to be completed. Appropriate documentation shall include:

1~~)~~. the signature of the Fire Chief from the applicant's sponsoring department; and

2~~)~~. documentation from an authorized fit-testing entity.

(b) No one ~~will~~shall be allowed to participate in the ~~hands-on~~practical or live burn practical examination in which a SCBA is used unless their fit testing is documented.

(~~b~~c) ~~Candidate~~Applicants for Tennessee State Fire Commission Certification in Fire Fighter I or II ~~hands-on~~practical or live burn practicals, who have beards or facial hair in the area of the SCBA face piece seal (examples may include full-face beards, muttonchops, goatees, sideburns, mustaches, or even a few days growth of stubble, etc.) ~~will~~shall not be allowed to participate in the skills exam. Facial hair between the

wearer's skin and the sealing surfaces of the face piece will prevent a good seal. A fire fighter shall not enter an area in which it has been determined that respiratory protection is necessary when conditions prevent a good seal of the respirator face piece to the face. This provision ~~will~~shall be enforced regardless of the live fire skills being tested at any site. No exceptions to this ~~policy will~~provision shall be granted. This provision is in conjunction with 29 CFR 1910.134 Respiratory Protection Standard.

(~~c~~d) Ordinary eyeglasses shall not be used with full face piece respirators. Eye glasses with temple bars or straps that pass between the sealing surface of a full face piece and the fire fighter's face will prevent a good seal. Special spectacle kits can be ordered and mounted inside a full face piece respirator.

(4) (a) For Regional Practical Examinations, a department ~~is required to~~ shall furnish a minimum of one (1) evaluator for every two (2) applicants that the department submits for examination. If a department submits less than two (<2) applicants, that department will not be required to provide an evaluator but is strongly encouraged to do so.

(b) Evaluators ~~must~~shall be certified by the Commission at a minimum of Fire Fighter-_II level (Fire Fighter-_III for 1987 NFPA Standard or earlier) and are encouraged to be certified at the Fire Department Instructor-_I level.

(c) Evaluators ~~will be required to~~shall successfully complete a Commission-approved examination before being allowed to serve as an Evaluator. The Evaluator training and examination may be available online over the Internet.

(5) Regional Practical Examination Site Requirements. The department hosting a regional practical examination ~~must be able to~~shall meet the following conditions:

(a) have adequate space to conduct the practical examinations;

(b) be able to provide all equipment required for the examination, excluding the equipment each applicant ~~must~~shall provide in accordance with Commission rules;

(c) a member of the host department ~~must~~shall have attended a regional practical examination before hosting one within the department;

(d) provide a minimum of three (3) evaluators who are certified by the Commission at a minimum of Fire Fighter-_II level (Fire Fighter-_III for 1987 NFPA Standard or earlier) and are encouraged to be certified at the Fire Department Instructor-_I level;

(e) the proposed ~~test~~examination site was inspected by the Commission representative in order to ensure it meets the requirements of the program; and

(f) provide for their fire_fighters and for practical examinations equipment which has been inspected and meets all applicable NFPA safety standards.

(6) A host department for a practical examination ~~must~~shall provide the Commission representative on the day of the practical examination a letter addressed to the Commission and signed by the Fire Chief or Training Chief certifying that all equipment used in the practical examination meets all applicable NFPA, OSHA and other applicable ~~S~~standards for safety and required inspections. Included in the letter shall be a certification statement that all equipment that is required to be tested according to said ~~S~~standard (e.g., ladders, hose, pumps, SCBA, etc.) has been tested according to the ~~S~~standard. Failure to provide this letter ~~will~~shall result in the cancellation of the practical examination for that day.

(7) All instructors, evaluators, and approved applicants who participate in a live fire practical ~~must~~shall meet the requirements of Chapter 4, Section 4.3, Student Prerequisites, of the

latest adopted edition of NFPA 1403. Written documentation of completion of this training ~~must~~shall be kept on file by the department and ~~will~~shall be subject to audit by the Commission. All requirements listed in the Live Fire Training Requirements Book ~~must~~shall be completed.

(8) ~~Hands-on p~~Practical skill sheets shall be available to all applicants through the Commission ~~Internet~~ website.

(9) Practical examination sites ~~must~~shall have adequate space to safely hold the examination. The ~~test~~ site ~~should~~shall have an isolated holding area for the applicants waiting to take the examination and a separate area for applicants who have completed the examination. The Commission representative shall ensure that the ~~test~~ site meets these requirements prior to the start of the examination.

(10) Guidelines for ~~Hands-On~~ Practical and Live Burn Practical Examinations~~:~~

(a) No fee ~~will~~shall be charged by the Commission for these examinations.

(b) ~~Hands-on~~ Practical regional ~~test~~examination sites ~~are to~~will be established in each Commission representative's territory, on an as needed basis, ~~in order~~ to meet the needs of the ~~airport~~ fire departments within their territories.

(c) Live Fire Practical ~~Tests~~examination sites ~~are to~~will be established by the Commission representatives in conjunction with a department's ~~able~~ability to host ~~this~~these types of practical ~~and must~~examinations which shall be NFPA 1403 compliant.

(d) Applicants may travel out of their region to ~~test~~take examinations at other ~~test~~ sites.

(e) The Commission representative is to conduct a training seminar for evaluators prior to each practical examination to ensure the evaluator's understand~~ing of testing~~examination procedures, grading procedures, performance criteria, and instructions on completing required paperwork. The Commission will provide the Commission representative with documents to be utilized during this training. Any evaluator who fails to attend this training will not be allowed to serve as an evaluator.

(f) Applications to challenge the practical examination ~~must~~shall be submitted to the Commission a minimum of two (2) weeks prior to the examination date. A minimum of ten (10) applicants ~~must~~shall be scheduled in order to conduct the practical examinations; a maximum of fifty (50) applicants ~~can~~may be tested per day. The Commission~~er~~ or Commission~~er~~'s designee may waive this requirement if justification exists.

(g) An applicant who fails any evolution shall be notified immediately of his/her failure and will be allowed to leave the practical immediately.

(h) Copies of the entire practical examination will be provided to all departments. A copy may also be requested by individuals from the Commission Office either by e-mail or US mail.

(i) Applicants who complete the examination ~~must~~shall remain at the host facility until the end of the day to assist in cleaning and restoring the host facility to original condition prior to receiving test results. Leaving early will result in automatic failure unless the applicant is given permission to leave by the Commission representative.

(j) ~~Persons~~Applicants who have completed their practical examination ~~must~~shall remain separate from those waiting to challenge the examination.

(k) ~~Persons~~Applicants waiting to challenge the practical examination ~~must~~shall be secluded from the actual practical. Under no circumstances ~~should~~shall an applicant waiting to challenge the practical examination be allowed to see the practicals being administered or be in contact with any individual who has completed the practical.

(l) The applicant or the applicant's sponsoring department ~~must~~shall provide at least one (1) SCBA and mask; and each applicant ~~must~~shall bring a mask which has been fit tested to them.

(m) The applicant or the applicant's sponsoring department shall inspect each applicant's equipment to ensure it meets current additions of applicable safety standards. These standards include:

1. NFPA 1981;
2. NFPA 1971;
3. NFPA 1976;
4. NFPA 1977; and
5. NFPA 1982.

(n) Each applicant ~~must~~shall bring his/her own personal protective equipment (e.g., helmet, turnout gear, gloves, and coat) including SCBA.

(o) The host department shall provide the equipment to be used for testing~~,~~ (e.g., ladders, hose, etc.).

(p) The applicant ~~must~~shall assume liability in case of injury. A statement to this effect is included on the application which ~~must~~shall be signed by the applicant.

(q) The Commission will solicit individuals who are Fire Fighter II or Fire Instructor I certified or individuals deemed by the Commission to be subject matter experts in the area of firefighting and are interested in serving as evaluators. Individuals shall submit their names and qualifications. This list of names will be maintained by the Commission office which will rotate through the names for each examination. Individuals may add their names at any time.

(r) An applicant ~~must~~shall perform the practical skills examinations as required for each class of certification. An applicant ~~can~~may not refuse to perform a practical skills examination even if his/her department does not have the equipment specified to perform that practical skill.

(s) The Commission representative shall have the authority to adopt these guidelines to address specific life safety problems as they arise.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

RULES OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING PERSONNEL STANDARDS AND EDUCATION

CHAPTER 0360-03-01
CLASSIFICATIONS FOR FULL-TIME AND VOLUNTEER FIRE FIGHTERS

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0360-03-01-.01 RESERVED.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-106(4), 4-24-107, 4-24-107(3) and 68-1-1102.* ***Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.02 FIRE FIGHTER I.

(1) A Fire Fighter I ~~must~~shall meet the entrance requirements of NFPA 472, NFPA 1001, NFPA 1072 and T.C.A. § 4-24-112.

(2) A Fire Fighter I ~~must~~shall satisfactorily pass the examination(s) for Fire Fighter I as promulgated by the Commission.

(3) A Fire Fighter I ~~must~~shall successfully obtain CPR certification through an entity recognized by the Commission. A copy of ~~the~~a valid CPR card ~~must~~shall be attached to the "Application for Written Examination."

(4) A Fire Fighter I ~~must~~shall successfully complete a Commission approved domestic

violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(5) A Fire Fighter I ~~must~~shall submit proof with his/her application of successfully completing NIMS IS-700: An Introduction and ICS-100: Introduction to ICS training or the equivalent of each.

(6) An individual having previously been certified by the Commission at a recognized level and whose certifications are current but wishes to re-challenge a level in order to obtain a Pro Board or an IFSAC Seal on his/her certifications ~~does not have to wait twelve (12) months before attempting to re-qualify at that level~~may do so by re-challenging the practical and written examinations.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.03 FIRE FIGHTER II.

(1) A Fire Fighter II ~~must~~shall successfully complete all of the requirements of Fire Fighter I as prescribed in ~~these rules~~Commission rules, regulations, and policies.

(2) A Fire Fighter II ~~must~~shall satisfactorily pass the examination(s) for Fire Fighter II as promulgated by the Commission.

(3) A Fire Fighter II ~~must~~shall successfully obtain CPR certification through an entity recognized by the Commission. A copy of ~~the~~a valid CPR card ~~must~~shall be attached to the "Application for Written Examination."

(4) A Fire Fighter II ~~must~~shall successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(5) A Fire Fighter II ~~must~~shall submit proof with his/her application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training, and ICS-200: ICS for Single Resources and Initial Action Incidents training or the equivalent of each. A fire fighter who has been certified by the Commission as a Fire Fighter I need not show proof of completing NIMS IS-700: An Introduction and ICS-100: Introduction to ICS training or the equivalent to each.

***Authority:** T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Amendment filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.04 FIRE FIGHTER I/II COMBINED.

(1) A Fire Fighter I/II Combined ~~must~~shall meet the entrance requirements of NFPA 472, NFPA 1001, NFPA 1072 and T.C.A. § 4-24-112.

(2) A Fire Fighter I/II Combined ~~must~~shall satisfactorily pass the examination(s) for Fire Fighter I/II Combined as promulgated by the Commission.

(3) A Fire Fighter I/II Combined ~~must~~shall successfully obtain CPR certification through an

entity recognized by the Commission. A copy of ~~the~~a valid CPR card ~~must~~shall be attached to the "Application for Written Examination."

(4) A Fire Fighter I/II Combined ~~must~~shall successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(5) A Fire Fighter I/II Combined ~~must~~shall submit proof with his/her application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training, and ICS-200: ICS for Single Resources and Initial Action Incidents training or the equivalent of each.

(6) A Fire Fighter I/II Combined ~~must~~shall successfully complete a Commission-approved Fire Fighter I/II Combined course of training.

***Authority**: T.C.A. §§ §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.05 FIRE DEPARTMENT INSTRUCTOR I.

(1) Qualifications. An applicant for Fire Department Instructor I may be certified by the Commission provided the applicant ~~can~~ meets the following requirements and ~~show~~demonstrates to the satisfaction of the Commission that he/she:

(a) is a member of the participating department; ~~and~~

(b) is certified as a Journeyman Fire Fighter or Fire Fighter II pursuant to Rule 0360-03-01-.03; ~~and~~

(c) has served for a minimum period of three (3) years as a fire fighter in a department; ~~and~~

(d) has successfully completed a Commission-approved training program compliant with NFPA 1041, Standard for Fire Service Instructor Professional Qualifications;

(~~d~~e) has satisfactorily passed the examination(s) for Fire Department Instructor I given by the Commission; and

(~~e~~f) agrees to conduct training and examinations, maintain records, and submit reports in a manner prescribed by the Commission.

***Authority**: T.C.A. §§ 4-24-106 and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1990. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.06 FIRE DEPARTMENT INSTRUCTOR II.

(1) Qualifications. An applicant for Fire Department Instructor II may be certified by the Commission provided the applicant ~~can~~ meets the following requirements and ~~show~~demonstrates to the satisfaction of the Commission that he/she:

(a) has successfully completed all of the requirements of the Fire Department Instructor I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and

policies; ~~and~~

(b) has successfully completed a Commission-approved training program compliant with NFPA 1041, Standard for Fire Service Instructor Professional Qualifications;

(~~2~~c) has satisfactorily passed the examination(s) for Fire Department Instructor II given by the Commission; and

(~~3~~d) agrees to conduct training and examinations, maintain records, and submit reports as prescribed by the Commission.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.07 FIRE DEPARTMENT INSTRUCTOR I/II COMBINED.

(1) Qualifications. An applicant for Fire Department Instructor I/II Combined may be certified by the Commission provided the applicant ~~can~~ meets the following requirements and ~~show~~demonstrates to the satisfaction of the Commission that he/she:

(a) has successfully completed all of the requirements of the Fire Department Instructor I and Fire Department Instructor II as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and policies; ~~and~~

(b) has successfully completed a Commission-approved training program compliant with NFPA 1041, Standard for Fire Service Instructor Professional Qualifications;

(~~b~~c) has satisfactorily passed the examination(s) for Fire Department Instructor I/II Combined given by the Commission; and

(~~c~~d) agrees to conduct training and examinations, maintain records, and submit reports as prescribed by the Commission.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.08 FIRE DEPARTMENT INSTRUCTOR III.

(1) Qualifications. An applicant for Fire Department Instructor III may be certified by the Commission provided the applicant ~~can~~ meets the following requirements and ~~show~~demonstrates to the satisfaction of the Commission that he/she:

(a) has successfully completed all of the requirements of Fire Department Instructor II as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and policies; ~~and~~

(b) has successfully completed a Commission-approved training program compliant with NFPA 1041, Standard for Fire Service Instructor Professional Qualifications;

(~~b~~c) has satisfactorily passed the examination(s) for Fire Department Instructor III given by the Commission; and

(~~c~~d) agrees to conduct training and examination(s), maintain records, and submit reports as prescribed by the Commission.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Repeal filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.09 FIRE OFFICER I.

(1) A Fire Officer I ~~must~~ shall successfully complete all of the requirements of Journeyman Fire Fighter or Fire Fighter II and Fire Department Instructor I as prescribed in ~~these~~ Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Fire Officer I shall successfully complete a Commission-approved training program compliant with the NFPA 1021, Standard for Fire Officer Professional Qualifications.

(~~2~~3) A Fire Officer I ~~must~~shall satisfactorily pass the examination(s) for Fire Officer I as promulgated by the Commission.

(~~3~~4) A Fire Officer I ~~must~~shall successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(~~4~~5) A Fire Officer I who was not certified as a Fire Fighter II or Fire Department Instructor I by the Commission shall submit proof with their application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training and ICS-200: ICS for Single Resources and Initial Action Incidents training or the equivalent to each.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed October 14, 1995; effective February 28, 1995. Amendment filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.10 FIRE OFFICER II.

(1) A Fire Officer II ~~must~~shall successfully complete all of the requirements of Fire Officer I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Fire Officer II shall successfully complete a Commission-approved training program compliant with the NFPA 1021, Standard for Fire Officer Professional Qualifications.

(~~2~~3) A Fire Officer II ~~must~~shall satisfactorily pass the examination(s) for Fire Officer II as promulgated by the Commission.

(~~3~~4) A Fire Officer II ~~must~~s h a l l successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(~~4~~5) A Fire Officer II who was not certified as a Fire Officer I by the Commission shall submit proof with their application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training and ICS-200: ICS for Single Resources and Initial Action Incidents training or the equivalent to each.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27,*

2014; effective January 25, 2015.

0360-03-01-.11 FIRE OFFICER I/II COMBINED.

(1) A Fire Officer I/II Combined ~~must~~shall successfully complete all of the requirements of Journeyman Fire Fighter or Fire Fighter II and Fire Department Instructor I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Fire Officer I/II Combined shall successfully complete a Commission-approved training program compliant with the NFPA 1021, Standard for Fire Officer Professional Qualifications.

(~~2~~3) A Fire Officer I/II Combined ~~must~~shall complete a Commission-approved course of training and satisfactorily pass the examination(s) for Fire Officer I/II Combined as promulgated by the Commission.

(~~3~~4) A Fire Officer I/II Combined ~~must~~shall successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(~~4~~5) A Fire Officer I/II Combined who was not certified as a Fire Fighter II or Fire Department Instructor I by the Commission shall submit proof with their application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training and ICS-200: ICS for Single Resources and Initial Action Incidents training or the equivalent to each.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.12 FIRE OFFICER III.

(1) A Fire Officer III shall successfully complete all of the requirements of Fire Officer II as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Fire Officer III shall successfully complete a Commission-approved training program compliant with the NFPA 1021, Standard for Fire Officer Professional Qualifications.

(~~2~~3) A Fire Officer III shall satisfactorily pass the examination(s) for Fire Officer III as promulgated by the Commission.

(~~3~~4) A Fire Officer III shall successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(~~4~~5) A Fire Officer III shall submit proof with his/her application of successfully completing ICS-300: Intermediate ICS training or its equivalent. A Fire Officer III who was not certified as a Fire Officer II by the Commission shall submit proof with his/her application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training, ICS-200: ICS for Single Resources and Initial Action Incidents training, and ICS-300: Intermediate ICS training or the equivalent to each.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1990. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Amendments and new rules filed June 3, 2016; effective September 1, 2016.*

0360-03-01-.13 FIRE OFFICER IV.

(1) A Fire Officer IV shall successfully complete all of the requirements of Fire Officer III as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Fire Officer IV shall successfully complete a Commission-approved training program compliant with the NFPA 1021, Standard for Fire Officer Professional Qualifications.

(~~2~~3) A Fire Officer IV shall satisfactorily pass the examination(s) for Fire Officer IV as promulgated by the Commission.

(~~3~~4) A Fire Officer IV shall successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(~~4~~5) A Fire Officer IV shall submit proof with his/her application of successfully completing ICS-400: Advanced Incident Command System or its equivalent. A Fire Officer IV who was not certified as a Fire Officer III by the Commission shall submit proof with his/her application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training, ICS-200: ICS for Single Resources and Initial Action Incidents training, ICS-300: Intermediate ICS training, and ICS-400: Advanced Incident Command System or the equivalent to each.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Amendments and new rules filed June 3, 2016; effective September 1, 2016.*

0360-03-01-.14 HAZARDOUS MATERIALS AWARENESS CERTIFICATION.

(1) A candidate for Hazardous Materials Awareness certification ~~must~~shall successfully pass the examination(s) for Hazardous Materials Awareness Certification as promulgated by the Commission.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.15 HAZARDOUS MATERIALS OPERATIONS CERTIFICATION.

(1) A candidate for Hazardous Materials Operations certification ~~must~~shall successfully complete all of the requirements of Hazardous Materials Awareness as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~ or complete the hazardous materials portion of a Commission-approved recruit training program in compliance with NFPA 472 and 1072.

(2) A candidate for Hazardous Materials Operations certification ~~must~~shall successfully pass the examination(s) for Hazardous Materials Operations Certification as promulgated by the Commission.

(3) This level may be taken at the same time as Hazardous Materials Awareness Certification. If the candidate does not successfully pass the examination for Hazardous Materials Awareness Certification, the examination for Hazardous Materials Operations Certification shall not be graded and shall be discarded. Both examinations must be challenged again.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.16 AIRPORT FIREFIGHTER.

(1) An Airport Firefighter ~~must~~shall successfully complete all of the requirements for Fire Fighter II and Hazardous Materials Operations Certification as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) An Airport Firefighter ~~must~~shall successfully pass an examination(s) for Airport Firefighter as promulgated by the Commission.

***Authority:** T.C.A. §§ §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-110. **Administrative History:** Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.17 WILDLAND FIREFIGHTER I.

(1) A Wildland Firefighter I ~~must~~shall successfully complete all of the requirements for Fire Fighter I as prescribed in ~~these~~ Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Wildland Firefighter I shall successfully complete a Commission-approved training program compliant with NFPA 1051, Standard for Wildland Fire Fighter Professional Qualifications.

(~~2~~3) A Wildland Firefighter I ~~must~~shall successfully pass the examination(s) for Wildland Firefighter I as promulgated by the Commission.

***Authority:** T.C.A. §§ 4-24-106 and 4-24-107. **Administrative History:** Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.18 WILDLAND FIREFIGHTER II.

(1) A Wildland Firefighter II ~~must~~shall successfully complete all of the requirements for Wildland Firefighter I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Wildland Firefighter II shall successfully complete a Commission-approved training program compliant with NFPA 1051, Standard for Wildland Fire Fighter Professional Qualifications.

(~~2~~3) A Wildland Firefighter II ~~must~~shall successfully pass the examination(s) for Wildland Firefighter II as promulgated by the Commission.

***Authority:** T.C.A. §§ 4-24-106 and 4-24-107. **Administrative History:** Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed August 2, 2011; effective January 29, 2012. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.19 FIRE AND LIFE SAFETY EDUCATOR I.

(1) A Fire and Life Safety Educator I ~~must~~shall successfully pass the examination(s) for Fire and Life Safety Educator I as promulgated by the Commission.

***Authority:** T.C.A. §§ 4-24-106 and 4-24-107. **Administrative History:** Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.20 FIRE AND LIFE SAFETY EDUCATOR II.

(1) A Fire and Life Safety Educator II ~~must~~shall successfully complete all of the requirements for Fire and Life Safety Educator I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Fire and Life Safety Educator II must successfully pass the examination(s) for Fire and Life Safety Educator II as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 27, 2015.*

0360-03-01-.21 FIRE ~~AND LIFE~~ SAFETY ~~EDUCATOR~~COMPLIANCE OFFICER I.

(1) A Fire Safety Compliance Officer I ~~must~~shall successfully complete all of the requirements for Fire Fighter II as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and policies or be certified in compliance with T.C.A. § 68-120-113.

(2) A Fire Safety Compliance Officer I ~~must~~shall successfully pass an examination(s) for Fire Safety Compliance Officer I as promulgated by the Commission.

(3) Certification as a Fire Safety Compliance Officer I does not qualify the individual as a fire prevention and building official under T.C.A. § 68-120-113.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.22 ~~Fire Safety Compliance Officer II~~**FIRE SAFETY COMPLIANCE OFFICER II.**

(1) A Fire Safety Compliance Officer II ~~must~~shall successfully complete all of the requirements for Fire Safety Compliance Officer I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Fire Safety Compliance Officer II ~~must~~shall successfully pass the examination(s) for Fire Safety Compliance Officer II as promulgated by the Commission.

(3) Certification as a Fire Safety Compliance Officer II does not qualify the individual as a fire prevention and building official under T.C.A. § 68-120-113.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.23 FIRE APPARATUS OPERATOR I.

(1) A Fire Apparatus Operator I ~~must~~shall successfully complete all of the requirements for Fire Fighter I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~ies~~.

(2) A Fire Apparatus Operator I ~~must~~shall successfully pass the examination(s) for Fire Apparatus Operator I as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.24 PUMPER DRIVER/OPERATOR II.

(1) A Pumper Driver/Operator II ~~must~~shall successfully complete all of the requirements for Fire Fighter I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~y~~ies.

(2) A ~~-~~Pumper Driver/Operator II ~~must~~shall successfully pass the examination(s) for Pumper Driver/Operator II as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.25 AERIAL APPARATUS DRIVER/OPERATOR.

(1) An Aerial Apparatus Driver/Operator ~~must~~shall successfully complete all of the requirements for Fire Fighter I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, ~~and by Commission~~ policy~~y~~ies.

(2) An Aerial Apparatus Driver/Operator ~~must~~shall successfully pass the examination(s) for Aerial Apparatus Driver/Operator as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.26 SAFETY OFFICER.

(1) A Safety Officer must successfully complete all of the requirements for Fire Officer I as prescribed in these rules and regulations and by Commission policy.

(2) A Safety Officer must successfully pass the examination(s) for Safety Officer as promulgated by the Commission.

(3) Safety Officer will not be available after July 1, 2015 and will be replaced by Incident Safety Officer I.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.27 INCIDENT SAFETY OFFICER I.

(1) An Incident Safety Officer I shall successfully complete all of the requirements for Fire Officer I as prescribed in Commission rules, regulations, and policies.

(~~1~~2) An Incident Safety Officer I ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1521, Standard for Fire Department Safety Officer.

(~~2~~3) An Incident Safety Officer I ~~must~~shall pass the examination(s) for Incident Safety Officer I as promulgated by the Commission.

Authority: *T.C.A. ~~§§~~ §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.28 HEALTH ~~&~~AND SAFETY OFFICER I.

(1) A Health and Safety Officer I ~~must have~~shall successfully complete~~d~~ all of the requirements

for Fire Officer I as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policyies ~~Fire Officer I~~.

(2) A Health and Safety Officer I ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1521, Standard for Fire Department Safety Officer.

(3) A Health and Safety Officer I ~~must~~shall pass the examination(s) for Health ~~&~~and Safety Officer I as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.29 RESERVED.

Authority: *T.C.A §§ 4-24-101, 4-24-106(4) and 4-24-107(3).* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.30 ~~TECHNICAL~~ROPE RESCUER I.

(1) A Rope Rescuer I shall successfully complete all of the requirements of Fire Fighter I as prescribed in Commission rules, regulations, and policies.

(~~1~~2) A ~~Technical~~Rope Rescuer I ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(~~2~~3) A ~~Technical~~Rope Rescuer I ~~must~~shall pass the examination(s) for ~~Technical~~Rope Rescuer I as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.31 ~~INTERIOR STRUCTURAL FIRE BRIGADE MEMBER~~ROPE RESCUER II.

(1) A Rope Rescuer II shall successfully complete all of the requirements of Fire Fighter II and Rope Rescuer I as prescribed in Commission rules, regulations, and policies.

(~~1~~2) A Rope Rescuer II ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(~~2~~3) A Rope Rescuer II ~~must~~shall pass the examination(s) for Rope Rescuer II as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.32 CONFINED SPACE RESCUER.

(1) A Confined Space Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Confined Space Rescuer ~~must~~shall pass the examination(s) for Confined Space

Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.33 TRENCH RESCUER.

(1) A Trench Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Trench Rescuer ~~must~~shall pass the examination(s) for Trench Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~,~~ 2014; effective January 25, 2015.*

0360-03-01-.34 STRUCTURAL COLLAPSE RESCUER.

(1) A Structural Collapse Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Structural Collapse Rescuer ~~must~~shall pass the examination(s) for Structural Collapse Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~,~~ 2014; effective January 25, 2015.*

0360-03-01-.35 VEHICLE RESCUER.

(1) A Vehicle Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Vehicle Rescuer ~~must~~shall pass the examination(s) for Vehicle Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~,~~ 2014; effective January 25, 2015.*

0360-03-01-.36 SURFACE WATER RESCUER.

(1) A Surface Water Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Surface Water Rescuer ~~must~~shall pass the examination(s) for Surface Water Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~,~~ 2014; effective January 25, 2015.*

0360-03-01-.37 SWIFTWATER RESCUER I.

(1) A Swiftwater Rescuer I ~~must~~shall successfully complete a Commission-approved training

program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Swiftwater Rescuer I ~~must~~shall pass the examination(s) for Swiftwater Rescuer I as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~.~~, 2014; effective January 25, 2015.*

0360-03-01-.38 SWIFTWATER RESCUER II.

(1) A Swiftwater Rescuer II ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Swiftwater Rescuer II ~~must~~shall pass the examination(s) for Swiftwater Rescuer II as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.39 DIVE RESCUER.

(1) A Dive Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Dive Rescuer ~~must~~shall pass the examination(s) for Dive Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~.~~, 2014; effective January 25, 2015.*

0360-03-01-.40 ICE RESCUER.

(1) An Ice Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) An Ice Rescuer ~~must~~shall pass the examination(s) for Ice Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~.~~, 2014; effective January 25, 2015.*

0360-03-01-.41 SURF RESCUER.

(1) A Surf Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Surf Rescuer ~~must~~shall pass the examination(s) for Surf Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~.~~, 2014; effective January 25, 2015.*

0360-03-01-.42 WILDERNESS RESCUER.

(1) A Wilderness Rescuer ~~must~~shall successfully complete a Commission-approved training

program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Wilderness Rescuer ~~must~~shall pass the examination(s) for Wilderness Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~,~~, 2014; effective January 25, 2015.*

0360-03-01-.43 MINE AND TUNNEL RESCUER.

(1) A Mine and Tunnel Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Mine and Tunnel Rescuer ~~must~~shall pass the examination(s) for Mine and Tunnel Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~,~~, 2014; effective January 25, 2015.*

0360-03-01-.44 CAVE RESCUER.

(1) A Cave Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Cave Rescuer ~~must~~shall pass the examination(s) for Cave Rescuer as promulgated by the Commission.

Authority: T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.

0360-03-01-.45 MACHINERY RESCUER.

(1) A Machinery Rescuer ~~must~~shall successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Machinery Rescuer ~~must~~shall pass the examination(s) for Machinery Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~,~~, 2014; effective January 25, 2015.*

0360-03-01-.46 EXTERIOR INDUSTRIAL FIRE BRIGADE MEMBER.

(1) An Exterior Industrial Fire Brigade Member ~~must~~shall successfully pass the examination(s) for Exterior Industrial Fire Brigade Member as promulgated by the Commission.

Authority: *T.C.A., §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27~~,~~, 2014; effective January 25, 2015.*

0360-03-01-.47 INTERIOR STRUCTURAL FIRE BRIGADE MEMBER.

(1) An Interior Structural Fire Brigade Member ~~must~~shall successfully complete all of the requirements for Exterior Industrial Fire Brigade Member as prescribed in ~~these~~Commission rules, ~~and~~ regulations, and ~~by Commission~~ policy~~y~~ies.

(2) An Interior Structural Fire Brigade Member ~~must~~shall successfully pass the examination(s) for Interior Structural Fire Brigade Member as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.48 FIRE INSPECTOR I.

(1) A Fire Inspector I ~~must~~shall have successfully completed all of the requirements for Hazardous Materials Awareness Certification.

(2) A Fire Inspector I ~~must~~shall successfully complete all of the requirements for Fire Inspector I as prescribed in NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, and Commission rules, regulations and policy.

(3) A Fire Inspector I ~~must~~shall complete a Commission-approved training course and successfully pass the examination(s) for Fire Inspector I as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.49 FIRE INSPECTOR II.

(1) A Fire Inspector II shall successfully complete all of the requirements for Fire Inspector I.

(2) A Fire Inspector II shall successfully complete all of the requirements for Fire Inspector II as prescribed in NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, and Commission rules, regulations and policies.

(3) A Fire Inspector II shall complete a Commission-approved training course.

(4) A Fire Inspector II shall successfully pass the examination(s) for Fire Inspector II as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.

0360-03-01-.50 FIRE INSPECTOR III.

(1) A Fire Inspector III shall successfully complete all of the requirements for Fire Inspector II.

(2) A Fire Inspector III shall successfully complete all of the requirements for Fire Inspector III as prescribed in NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, and Commission rules, regulations and policies.

(3) A Fire Inspector III shall complete a Commission-approved training course.

(4) A Fire Inspector III shall successfully pass the examination(s) for Fire Inspector III as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.

0360-03-01-.~~49~~51 FIRE INVESTIGATOR I.

(1) A Fire Investigator I ~~must~~shall successfully complete all of the requirements for Fire

Investigator I as prescribed in NFPA 921, NFPA 1033, and Commission rules, regulations and policy~~y~~ies.

(2) A Fire Investigator I ~~must~~shall complete a Commission-approved training course and successfully pass the examination(s) for Fire Investigator I as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *New rule filed June 3, 2016; effective September 1, 2016.*

0360-03-01-.5~~0~~2 HAZARDOUS MATERIALS TECHNICIAN.

(1) A Hazardous Materials Technician shall successfully complete all of the requirements for Hazardous Materials Awareness Certification and Hazardous Materials Operations Certification as prescribed in NFPA 472 or NFPA 1072, and Commission rules, regulations and policy~~y~~ies.

(2) A Hazardous Materials Technician shall successfully complete all of the requirements for Hazardous Materials Technician as prescribed in NFPA 472 and Commission rules, regulations and policy~~y~~ies.

(3) A Hazardous Materials Technician shall successfully complete a Commission-approved training course and satisfactorily pass the examination(s) for Hazardous Materials Technician as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *New rule filed June 3, 2016; effective September 1, 2016.*

0360-03-01-.5~~1~~3 HAZARDOUS MATERIALS INCIDENT COMMANDER.

(1) A Hazardous Materials Incident Commander shall successfully complete all of the requirements for Hazardous Materials Technician as prescribed in NFPA 472, and Commission rules, regulations and policy~~y~~ies.

(2) A Hazardous Materials Incident Commander shall successfully complete all of the requirements Hazardous Materials Incident Commander as prescribed in NFPA 472 and NFPA 1561 and Commission rules, regulations and policy.

(3) A Hazardous Materials Incident Commander shall complete a Commission-approved training course and satisfactorily pass the examination(s) for Hazardous Materials Incident Commander as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *New rule filed June 3, 2016; effective September 1, 2016.*

0360-03-01-.54 PLANS REVIEWER I.

(1) A Plans Reviewer I shall successfully complete all of the requirements for Plans Reviewer I as prescribed in NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, and Commission rules, regulations and policies.

(2) A Plans Reviewer I shall complete a Commission-approved training course.

(3) A Plans Reviewer I shall successfully pass the examination(s) for Plans Reviewer I as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.

0360-03-01-.55 PLANS REVIEWER II.

(1) A Plans Reviewer II shall successfully complete all of the requirements for Plans Reviewer I.

(2) A Plans Reviewer II shall successfully complete all of the requirements for Plans Reviewer II as prescribed in NFPA 1031, Standard for Professional Qualifications for Fire Inspector and Plan Examiner, and Commission rules, regulations and policies.

(3) A Plans Reviewer II shall complete a Commission-approved training course.

(4) A Plans Reviewer II shall successfully pass the examination(s) for Plans Reviewer II as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.

0360-03-01-.56 FIRE MARSHAL.

(1) A Fire Marshal shall successfully complete all of the requirements for Fire Marshal as prescribed in NFPA 1037, Standard on Fire Marshal Professional Qualifications, and Commission rules, regulations and policies.

(2) A Fire Marshal shall complete a Commission-approved training course.

(3) A Fire Marshal shall successfully pass the examination(s) for Fire Marshal as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.

0360-03-01-.57 AIRCRAFT RESCUE FIREFIGHTING (ARFF) DRIVER/OPERATOR.

(1) An Aircraft Rescue Firefighting (ARFF) Driver/Operator shall successfully complete all of the requirements for Aircraft Rescue Firefighting (ARFF) Driver/Operator as prescribed in NFPA 1002, Standard for Fire Apparatus Driver/Operator Professional Qualifications, and Commission rules, regulations and policies.

(2) An Aircraft Rescue Firefighting (ARFF) Driver/Operator shall complete a Commission-approved training course.

(3) An Aircraft Rescue Firefighting (ARFF) Driver/Operator shall successfully pass the examination(s) for Aircraft Rescue Firefighting (ARFF) Driver/Operator as promulgated by the Commission.

Authority: T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.

RULES
OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING
PERSONNEL STANDARDS AND EDUCATION

CHAPTER 0360-05-01
REVOCATION OF CERTIFICATION

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0360-05-01-.01 FAILURE TO MEET CERTAIN CONDITIONS.

(1) The Commission may revoke, modify, suspend or condition its certification of an individual, a training course, or a training program if it finds, after appropriate notice and hearing, that:

(~~1~~a) the requirements for certification had not been met prior to certification; ~~or~~

(~~2~~b) any continuing responsibilities associated with certification are not being fulfilled; ~~or~~

(~~3~~c) any fraud, collusion, misrepresentation or substantial mistake was involved in the procurement of the certification~~.~~; or

(d) any involvement of a certified individual who engages in fraud, collusion, or conspiracy to subvert the certification qualification process or procure a certification for another person.

***Authority**: T.C.A. §_4-24-107.* ***Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990.*

0360-05-01-.02 SEPARATION FROM ACTIVE FIRE SERVICE.

(1) An individual's certification(s) ~~will~~shall automatically terminate upon the expiration of three (3) years after such person ceases to be an active member of a fire department. It ~~will~~shall be the responsibility of each individual fire department to notify the Commission of any fire service personnel leaving the fire department due to separation, termination, retirement, death, etc.

(2) Work for the Commission as a Commission Member or Commission staff shall constitute continued work in the fire service and shall not be considered as a separation from active fire service if that individual is no longer employed by a fire department.

(3) Personnel leaving the fire service for active military duty shall not be subject to termination of certification while on active duty as stated in this part. It ~~will~~shall be the responsibility of each individual fire department's Chief of Training to notify the Commission in writing of any fire service personnel leaving the fire department on active military duty for more than twelve (12) months. This notification shall be submitted at the end of each twelve (12) month period.

(4) The Fire Fighter I/Hazardous Materials Awareness/Hazardous Materials Operations Certificates shall terminate three (3) years from the date of certification if the candidate has not become affiliated with a department. If the candidate does become affiliated with a department, it is the responsibility of the candidate to have the Chief of the Fire Department notify the Commission Office, in writing, of the date of said affiliation.

(5) Work as a full- or part-time employee of a unit of government (local, state, or federal) in the State of Tennessee, where the job responsibilities include, but are not limited to, the training

of fire fighters, fire investigations, fire inspections or significant interaction with the fire services, shall not be considered to be a separation from active fire service. It is the responsibility of the fire fighter to provide proof to the Commission that his/her new job duties include training of fire fighters, fire investigations, fire inspections or significant interaction with the fire services in the State of Tennessee.

Authority: *T.C.A § 4-24-101 and 4-24-107.* ***Administrative History.*** *Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990 Amendment filed October 14, 1994; effective February 28, 1995; Repeal and new rule filed April 25, 2005, effective July 9, 2005; Amendment filed December 14, 2009, effective March 14, 2010; Amendment filed October 27, 2014; effective January 25, 2015.*

0360-05-01-.03 APPLICABILITY OF THE UNIFORM ADMINISTRATIVE PROCEDURES ACT.

The Uniform Administrative Procedures Act, compiled in T.C.A. Title 4, Chapter 5, shall govern all matters and procedures respecting the hearing and judicial review of any contested case arising under this chapter.

Authority: T.C.A. § 4-24-107.

RULES
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CHAPTER 0360-06-01
MISCELLANEOUS CERTIFICATION STANDARDS

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0360-06-01-.01 ADOPTION BY REFERENCE.

(1) The Commission adopts by reference the following National Fire Protection Association (NFPA) Standards in their entirety as performance standards unless otherwise provided herein:

(a) 472 Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2013 Edition;

(b) 1001 Standard for Fire Fighter Professional Qualifications, 2013 Edition;

(c) 1002 Standard for Fire Apparatus Driver/Operator Professional Qualifications, 20~~09~~17 Edition;

(d) 1003 Standard for Airport Fire Fighter Professional Qualifications, 201~~0~~5 Edition;

(e) 1005 Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters, 2014 Edition;

(f) 1006 Standard for Technical Rescuer Professional Qualifications, 2013 Edition;

(g) 1021 Standard for Fire Officer Professional Qualifications, 2014 Edition;

(h) 1031 Standard for Professional Qualifications for Fire Inspector and Plan Examiner, 2014 Edition;

(i) 1033 Standard for Professional Qualifications for Fire Investigator, 2014 Edition;

(j) 1035 Standard for Professional Qualifications for Fire and Life Safety Educator, Public Information Officer, and Juvenile Firesetter Intervention, 201~~0~~5 Edition;

(k) 1037 Standard on Fire Marshal Professional Qualifications, 2016 Edition;

(~~k~~l) 1041 Standard for Fire Service Instructor Professional Qualifications, 2012 Edition;

(~~l~~m) 1051 Standard for Wildland Fire Fighter Professional Qualifications, 20~~07~~16 Edition;

(n) 1072 Standard for Hazardous Materials/Weapons of Mass Destruction Emergency Response Personnel Professional Qualifications, 2017 Edition;

(~~m~~o) 1081 Standard for Industrial Fire Brigade Member Professional Qualifications, 2012 Edition;

(~~n~~p) 1403 Standard on Live Fire Training Evolutions, 20~~12~~18 Edition;

(~~o~~q) 1500 Standard on Fire Department Occupational Safety and Health Program, 2013 Edition; and,

(~~p~~r) 1521 Standard for Fire Department Safety Officer, 20~~08~~15 Edition.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-110. **Administrative History**: Original rule filed November 8, 1990; effective December 23, 1990. Amendment filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Amendments filed August 2, 2011; effective January 29, 2012. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Amendments and new rules filed June 3, 2016; effective September 1, 2016.*

0360-06-01-.02 REPEALED.

***Authority**: T.C.A. §§ 4-24-106 and 4-24-107. **Administrative History**: Original rule filed October 14, 1995; effective February 28, 1995. Repeal filed April 25, 2005; effective July 9, 2005.*

0360-06-01-.03 DOMESTIC VIOLENCE TRAINING.

The Commission's curriculum requirements on firefighting standards and education ~~will~~shall include materials concerning domestic violence training pursuant to T.C.A. § 4-24-111.

***Authority:** T.C.A. §§ 4-24-107 and 4-24-111. **Administrative History:** Original rule filed April 25, 2005; effective July 9, 2005.*

0360-06-01-.04 PROGRESSION.

(1) Fire service personnel who have been certified at a specific progression level may take the examination for a lower (regression) level.

(2) If an applicant who has already achieved certification at a particular level(s) under prior NFPA standards wishes to achieve certification for those levels after the date Tennessee becomes accredited, the applicant will be allowed to do so and the waiting period shall not apply. The applicant will be required to complete all the requirements for the level(s) of certification sought.

(3) Unless otherwise prescribed in these rules, an applicant may progress to the next level of certification after achieving the prior certification level.

(4) A thirty (30) day waiting period is in effect only for those dependent levels of certification that require a prerequisite level of certification prior to testing at the desired level. For example, an applicant shall be required to wait thirty (30) days between Fire Instructor I and Fire Officer I examinations because Fire Instructor I is a prerequisite for Fire Officer I. However, an applicant shall be eligible to test on the same day for both Airport Firefighter and Fire Officer I if an applicant meets the prerequisite requirements for each level because neither level of certification is a prerequisite or dependent on the other level of certification.

***Authority:** T.C.A. §§ 4-24-101 and 4-24-107. **Administrative History:** Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-06-01-.05 RECIPROCITY.

(1) Reciprocity of certification shall be considered by the Commission for applicants who have achieved certification from another agency that has achieved national accreditation from an

organization recognized by the Commission and who meet the criteria established by the Commission.

(2) The following shall be submitted to request reciprocity:

(a) Application for reciprocity with a list of certification(s) for which the applicant is requesting reciprocity;

(b) Documentation that the applicant has not been out of the fire service ~~for a period of~~within the last three (3) years or more from the date of applying for reciprocity;

(c) Proof of certification (copies of certificates). Certificates of attendance shall not constitute proof of certification; and

(d) Proof of applicant's residency in Tennessee or documentation of support, sponsorship or employment by a fire chief or department recognized pursuant to T.C.A. § 68-102-301, et seq.

(3) When considering whether to grant reciprocity to another jurisdiction's certifications, the Commission shall only grant reciprocity only if all of the following criteria are met:

~~(a) the Commission certifies an equivalent course;~~

(~~b~~a) the certification is issued by an entity accredited by IFSAC or Pro Board, the certification is in the registry of the national accrediting agency, and the certification is issued after the date the entity became accredited;

(~~c~~b) the applicant has not been out of the fire service for a period of three (3) years or more; and

(~~d~~c) the Commission receives proof of the applicant's residency in Tennessee or a letter of support, sponsorship or employment from a fire chief or recognized department employing or appointing the applicant.

(4) If reciprocity is granted, the Commission shall issue a letter recognizing the applicant's certifications in the State of Tennessee and this recognition shall meet the requirements of certification in Tennessee.

(5) For progression purposes in the Certification Program and for purposes related to Educational Incentive Pay, the date of recognition of the certification shall be used for "Date of Certification".

(6) If a fire department requires or an individual, who has received reciprocity of a level of certification, chooses to pursue certification in the State of Tennessee, the applicant shall be eligible to pursue certification but shall be required to meet all of the certification requirements ~~in force~~.

(7) The Commission shall not recognize or grant reciprocity to a certification issued by a fire department in Tennessee even if that fire department is accredited by a national accrediting agency.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-202.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Amendments filed October 27, 2014; effective January 25, 2015. Amendments and new rules filed June 3, 2016; effective September 1, 2016.*

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CHAPTER 0360-07-01
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0360-07-01-.01 MINIMUM EMPLOYMENT STANDARDS -- DEFINITIONS.

(1) All persons who are hired as a fire fighter by an eligible unit of government on or after January 1, 1986, shall:

(a) be at least eighteen (18) years of age; ~~and~~

(b) be a citizen of the United States; ~~and~~

(c) be a high school graduate or possess equivalency; ~~and~~

(d) ~~have~~ not have been convicted of any felony charge, have not pleaded guilty to any felony charge, have not entered a plea of nolo contendere to any felony charge; ~~and~~

(e) ~~have~~ not have been released or discharged for any other reason than honorable discharge from any of the armed forces of the United States; ~~and~~

(f) have no history, within the past three (3) years, of habitual intoxication and/or personal misuse of any drugs, and/or the use of intoxicating liquors, narcotics, controlled substances and/or stimulants in such a manner as to adversely affect the person's ability to perform as a fire fighter to cause discredit to the fire service; ~~and~~

(g) ~~must~~shall meet all local requirements; ~~and~~

(h) have passed a physical examination by a licensed physician which, at minimum, meets the requirements of Section E of Occupational Health and Safety Administration ("OSHA") regulation 1910.134; and

(i) have a good moral character; or

(j) have successfully appealed such cause of ineligibility to the appropriate local authority having jurisdiction.

(2) All persons hired as a fire fighter by an eligible unit of government prior to January 1, 1986, shall be considered as having met the minimum employment standards.

***Authority**: T.C.A. §§ §§ 4-24-107 and 4-24-202. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed April 25, 2005; effective July 9, 2005. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.02 FIRE FIGHTER -- DEFINITION.

(1) For the purpose of qualifying for the pay supplement, a person ~~must~~shall meet all of the following criteria:

(~~1~~a) any person in the employ of a unit of government who is a full-time employee of the department of such unit; ~~and~~

(~~2~~b) is trained in fire fighting or prevention of fires and is actively engaged in such work; and

(~~3~~c) whose primary livelihood is derived from such work.

***Authority**: T.C.A. §§ 4-24-107 and 4-24-201. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed October 14, 1994; effective February 28, 1995. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.03 RESERVED.

***Authority**: T.C.A. §§ 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed September 30, 1983; effective December 14, 1983. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed October 14, 1994; effective February 28, 1995. Repeal filed April 25, 2005; effective July 9, 2005. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.04 ENTRY LEVEL PERSONNEL.

(1) It shall be mandatory for all qualified personnel that have entered the Fire Service after December 31, 1990, to become certified, when eligible, at the Fire Fighter I level and progress when eligible through the Fire Fighter II level of certification in order to become eligible for supplemental ~~pay~~Educational Incentive Pay.

(2) The Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness and Hazardous Materials Operations certification levels ~~must~~shall be completed by the end of the calendar year in which the applicant reaches his/her thirty-sixth (36th) month of employment with a participating department. Fire Service personnel that have not obtained Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness and Hazardous Materials Operations certification after this date ~~will~~shall not be eligible for Educational Incentive Pay until said certification(s) ~~has~~have been obtained.

(3) Qualified personnel, who are separated from the fire service for a period of greater than three (3) years and then reenter the fire service, ~~must~~shall subsequently obtain certification in accordance with ~~R~~rule 0360-05-01-.02.

(4) Individuals hired into a department as Fire Safety Inspectors after December 31, 1990, and who are not trained in fire suppression may meet the requirements of this section by completing certification as prescribed by T.C.A. § 68-120-113 by the end of the calendar year in which they reach their twelfth (12th) month of employment. If an individual is hired as a Fire Safety Inspector and later transfers to fire suppression, the individual ~~must~~shall achieve Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness and Hazardous Materials Operations certifications within three (3) years after the transfer date.

(5) Individuals hired into a department as Public Fire and Life Safety Educators after December 31, 1990, and who are not trained in fire suppression may meet the requirements of this section by completing certification as Public Fire and Life Safety Educator I and Public Fire and Life Safety Educator II by the end of the calendar year in which they reach their thirty-sixth (36th) month of employment. If an individual is hired as a Public Fire and Life Safety Educator and later transfers to fire suppression, the individual ~~must~~shall achieve Fire Fighter I/Fire Fighter II/Hazardous Materials Awareness and Operations certification within three (3) years after the transfer date.

(6) The date an individual entered the fire service for participation in the educational incentive pay program shall be the date the individual joins a paid department in Tennessee that participates in the educational incentive pay program as a full-time paid fire_fighter of that department. Service as a volunteer, paid on call, part-time firefighter or other non-full-time fire_fighter shall not count toward an individual's time in the fire service as it relates to Educational Incentive Pay Program.

(7) All fire departments participating in the Educational Incentive Pay Program shall ensure to have their qualified personnel obtain the Fire Fighter II level of certification no later than the thirty-sixth (36th) month from the date the department enters into the Educational Incentive Pay Program. Department personnel that have not obtained the required certification(s), as provided in rule 0360-07-01-.04(1) and (2), shall be ineligible to receive Educational Incentive Pay until the required certification(s) have been obtained.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, 4-24-201 and 4-24-202. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed September 30, 1983; effective December 14, 1983. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Amendment filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.05 REQUIREMENTS FOR IN-SERVICE TRAINING PROGRAMS.

(1) Length of Training

(a) Certified or recognized programs ~~must~~shall be of at least forty (40) hours duration. A department may count one (1) hour for testing as part of the department's forty (40) hour in-service training program.

(b) ~~Each subject area segment of the~~ Instructer led program(s) ~~must~~shall be scheduled for not less than two (2) hours.

(c) Online/computer courses shall be a minimum of one (1) hour in duration.

(2) Appointment of Training ~~Officer~~Coordinator~~.~~

(a) Each department conducting a forty (40) hour in-service training program ~~must~~shall meet the minimum standards as defined in ~~this chapter of the~~ Commission's rules, ~~and~~ regulations, and policies.

(b) Within twelve (12) months of their appointment, each new Training ~~Officer~~Coordinator for a department participating in the Educational Incentive Pay Program ~~must~~shall attend a training session on the Commission's laws, rules, regulations, programs, policies and procedures. Commission staff may offer one-on-one training sessions at the Commission office and will hold at least one (1) regional training session in each Grand Division of the state per year.

(3) Appointment of Instructor~~.~~

(a) Instructors used for in-service training ~~must~~shall be approved by the Training ~~Officer~~Coordinator and ~~must~~shall be qualified by experience and training in the subject matter of the course to be taught except for other authorized specialized courses.

(b) Instructors are required to be certified as Fire Instructor I unless otherwise authorized.

(~~b~~c) Instructors ~~cannot~~shall not teach themselves. However, instructors of Commission-approved in-service training classes shall receive one (1) hour credit for each hour taught provided that the teaching ~~does~~shall not consist of the use of electronic media exclusively and shall require the instructor to interact with the attendees of the class to obtain credit.

(~~c~~d) Fire service personnel who serve as evaluators at Commission Sponsored ~~Hands-on~~Practical or Live Burn Practical Examinations shall receive four (4) hours Specialized Training Credit for each practical where the firefighter serves as an evaluator up to a maximum of two (2) practicals per calendar year for a maximum of eight (8) hours credit. In-house practical/live burn examinations do not qualify. One (1) In-Service Training Substitution form ~~should~~shall be submitted per evaluator for the year noting the date(s) the applicant served as an evaluator.

(4) Course Curriculum Requirements~~.~~

(a) Course curricula ~~must~~shall be based on a needs survey of the area served and courses required by the Commission. All curricula ~~must~~shall be substantially derived from the appropriate standards as set forth in the Commission's rules, Chapter 0360-06-01, with the exception of any required subject material not adequately covered in these standards and ~~must~~shall be submitted for review by the Director or his/her designee, and be approved by the Commission. At least thirty (30) days prior to commencement of training, a copy of the curriculum noting whether the instructors are certified as Fire Instructor I, or not, shall be submitted to the Commission. If the instructors are not certified as Fire Instructor I, then ~~and~~ the~~ir~~ instructors' qualifications, the dates and location of training, the dates of testing, and a copy of the testing instruments and answers, and other such data as required by the Commission, ~~must~~shall be submitted to the Commission for approval. If a course is taught by a person not certified as Fire Instructor I, then the qualifications of the instructor in the subject matter taught shall be included with the course records for Commission audit purposes.

1. All Training Programs ~~must~~shall be submitted to the Commission office for approval no later than ~~November~~October 1 of the calendar year 2014~~8~~ for the training conducted in calendar year 2015~~9~~. Thereafter, information and training programs required by the Commission ~~must~~shall be received at the Commission office ~~by November~~ no later than October 1 of the preceding calendar year in which training is to be taught. Failure to provide all information by the required date may result in a rejection of supplemental Educational Incentive ~~p~~Pay. All information shall be submitted in a form prescribed by the Commission. Peer reviews shall be performed and notification sent to departments by December 31.

2. Course dates submitted for a department's In-Service Training Program are the dates on which the courses are to be taught. However, due to unforeseen circumstances, changes ~~must~~ sometimes occur. If a change in a date is necessary less than thirty (30) days from the scheduled date, a department is to make note of the change in their program along with the reason for the change. If a change in class date is required thirty (30) or more days before the scheduled date, a written notification ~~must~~shall be sent to the Commission office with the new class date and the reason for change. The notice may be submitted by fax, ~~email~~electronically or ~~by~~ U.S. Mail.

3. If a department ~~must~~is required to provide a range of dates and locations that a particular class will be taught when submitting their In-Service Training Program, the department ~~must~~shall provide to the Commission office the exact dates, times, and locations of the classes a minimum of seventy-two (72) hours prior to the classes being taught. This notice may be submitted in a form prescribed by the Commission; however if by mail, sufficient time should be allowed so that the notice has time to arrive in the Commission office a minimum of seventy-two (72) hours in advance of the new class dates. No credit ~~will~~shall be given for classes for which the Commission office has not received advance notice of specific dates.

4. A department may not use the substantially same ~~i~~In-~~s~~Service ~~t~~Training ~~p~~Program in consecutive years.

(b) The Commission requires that the following minimum training be included in all training programs that are submitted for Commission approval:

1. at least ~~eight~~four(~~8~~4) hours each year on fire fighter health and safety ~~but not more than sixteen (16) hours on Hazardous Materials~~; and

2. at least once every three (3) years, four (4) hours of the following subjects:

~~(i) Fire fighter safety;~~

(~~ii~~i) Post Traumatic/Critical Incident Stress Training;

(~~iiii~~i) Domestic violence training/Sudden Infant Death Syndrome ("SIDS") training; ~~and~~

(iii) Hazardous Materials, no more than (16) hours/year; and

3. The Commission also requires that eligible fire fighters be currently trained and demonstrate proficiency in the skills of CPR by an agency recognized by the Commission. A maximum of four (4) hours credit toward the required forty (40) hours in-service training shall be allowed for this training.

4. ~~Should the~~If a department elects to participate in a two (2) year CPR training program, a minimum of forty (40) hours in-service training ~~will~~shall still be required in order to qualify for the Educational Incentive Pay.

~~(c) Training subjects curricula must demonstrate in-depth training and preliminary subjects that are normally found in basic training will not be acceptable.~~

(~~d~~c) Courses taught by a department on routine functions of the department (hose testing, pre-planning, pumper testing, vehicle maintenance, station maintenance, etc.) ~~will~~shall not be considered training for purposes of the ~~i~~In-~~s~~Service ~~t~~Training ~~p~~Program.

(~~e~~d) Training provided to members of a department ~~must~~shall be appropriate to a ~~firefighter~~fire fighter's rank and responsibility and the size and location of a fire fighter's department. (e.g., an Arson Investigator or Codes Enforcement Officer who has no fire suppression duties should not complete a course in fire suppression activities.)

(~~f~~e) Computerized training courses and/or Internet courses may be part of a department's In-Service Training Program but ~~must~~shall meet the following conditions:

1. The course software ~~must~~shall provide sufficient safeguards to ensure each individual claiming credit has completed his/her own work.

2. The course software ~~must~~shall prohibit the ~~student~~individual from skipping any of the courses and proceeding to the final examination.

~~3. The course software must have a final examination and the examination test bank must be, at a minimum, twice the size of the final examination. The final examination should be randomly generated from this test bank for each student completing the course. If the software cannot meet this provision, then the Training Officer is to develop a final examination for this course based upon Commission requirements for the final examination of an in-service training program to be submitted with the program.~~

~~4~~3. The ~~software~~training provider ~~must~~shall provide a Certificate of Completion for each ~~student~~individual who successfully completes the course. This Certificate ~~should~~shall be kept on file by the department for audit purposes.

~~5~~4. The ~~software~~training provider ~~must~~shall provide information that outlines the course objectives, instructional method(s), and the time it takes to complete the course. This information ~~should~~shall be briefly outlined as part of the department's In-Service Training Program.

~~6~~5. The department ~~must~~shall schedule the training in accordance with the requirements of the Commission.

~~7~~6. The Training ~~Officer~~Coordinator or a Fire Department Instructor-I ~~must~~shall be available (either in person or by telephone) during the ~~allocated training time~~normal business hours to answer any questions that an ~~student~~individual may have regarding the course.

~~8~~7. The department ~~must~~shall have audit procedures in place to ensure that an ~~student~~individual is completing his/her own work. ~~These procedures should be briefly outlined as part of the department's In-Service Training Program.~~

~~9~~8. No more than twenty (20) hours of credit will be given for computerized training.

(5) Attendance Records. Attendance records ~~must~~shall be maintained on each ~~trainee~~fire fighter in a form prescribed by the Commission and ~~must~~shall be made available for inspection upon request by the Commission or its representative. The Training ~~Officer~~Coordinator and head of the department conducting in-service training ~~must~~shall certify to the local unit of government those fire fighters who successfully completed the training, and certified records ~~must~~shall be maintained in each individual department for a period of three (3) years. Such ~~certification must~~records shall be included on a form prescribed by the Commission~~:~~.

~~(a) name (printed and signed);~~

~~(b) rank or position;~~

~~(c) Employee Identification Number or last four digits of Social Security Number;~~

~~(d) employing department;~~

~~(e) test score;~~

~~(f) title of class;~~

~~(g) number of students in class;~~

~~(h) instructor's name (printed and signed);~~

~~(i) date of course;~~

~~(j) length of course (number of hours of course and time it was instructed);~~

~~(k) test date; and~~

~~(l) the instructor must void any unused lines on the Class roster by drawing a line through each line and writing the word "VOID."~~

(6) Testing Instrument~~.~~

(a) Multiple testing instruments ~~must~~shall be designed to assure that the same ~~test~~examination is not administered to two (2) consecutive training sessions using the same curriculum. The ~~test must~~examination shall be in the form of multiple choice questions and a separate ~~test~~examination administered to cover each unique course of instruction in the training program. Each ~~test must~~examination shall contain the greater of ten (10) questions relating to a course of instruction or one (1) question relating to each hour of course instruction~~.~~ (e.g., sixteen (16) hazardous materials questions for a sixteen (16)-hour hazardous materials course~~.~~). The ~~tests~~examinations may be administered either independently or in a single cumulative ~~test~~examination at the conclusion of the training program. If a cumulative ~~test~~ option is selected, the ~~test must~~examination shall be divided by section of each unique course of instruction.

(b) ~~Test~~ aAnswer sheets ~~must~~shall follow a format which ~~must show~~contains the following:

1. name;

~~2. rank or position;~~

~~3~~2. Employee Identification Number or ~~last four digits of Social Security~~Public Safety Identification (PSID) Number;

~~4~~3. employing department; and

~~5~~4. score ~~of the trainee~~.

(c) Testing Instruments which combine the questions with the answer sheet ~~will~~shall not be accepted for grading. Answer sheets ~~must be separate and must~~shall be maintained as a record for at least three (3) years and shall be submitted to the Commission office upon request by the Commission.

(d) Each ~~test~~examination covering a course of instruction ~~should~~shall be developed, administered and scored by the Training ~~officer~~Coordinator or Instructor. Each ~~trainee must~~individual shall score at least seventy percent (70%) on each ~~test~~examination. Only one retest will be allowed for individuals failing to achieve seventy percent (70%). If administered as a single cumulative ~~test~~examination, each ~~trainee must~~individual shall score at least seventy percent (70%) on each section of the ~~test~~examination. If the ~~trainee~~individual fails any section of the ~~test~~examination, the ~~trainee can~~individual may retest one (1) time on each section.

(7) Approval of Specialized Schools/Courses~~.~~

(a) If a fire fighter attends a specialized school appropriate to his rank (or position) and responsibility, the eligibility of the school ~~must~~shall be approved by the Commission

office. Only schools of a fire service related nature of at least two (2) hours in duration, except for approved online courses and curriculum for which one (1) hour is acceptable, will be considered for in-service credit toward meeting the forty (40) hour training requirement. When submitting a course for Commission approval, the department shall indicate the NFPA Standard Number and Section that is applicable to the course being submitted. When applicable, the course will be submitted by March 1 for pre-approval by the Commission office. In cases where the curriculum and instructors are unknown and when admittance is by short notice, the curriculum and proof of successful completion will be submitted after the course is completed.

(b) If no ~~test~~examination is administered, the attending fire fighter should submit to his Training ~~Officer~~Coordinator a detailed evaluation of the course and a correlation sheet showing how their coursework meets the appropriate NFPA Standard. If satisfied that the training was valid and beneficial, the Training ~~Officer should~~Coordinator shall submit a statement to that effect, along with a copy of the report, to the Commission office. If this is not done, no credit ~~will~~shall be given.

(c) In-service credit requests will be reviewed and may be granted for an individual fire fighter for the current training year only, if the course is relevant to his duties and responsibilities.

(d) In some instances, the above type training session may be combined with the regularly scheduled and Commission-approved forty (40) hour in-service training sessions. If this is done, the attending fire fighter ~~must~~shall be tested on those hours attended in the departmental forty (40) hour program. This will necessitate the local ~~t~~Training ~~officer~~Coordinator being responsible for identifying the appropriate questions involved in the Commission-approved testing instrument.

(e) Fire service personnel attending the National Fire Academy and successfully completing courses taught on campus will be given credit. In addition, ~~Hazardous Materials training is required annually and~~ a current CPR certification is required in order to be qualified for ~~the~~ Educational Incentive Pay.

(8) Approval of Fire Courses (Colleges and Universities).

(a) Any fire fighter who successfully completes a fire related course (or courses) at any accredited institution, institution of higher education, college or university, may be considered for annual fulfillment of all or a portion of the required forty (40) hour in-service training, not to include the eight (8) hours of hazardous material training or the CPR certification requirements as provided for in the provisions herein and approved by the Commission.

(b) Course completion toward credit for the annual forty (40) hour in-service training requirements may be met by completing three (3) semester hours (45 classroom hours) or four (4) quarter hours (40 class-room hours) of instruction with a passing grade. The completion date of the course ~~must~~shall be within the calendar (training) year for which in-service training credit is sought.

(c) Applicants for in-service training credit under these provisions ~~must~~shall have the approval of the department head and ~~must~~shall submit the required Commission form for consideration to the Commission office. When submitting a course for Commission approval, the department shall indicate the NFPA Standard Number and Section that is applicable to the course being submitted.

(d) In some instances, the above type training hours may be combined with the regularly scheduled and Commission-approved forty (40) hour in-service training sessions. If this is done, the attending fire fighter ~~must~~shall be tested on those hours attended in the departmental forty (40) hour program. This will necessitate the local Training

~~Officer~~Coordinator being responsible for identifying the appropriate questions involved in the Commission-approved testing instrument.

(e) Final approval by the Commission is contingent upon official notification from the institution in which the course was completed with a passing grade.

(9) Approval of Certification Programs.

(a) Fire fighters completing the required number of hours of preparation training, certified by the training officer, and successfully passing the appropriate progression level examination in the Commission's certification program within the calendar year for which training is sought, shall be considered as having fulfilled the forty (40) hour in-service requirement and therefore eligible for the supplemental pay.

(b) Any fire fighter qualifying for in-service training credit in this manner ~~must~~shall also meet the ~~eight~~four (~~8~~4) hours of ~~hazardous material~~fire fighter health and safety training requirements and the CPR certification requirements as provided in these rules.

(10) Emergency Medical Training

(a) Emergency Medical Training shall be considered meeting the requirements of in-service training so long as all other mandatory programs, as provided in these rules, are met.

(b) No more than sixteen (16) hours of credit ~~will~~shall be awarded for this training.

(11) Records Storage

(a) All department records related to the Educational Incentive Pay Program shall be kept by the department in a secure location. Access to the records shall be limited to the fire chief, the chief of training or their designee.

(b) Any department that maintains training records via computer or other electronic means~~,~~ ~~must~~shall submit a request to the Commission office~~ in writing~~. The department's electronic records ~~may~~shall be subject to audit by the Commission. The department ~~must~~shall describe the electronic records system, identifying the security safeguards that are in place.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, 4-24-111, and 4-24-202.* ***Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed October 14, 1994; effective February 28, 1995. Amendments filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.06 PAYMENT PROCEDURES.

(1) The Commission shall disburse to eligible units of government the Educational Incentive Pay awarded to fire fighters who have established eligibility for such under the provisions of the Commission's rules and regulations. The disbursement of these funds shall be subject to all of the following conditions:

_____(~~1~~a) The Educational Incentive Pay ~~will~~shall be based on the availability of funds appropriated by the General Assembly.

_____(~~2~~b) Payment will be made only upon request by the unit of government and upon submission of the necessary documentation by the administrative officer of the eligible department.

_____(~~a~~1.)Proof of the successful completion of a Commission-approved training program, by submission of a copy of the following forms by March 1 of the calendar year:

_____~~1.~~(i) Educational Incentive Pay Request;

_____~~2.~~(ii) In-Service Training Report;

_____~~3.~~(iii) Notarized Statement of Fire Chief attesting to accuracy and completeness of the information~~,~~; and

_____~~4.~~(iv) Training Substitution Forms for previous year.

_____(~~3~~2.) Payment ~~will~~shall be made in a lump sum directly to the governmental entity handling salary accounts for the eligible departments.

_____(c) No payment shall be made after the end of the fiscal year, June 30, unless such payment is authorized by the departments of commerce and insurance and finance and administration.

_____(~~4~~d) It ~~will~~shall be the responsibility of the unit of government to disburse the funds to the individual fire fighters after the deduction of the applicable taxes.

_____(~~5~~e) The unit of government ~~is~~shall be responsible for any increase in the employer's contribution to social security or like programs necessitated by the increase in the employee's annual base earnings.

_____(~~6~~f) Members of the Fire Service shall not be eligible for supplement pay from more than one (1) agency.

_____(~~7~~g) Effective ~~January~~August 31, 201~~5~~8, information and training ~~P~~programs required by the Commission ~~must~~shall be received at the Commission office by ~~November~~October 1 of the preceding calendar year in which training is to be taught. Failure to provide all information by the required date may result in a rejection for supplemental pay.

_____(~~8~~h) Departments submitting a certified list of eligible names of fire fighters who have qualified themselves for the forty (40) hour in-service training, Educational Incentive Pay, ~~must~~shall also certify to the Commission that each qualifying individual is a member of the department whose name was on the department payroll as of December 31, of the calendar year in which training was received.

If a qualifying individual is separated from the fire service for any of the following reasons, after becoming qualified, they will be considered as having met the December 31 employment requirements if they:

___~~(a)~~1. become eligible and accept a service retirement and begin drawing retirement benefits; ~~or~~

___~~(b)~~2. become eligible and accept a disability retirement; or

___~~(c)~~3. die while employed.

_____(~~9~~i) All requests for supplemental pay ~~must~~shall be submitted to the Commission office by certified mail and postmarked no later than March 1 of each calendar year.

___~~(a)~~1. The Commission ~~will~~shall not grant a waiver of this date for two (2) consecutive years.

___~~(b)~~2. A department shall have fifteen (15) calendar days from the date it receives notice

that a correction is required to their request for Educational Incentive Pay to make the necessary correction and return the request to the Commission.

(c)3. Departments may submit additions to their requests for supplemental pay for up to sixty (60) days from the date Educational Incentive Pay checks were mailed to departments if not later than June 30. Payment of these additions is contingent upon availability of funds.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-202. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.07 WAIVER.

(1) The Commission shall only consider requests to waive the following rules and regulations:

(a) the waiting periods between certifications in Rrules 0360-02-02 and 0360-03-01;

(b) the deadline for submission of training programs for approval in Rrule 0360-07-01-.05(4); and

(c) the deadline for submitting requests for supplemental pay in Rrule 0360-07-01-.06(9).

(2) When considering whether good cause has been shown to grant a waiver pursuant to this rule, the Commission may consider, but is not limited to, the following:

(a) hardships on departments through time, staffing, budget or facilities limitations;

(b) unavailability of qualified instructors or test proctors due to financial, staffing or time constraints;

(c) inclement weather, natural disasters, etc.; and

(d) illness, injury or disability of training officer that causes the department to miss the submission deadlines in rule 0360-07-01(4) and (9).

(3) A waiver shall not be granted in two (2) consecutive years.

(4) A request for a waiver mustshall be submitted in writing.

***Authority**: T.C.A. §§ 4-24-101 and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed December 14, 2009; effective March 14, 2010. Amendment filed October 5, 2010; effective March 31, 2011. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.08 AUDIT.

(1) All accounts shall be subject to audit by the State Comptroller.

(2) All records pertaining to the Educational Incentive Pay Program shall be available for inspection by a member of the Commission or its staff and shall be kept for three (3) years after the Educational Incentive Pay was issued.

(3) An audit committee of the Commission, made up of the Director and a Commission Member or a Commission-approved designee, shall review the Educational Incentive Pay Program records of a minimum of ten percent (10%) of departments participating in the Educational Incentive Pay Program each year. Departments subject to review each year will be

~~chosen~~selected at random~~ by each Commission member drawing a minimum of two (2) departments to audit after all Educational Incentive Pay requests have been received~~.

(a) The audit committee shall present its findings to the Commission for consideration. The audit committee shall review the records of the department to ensure compliance with Commission rules, including, but not limited to:

1. "In-Service Training Verification Sheets" are signed;

2. attendance records were properly filled out as required by rule 0360-07-01-.05(5);

3. ~~test~~examination records were properly graded and filled out as required by rule 0360-07-01-.05(6);

4. records required by NFPA 1001, Chapter 4 are properly maintained; and

5. electronic records, if kept, are properly maintained and secured.

(b) The audit committee ~~should~~shall make one (1) of the following recommendations to the Commission:

1. Audit was in compliance with Commission requirements~~.~~;

2. No action required. This ~~would be used~~ recommendation is for a minor infraction. Committee counselled the department on the corrective actions needed~~.~~;

3. Informal Review. This ~~would be used~~recommendation is for minor infractions that the committee ~~felt~~determines need~~ed~~s to be reviewed to ensure corrective action was taken. This review would only encompass the areas that needed reviewing and ~~would be done~~shall be performed by the participants of the original audit~~.~~;

4. Probation. This ~~would be used~~recommendation is for more significant infractions. The committee ~~would~~shall recommend that the department be audited again for a period ranging from one (1) to three (3) years~~.~~; or

5. Formal Hearing. The Committee ~~feels~~has information that a major violation of the Commission's rules or state statute ~~has~~may have occurred~~;~~, and ~~would recommend~~ a hearing ~~under the Commission's Rules and Regulations~~ for formal discipline~~ary~~ action under the Commission's rules, regulations and policies is justified.

(c) When making its report to the Commission, the Committee may make any additional comments and recommendations ~~it feels~~which are appropriate, but the above ~~are the~~ general guidelines are to be used. The Commission~~er~~ or Commission~~er~~'s designee shall send each audited ~~D~~department a copy of the completed audit report.

(4) Commission staff and Commission ~~M~~members may conduct unannounced visits to departments' training classes. The visit ~~will~~shall not disrupt the training session; however information may be solicited from the participants and/or instructor during a break or after the class. Documentation ~~will~~shall be completed about the visit and filed with that department's In-Service Training Program for that year. If training is not being conducted as scheduled, that department will be invited to the next regularly scheduled Commission meeting to offer an explanation.

(5) If a department is found in compliance for two (2) immediately preceding, consecutive years of audits, then its selection for a third (3rd) consecutive audit will be nullified and void.

(6) All new fire departments entering into the incentive pay program shall be audited in the first (1st) year of their participation in the program. The new fire departments will not count toward the ten percent (10%) requirement for audits of fire departments in the incentive pay program.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History****: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.09 DISCIPLINARY MATTERS.

(1) The Commission may revoke, modify, suspend or condition the educational incentive pay, to the unit of government, or governmental entity handling salary accounts for the otherwise eligible departments, if it finds, after appropriate notice and hearing, that;

(a) the requirements for the salary pay supplement had not been met as per the Commission's Rules and Regulations.

(b) any fraud, collusion, misrepresentation or substantial mistake was involved in the procurement of the educational incentive pay.

Authority*: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-201.* ***Administrative History****: Original rule filed October 14, 1994; effective February 28, 1995. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.10 PROSECUTION OF FALSE CLAIMS FOR EDUCATIONAL INCENTIVE PAY.

(1) As an added measure to guard against the misuse of State funds, the Fire Fighting Commission and staff will vigorously seek criminal prosecution through the State Attorney General's Office against any individual or individuals it finds have engaged in fraudulent conduct or false representation in connection with the completion of training requirements in order to unjustly obtain educational incentive pay.

(2) The Commission will recognize the possibility of inadvertent mistakes involved in a Department's record keeping, and after close scrutiny of such facts will make the proper recommendation to such Department involved and seek immediate reimbursement of such funds erroneously paid due to the Department's oversight. If such reimbursement is not immediately forthcoming, the Fire Fighting Commission and Staff will commence legal action accordingly.

Authority*: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-201.* ***Administrative History****: Original rule filed October 14, 1994; effective February 28, 1995. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

0360-07-01-.11 THROUGH 0360-07-01-.18 RESERVED.

Authority*: T.C.A. § 4-24-107.* ***Administrative History****: Original rule filed August 27, 1979; effective October 10, 1979. Repeal filed November 8, 1990; effective December 23, 1990. Repeal and new rule4 filed October 27, 2014; effective January 25, 2015.*

* 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)
Brian Biggs	X				
Tommy Kelly	X				
Darryl Kerley	X				
Jay Moore	X				
Stephanie Specht	X				
Matthew Sorge	X				
David Windrow	X				
Michael Naifeh				X	
Toran Hedgepath				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Fire Fighting Personnel Standards and Education Commission (board/commission/ other authority) on 09/13/2017 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: 07/28/2017

Rulemaking Hearing(s) Conducted on: (add more dates). 09/13/2017

Date: 5/31/2018

Signature:

Name of Officer: Joseph Underwood

Title of Officer: Chief Counsel for Fire Prevention & Law Enforcement

Subscribed and sworn to before me on: 5/31/18

Notary Public Signature:

My commission expires on: 12/16/20

DAVID COMBS
STATE OF TENNESSEE NOTARY PUBLIC
WILSON COUNTY
MY COMMISSION EXPIRES 12-16-2020

Agency/Board/Commission:

Rule Chapter Number(s):

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

7/23/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/27/18

Effective on: 10/25/18

Tre Hargett
Secretary of State

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PUBLIC DOCUMENTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Mental Health and Substance Abuse Services
DIVISION:	Substance Abuse Services
SUBJECT:	Controlled Substances
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403; 21 U.S.C. § 812; and 21 C.F.R. 1308.
EFFECTIVE DATES:	October 3, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The lists of controlled substances for all schedules were revised to ensure consistency with Part 1308 of Title 21 of the Code of Federal Regulations (C.F.R.) and T.C.A. §§ 39-17-406, 39-17-408, 39-17-410, 39-17-412, 39-17-414, and 39-17-416. 0940-06-01-.01 names controlled substances within Schedule I including opiates, opium derivatives, hallucinogenic substances, depressants, and stimulants. Specific Fentanyl derivatives and analogues have been added to Schedule I. Additionally, descriptions of possible future analogues and derivatives were added to ensure that all derivatives and analogues that meet this description are automatically scheduled (see TDMHSAS findings included with this document). Finally, certain cannabimimetic agents have been added. 0940-06-01-.02 names controlled substances within Schedule II including opium and opiates, substances produced by extraction from vegetable origin or chemical synthesis, opiates, stimulants, depressants, hallucinogenic substances, immediate precursors to amphetamine and methamphetamine, and PCP. 0940-06-01-.03 names controlled substances within Schedule III including stimulants, depressants, nalorphine,

narcotic drugs, anabolic steroids, and hallucinogenic substances.

0940-06-01-.04 names controlled substances within Schedule IV including narcotic drugs, depressants, fenfluramine, and stimulants.

0940-06-01-.05 names controlled substances within Schedule V including narcotic drugs containing non-narcotic active medicinal ingredients, stimulants, and depressants. Gabapentin, although not federally scheduled, has been scheduled as a Schedule V controlled substance in this rule (see TDMHSAS findings included with this document).

0940-06-01-.06 names controlled substances within Schedule VI including marijuana and tetrahydrocannabinols.

0940-06-01-.07 names controlled substances within Schedule VII including butyl nitrite and any isomer of butyl nitrite.

0940-06-01-.08 incorporates by reference exclusions for non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22 including those sold lawfully over the counter without a prescription.

0940-06-01-.09 names chemical preparations excluded from controlled substances.

0940-06-01-.10 names veterinary anabolic steroid implant products excluded from controlled substances.

0940-06-01-.11 names prescription products excluded from controlled substances.

0940-06-01-.12 names anabolic steroid products excluded from controlled substances.

0940-06-01-.13 names certain cannabis plant material, and product made therefrom, excluded from controlled substances.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

See attached memo.

STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES
ANDREW JACKSON BUILDING, 6th FLOOR
500 DEADERICK STREET
NASHVILLE, TENNESSEE 37243

BILL HASLAM
GOVERNOR

MARIE WILLIAMS
COMMISSIONER

MEMORANDUM

TO: Marie Williams, LCSW
Commissioner, TDMHSAS

FROM: Jim Layman
Rules Coordinator, Division of Planning, Policy & Legislation, TDMHSAS

DATE: December 12, 2017

RE: Public Hearing for 0940-06-01 Controlled Substances rulemaking activity

On Monday, December 11, 2017, the Tennessee Department of Mental Health and Substance Abuse Services ("the Department") held a public hearing re: proposed changes to Rules Chapter 0940-06-01 Controlled Substances. The Department did not receive any oral or written comments during this public hearing or during the time period designated for accepting comments re: Rules Chapter 0940-06-01 Controlled Substances.

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.

These rules will not affect small businesses. Although, some pharmacies qualify as small businesses, the changes to the controlled substances schedules promulgated by these rules should not change the daily operations of those pharmacies.

Economic Impact Statement

1) The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.

   These rules will not affect 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 will not affect reporting, recordkeeping, or other administrative costs of small businesses.

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

   These rules will not affect small businesses.

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 is no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rules.

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

   These rules compare favorably with the federal controlled substances schedules as T.C.A. § 39-17-403 requires the Tennessee Department of Mental Health and Substance Abuse Services (TDMHSAS) to schedule substances if those substances have been designated as controlled substances by federal regulations promulgated by the U.S. Department of Justice Drug Enforcement Administration (DEA), unless TDMHSAS, upon agreement with the Tennessee Department of Health (TDH), decides otherwise. Additionally, these rules mirror the statutory controlled substances schedules recently approved by the Tennessee General Assembly (Senate Bill 2258/House Bill 1832).

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 will not affect 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

TDMHSAS believes that these rules will not have a projected 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 lists of controlled substances for all schedules were revised to ensure consistency with Part 1308 of Title 21 of the Code of Federal Regulations (C.F.R.) and T.C.A. §§ 39-17-406, 39-17-408, 39-17-410, 39-17-412, 39-17-414, and 39-17-416.
0940-06-01-.01 names controlled substances within Schedule I including opiates, opium derivatives, hallucinogenic substances, depressants, and stimulants. Specific Fentanyl derivatives and analogues have been added to Schedule I. Additionally, descriptions of possible future analogues and derivatives were added to ensure that all derivatives and analogues that meet this description are automatically scheduled (see TDMHSAS findings on p. 35 of this document). Finally, certain cannabimimetic agents have been added.
0940-06-01-.02 names controlled substances within Schedule II including opium and opiates, substances produced by extraction from vegetable origin or chemical synthesis, opiates, stimulants, depressants, hallucinogenic substances, immediate precursors to amphetamine and methamphetamine, and PCP.
0940-06-01-.03 names controlled substances within Schedule III including stimulants, depressants, nalorphine, narcotic drugs, anabolic steroids, and hallucinogenic substances.
0940-06-01-.04 names controlled substances within Schedule IV including narcotic drugs, depressants, fenfluramine, and stimulants.
0940-06-01-.05 names controlled substances within Schedule V including narcotic drugs containing non-narcotic active medicinal ingredients, stimulants, and depressants. Gabapentin, although not federally scheduled, has been scheduled as a Schedule V controlled substance in this rule (see TDMHSAS Findings on p. 36 of this document).
0940-06-01-.06 names controlled substances within Schedule VI including marijuana and tetrahydrocannabinols.
0940-06-01-.07 names controlled substances within Schedule VII including butyl nitrite and any isomer of butyl nitrite.
0940-06-01-.08 incorporates by reference exclusions for non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22 including those sold lawfully over the counter without a prescription.
0940-06-01-.09 names chemical preparations excluded from controlled substances.
0940-06-01-.10 names veterinary anabolic steroid implant products excluded from controlled substances.
0940-06-01-.11 names prescription products excluded from controlled substances.
0940-06-01-.12 names anabolic steroid products excluded from controlled substances.
0940-06-01-.13 names certain cannabis plant material, and product made therefrom, excluded from controlled substances.

(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;

21 U.S.C. 812: Establishes schedules of controlled substances.
21 C.F.R. 1308: Contains schedules of controlled substances set forth by the U.S. Department of Justice Drug Enforcement Administration.
T.C.A. § 4-4-103: Empowers the Commissioner of each department to prescribe regulations.
T.C.A. § 33-1-302: Empowers the Department to make and enforce rules necessary for the efficient financial management and lawful operation of facilities and services.
T.C.A. § 33-1-303: Defines powers of the Commissioner including rulemaking authority.
T.C.A. § 33-1-305: Empowers the Commissioner of the Department of Mental Health and Substance Abuse Services to adopt rules to fulfill the Department's responsibilities.
T.C.A. § 33-1-309: Requires the Department to adopt all rules in accordance with the Uniform Administrative Procedures Act.
T.C.A. § 39-17-403: Requires the Commissioner of the Department of Mental Health and Substance Abuse Services, upon agreement of the Commissioner of the Department of Health, to control substances according to certain guidelines.

(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 rule affects healthcare professionals and pharmacies; as well as the TN Boards of Nursing, Medical Examiners, and Pharmacy; the TennCare Inspector General and the TN Bureau of Investigation. The Department did not receive any comments from these groups regarding this rule during the rulemaking hearing held for this rule on December 11th, 2017.

(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;

There are no opinions of the Attorney General and Reporter that directly relate to these rules.

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

It is estimated that these rules will not have a fiscal impact on state and local government revenues and expenditures.

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

Wesley Geminn, Chief Pharmacist, TDMHSAS
Jim Layman, Legislative Liaison & Rules Coordinator, TDMHSAS

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

Wesley Geminn, Chief Pharmacist, TDMHSAS
Jim Layman, Legislative Liaison & Rules Coordinator, TDMHSAS

(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

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

N/A

Tennessee Department of Mental Health and Substance Abuse Services Findings of the Potential for Abuse of Fentanyl Derivatives and Analogs

1. The actual or relative potential for abuse:

Fentanyl derivatives and analogs include a 4-anilidopiperidine structure that is chemically related to the synthetic opioid, fentanyl. Fentanyl is a widely prescribed analgesic drug with a known abuse potential while many of its derivatives and analogs currently do not have an accepted medical use in the United States. While certain analogs, such as carfentanil, remifentanil, sufentanil, and alfentanil do have medically accepted uses in the U.S., they are tightly regulated controlled substances and are the only fentanyl analogs with this status. Due to fentanyl derivatives and analogs being synthetic opioids, they have analgesic effects but their mechanism of action in the central nervous system causes a high potential for abuse and may lead to dependence.

2. The scientific evidence of its pharmacological effect, if known:

Fentanyl derivatives and analogs that contain a 4-anilidopiperidine structure act on the mu-opioid receptors in the central nervous system leading to effects including analgesia, mood alterations, euphoria, dysphoria, and drowsiness similar to other opioid analgesics. Repeated exposure to fentanyl derivatives and analogs can lead to dependence, addiction, respiratory depression, unconsciousness, and even death.

3. The state of current scientific knowledge regarding the substance:

Fentanyl was first developed in 1959 in the U.S. by Janssen Pharmaceuticals. The majority of current scientific knowledge regarding fentanyl derivatives and analogs is due to the study of the FDA approved fentanyl-related products including fentanyl itself, carfentanil, remifentanil, sufentanil, and alfentanil.

4. The history and current pattern of abuse:

A 2016 DEA report stated that hundreds of thousands of counterfeit pills containing deadly amounts of fentanyl and fentanyl analogs have been entering the U.S. market since 2014. The DEA National Forensic Laboratory Information System reported that from 2014 to 2015, the number of drug submissions testing positive for acetyl fentanyl increased from 463 in 2014 to 1,870 in 2015. As well, they reported an increase in submissions testing positive for furanyl fentanyl of 244 from January to July 2016.[2]

5. The scope, duration and significance of abuse:

Fentanyl derivatives and analogs have a similar pharmacological profile to the fentanyl opioid class. According to a 2016 CDC report, there were over 20,000 overdose deaths related to synthetic opioids, and fentanyl analogs were present in greater than 10% of all opioid-related deaths in 4 of the 10 states included in the study.[3]

6. The risk to the public health:

Fentanyl derivatives and analogs may be abused or may be used in combination with other illicit drugs to produce additive effects. These substances are commonly found mixed in street drugs, such as heroin and cocaine, and can increase the risk of death. The increased risk of death is due to the fact that a small amount can induce respiratory depression and unconsciousness, especially when mixed with other opioids, benzodiazepines, and other drugs that depress the respiratory system. Stricter laws around fentanyl derivatives and analogs may reduce the risk to public health by allowing law enforcement to prosecute anyone possessing or modifying these substances.

7. The potential of the substance to produce psychic or physiological dependence liability:

In comparison studies, fentanyl derivatives and analogs have been shown to have varying potencies with upwards of 10,000 times more analgesic potency than morphine.[4] Dependence may develop with regular use of opioids, which may precipitate withdrawal syndrome when the drug is discontinued.

8. Whether the substance is an immediate precursor of a substance already controlled under this section:

This substance is not an immediate precursor of a substance already controlled in Tennessee. Although these are analogs, the chemical structures of fentanyl derivatives and analogs do not put them under our previous actions for controlling analogs and precursors to controlled substances.

---

[1] FAQ's-Fentanyl and Fentanyl-Related Substances. *DEA*. https://www.dea.gov/druginfo/fentanyl-faq.shtml
[2] Influx of Fentanyl-laced Counterfeit Pills and Toxic Fentanyl-related Compounds Further Increases Risk of Fentanyl-related Overdose and Fatalities. *CDC*. Aug 2016. https://emergency.cdc.gov/han/han00395.asp
[3] O'Donnel, Julie K, et al. Deaths Involving Fentanyl, Fentanyl Analogs, and U-47700 – 10 States, July-December 2016. *Morbidity and Mortality Weekly Report*. Oct 2017. https://www.cdc.gov/mmwr/volumes/66/wr/pdfs/mm6643e1-H.pdf
[4] DEA Issues Carfentanil Warning to Police and Public. *DEA*. Sept 2016. https://www.dea.gov/divisions/hq/2016/hq092216.shtml

Tennessee Department of Mental Health and Substance Abuse Services
Findings of the Potential for Abuse of Gabapentin

1. The actual or relative potential for abuse:

Gabapentin (Neurontin®) is in the same drug class as Pregabalin (Lyrica®) which is a schedule V controlled substance. Gabapentin is thought to have a lesser potential for abuse due to its slower onset, but its misuse has greatly increased in the last few years.

Gabapentin has been found to have powerful sedative and psychedelic effects in many patients and its effects are likened to a "super amphetamine rush". Misusers of the drug report that it makes them feel more active, increasingly friendly, and disinhibited. Gabapentin can be combined with other drugs such as baclofen, cannabis, alcohol, selective serotonin reuptake inhibitors, lysergic acid diethylamide, amphetamine and *gamma*-hydroxybutyric acid to augment its more desirable side effects.[1] Consumer websites report several experiences of gabapentin misuse in order to "feel high." According to these consumer reports, gabapentin effects are close to those of marijuana and can appear with low doses.[4]

Another factor that likely promoted abuse potential of Gabapentin would be its easy procurement. It can be obtained on the web without the need of a medical prescription through black market web-based pharmacies. Furthermore, the two major sources of gabapentin were physicians (52%) and drug dealers (36%), and street costs were reported to be less than $1.00 per pill.[1]

Different motivations for improper use of gabapentin are as follows: motivation for getting "high", alleviation of opioid withdrawal symptoms and potentiating a methadone high. A strong relationship between opioid use disorder and gabapentin abuse has been reported (a study in former inmates). Problems related to the improper use of gabapentin can lead to toxicity and death, especially when mixed with other drugs.

Although gabapentin is not scheduled at the federal level, the following states have scheduled gabapentin as a controlled substance: Kentucky. Other states, like Ohio, have not scheduled gabapentin, but has increased its monitoring by requiring it to be reported to their prescription monitoring program.

2. The scientific evidence of its pharmacological effect, if known:

Gabapentin is indicated for postherpetic neuralgia in adults and as adjunctive therapy in the treatment of partial onset seizures, with and without secondary generalization, in adults and pediatric patients 3 years and older with epilepsy.[6]

While its exact mechanism of action remains unknown, it is thought to work by reducing synaptic transmission thereby decreasing presynaptic voltage-gated Ca2+ and Na+ channels.[1] It is classified as a 'GABA analog" and is structurally related to GABA, but it does not bind to the GABA receptors or affect GABA binding, uptake, or degradation.[2]

A recent review of clinical trials of gabapentin stated that the most common side effects of gabapentin were somnolence, dizziness, ataxia, and fatigue.[6]

3. The state of current scientific knowledge regarding the substance:

Gabapentin was approved in the United States in 1993 for the treatment of seizure disorder, but since that time, it has increasingly been prescribed for a number of other conditions, including diabetic neuropathy and mood stabilization.

4. The history and current pattern of abuse:

In a cohort of 503 adults reporting current, nonmedical use of diverted prescription opioids in Appalachian Kentucky (and not presently in substance abuse treatment), 15% of participants identified using gabapentin specifically "to get high" in the past 6 months. This represents a 165% increase in use compared with reports from 1 year prior and a 2,950% increase since 2008 within this cohort. Participants reported using gabapentin an average of 25 of the past 30 days and were more likely than nonusers to be abusing immediate-release oxycodone. Females and those with chronic medical conditions were significantly more likely to abuse gabapentin.[3]

Gabapentin use has been reported among opioid abusers to enhance the effects of the opioids. Some cocaine users have used it—either alone or with quetiapine—as a substitute for cocaine or to avoid cocaine withdrawal symptoms.

5. The scope, duration and significance of abuse:

A retrospective study was conducted using electronic poison center data in order to evaluate clinical effects of newer anticonvulsant overdose, determine if a relationship exists between dose and clinical effect, and if a particular agent appears more toxic in overdose. Out of 501 cases identified, 347 met the final inclusion criteria (no polydrug overdose, no children, etc). There were **116 gabapentin**, 67 lamotrigine, 15 levetiracetam, 15 tiagabine, 56 topiramate, 23 pregabalin, and 55

oxcarbazepine cases.[5] In this study, gabapentin was found to be the most prevalent medication involved in anticonvulsant overdose.

6. The risk to the public health:

To the extent that gabapentin may be abused or may be used in concert with other drugs producing addictive results, it may be a risk to the public health.

7. The potential of the substance to produce psychic or physiological dependence liability:

There have been several case reports in the literature describing the potential effects of withdrawal from gabapentin. The onset of withdrawal symptoms in each of these patients began between 12 hours and 7 days after cessation of use, with the majority of cases occurring between 24 and 48 hours. More than half of the reported withdrawal symptoms consisted of some form of agitation. Confusion and disorientation were the next most frequent symptoms, occurring in 45% of the cases. In those patients for whom gabapentin was reinitiated (n = 18), all symptoms resolved.[2]

A study in 2007 found that a patient presented to the hospital with: 1) tolerance, 2) withdrawal syndrome, and 3) consumption of a dose larger than the one prescribed after taking a large amount of gabapentin. These three things indicate a dependency on the medication.[4]

8. Whether the substance is an immediate precursor of a substance already controlled under this section:

This substance is not an immediate precursor of a substance already controlled in Tennessee.

---

[1] Review about gabapentin misuse, interactions, contraindications and side effects. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5308580/pdf/jep-9-013.pdf
[2] Gabapentin: Abuse, Dependence, and Withdrawal. http://journals.sagepub.com.ezproxy.uthsc.edu/doi/abs/10.1177/1060028015620800?url_ver=Z39.88-2003&rfr_id=ori:rid:crossref.org&rfr_dat=cr_pub%3dpubmed
[3] Abuse and Diversion of Gabapentin Among Nonmedical Prescription Opioid Users in Appalachian Kentucky.
[4] Abuse, Dependency and Withdrawal with Gabapentin: A First Case Report. Thieme, Pharmacopsychiatry. 2007.
[5] Clinical Outcomes in Newer Anticonvulsant Overdose: A Poison Center Observational Study. J Med Toxicology (2014).
[6] Neurontin® package insert / prescribing recommendations

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For Department of State Use Only

Sequence Number: 07-06-18
Rule ID(s): 7198
File Date: 7/5/18
Effective Date: 10/3/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission: Tennessee Department of Mental Health and Substance Abuse Services
Division: Division of Substance Abuse Services
Contact Person: Jim Layman, Legislative Liaison & Rules Coordinator
Address: 500 Deaderick Street, 5th Floor, Andrew Jackson Bldg., Nashville, TN
Zip: 37243
Phone: 615-532-0977
Email: Jim.Layman@tn.gov

Revision Type (check all that apply):
___ Amendment
X New
X Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0940-06-01	Controlled Substances
Rule Number	**Rule Title**
0940-06-01-.01	Controlled Substances in Schedule I
0940-06-01-.02	Controlled Substances in Schedule II
0940-06-01-.03	Controlled Substances in Schedule III
0940-06-01-.04	Controlled Substances in Schedule IV
0940-06-01-.05	Controlled Substances in Schedule V
0940-06-01-.06	Controlled Substances in Schedule VI
0940-06-01-.07	Controlled Substances in Schedule VII
0940-06-01-.08	Non-Narcotic Substances Excluded from Controlled Substances
0940-06-01-.09	Chemical preparations excluded from Controlled Substances
0940-06-01-.10	Veterinary anabolic steroid implant products excluded from Controlled Substances
0940-06-01-.11	Prescription products excluded from Controlled Substances
0940-06-01-.12	Anabolic steroid products excluded from Controlled Substances
0940-06-01-.13	Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances

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-files.s3.amazonaws.com/forms/Rulemaking%20Guidelines_September2016.pdf.

Chapter 0940-06-01
Controlled Substances

Chapter 0940-06-01 Controlled Substances is being repealed and rewritten including its table of contents.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

Chapter 0940-06-01
Controlled Substances

New Rule

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0940-06-01-.01 Controlled Substances in Schedule I
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0940-06-01-.04 Controlled Substances in Schedule IV
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0940-06-01-.07 Controlled Substances in Schedule VII
0940-06-01-.08 Non-Narcotic Substances Excluded from Controlled Substances
0940-06-01-.09 Chemical preparations excluded from Controlled Substances
0940-06-01-.10 Veterinary anabolic steroid implant products excluded from Controlled Substances
0940-06-01-.11 Prescription products excluded from Controlled Substances
0940-06-01-.12 Anabolic steroid products excluded from Controlled Substances
0940-06-01-.13 Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances

0940-06-01-.01 Controlled Substances in Schedule I.

(1) Schedule I consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, salts is possible within the specific chemical designation. For the purposes of subparagraph (vv~~ll~~)(2)(xv) 3-Methylfentanyl, only, the term isomer includes the optical and geometric isomers.

~~(a) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidnyl]-N-phenyl-acetamide)..... 9815~~

~~(b) Acetylfentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)..... 9821~~

(a~~c~~) Acetylmethadol..... 9601

~~(d) Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-nphenylacrylamide)..... 9811~~

(b~~d~~) Allylprodine..... 9602

(c~~e~~) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-

acetylmethadol; levomethadyl acetate; or LAAM)..... 9603

(d~~f~~) Alphameprodine..... 9604

(e~~g~~) Alphamethadol..... 9605

~~(h) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine)..... 9814~~

~~(i) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide)..... 9832~~

(f~~j~~) Benzethidine..... 9606

(g~~k~~) Betacetylmethadol..... 9607

~~(l) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide)..... 9830~~

~~(m) Beta-hydroxythiofentanyl..... 9836~~
~~Other name: N-[1-[2-hydroxy-2-(thiophen-2-yl)ethyl]piperidin-4-yl]-N-phenylpropionamide, N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide~~

~~(n) Beta-hydroxy-3-methylfentanyl..... 9831~~
~~Other name: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide~~

(h~~o~~) Betameprodine..... 9608

(i~~p~~) Betamethadol..... 9609

(j~~q~~) Betaprodine..... 9611

~~(r) Butyryl Fentanyl..... 9822~~
~~Other name: N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide~~

(k~~s~~) Clonitazene..... 9612

(l~~t~~) Dextromoramide..... 9613

(m~~u~~) Diampromide..... 9615

(n~~v~~) Diethylthiambutene..... 9616

(o~~w~~) Difenoxin..... 9168

(p~~x~~) Dimenoxadol..... 9617

(q~~y~~) Dimepheptanol..... 9618

(r~~z~~) Dimethylthiambutene..... 9619

(s~~aa~~) Dioxaphetyl butyrate..... 9621

(t~~bb~~) Dipipanone..... 9622

(u~~cc~~) Ethylmethylthiambutene..... 9623

(v~~dd~~) Etonitazene..... 9624

(wee) Etoxeridine..... 9625

(xff) Furethidine..... 9626

~~(gg) Furanyl Fentanyl..... 9834~~

(yhh) Hydroxypethidine..... 9627

(zii) Ketobemidone..... 9628

(aajj) Levomoramide..... 9629

(bbkk) Levophenacylmorphan..... 9631

~~(ll) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide)..... 9813~~

~~(mm) 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide)..... 9833~~

(ccnn) Morpheridine..... 9632

(ddoo) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine)..... 9661

(eepp) Noracymethadol..... 9633

(ffqq) Norlevorphanol..... 9634

(ggrr) Normethadone..... 9635

(hhss) Norpipanone..... 9636

~~(tt) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide)..... 9812~~

(iiuu) PEPAP (1-(2-phenylethyl)-4-phenyl-4-acetoxypiperidine)..... 9663

(jjvv) Phenadoxone..... 9637

(kkww) Phenampromide..... 9638

(llxx) Phenomorphan..... 9647

(mmyy) Phenoperidine..... 9641

(nnzz) Piritramide..... 9642

(ooaaa) Proheptazine..... 9643

(ppbbb) Properidine..... 9644

(qqccc) Propiram..... 9649

(rrddd) Racemoramide..... 9645

~~(eee) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide)..... 9835~~

(ssfff) Tilidine..... 9750

(ttggg) Trimeperidine.....9646

(uuhhh) U-47700.....9547

(vv) Fentanyl Derivatives and Analogues.

1. Unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, any material, compound, mixture, or preparation, including its salts, isomers, esters, or ethers, and salts of isomers, esters, or ethers, whenever the existence of such salts is possible within any of the following specific chemical designations containing a 4-anilidopiperidine structure:

   i. With or without substitution at the carbonyl of the aniline moiety with alkyl, alkenyl, carboalkoxy, cycloalkyl, methoxyalkyl, cyanoalkyl, or aryl groups, or furanyl, dihydrofuranyl, benzyl moiety, or rings containing heteroatoms sulfur, oxygen, or nitrogen;

   ii. With or without substitution at the piperidine amino moiety with a phenethyl, benzyl, alkylaryl (including heteroaromatics), alkyltetrazolyl ring, or an alkyl or carbomethoxy group, whether or not further substituted in the ring or group;

   iii. With or without substitution or addition to the piperdine ring to any extent with one or more methyl, carbomethoxy, methoxy, methoxymethyl, aryl, allyl, or ester groups;

   iv. With or without substitution of one or more hydrogen atoms for halogens, or methyl, alkyl, or methoxy groups, in the aromatic ring of the anilide moiety;

   v. With or without substitution at the alpha or beta position of the piperidine ring with alkyl, hydroxyl, or methoxy groups;

   vi. With or without substitution of the benzene ring of the anilide moiety for an aromatic heterocycle; and

   vii. With or without substitution of the piperidine ring for a pyrrolidine ring, perhydroazepine ring, or azepine ring;

2. Excluding, Alfentanil, Carfentanil, Fentanyl, and Sufentanil; including, but not limited to:

   i. Acetylfentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)..9821

   ii. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidnyl]-N-phenyl-acetamide).....9815

   iii. Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide).....9811

   iv. Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl]propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido)piperidine)..... 9814

   v. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide) 9832

   vi. Benzodioxolefentanyl

   vii. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-

phenylpropanamide)..... 9830

viii. Beta-hydroxythiofentanyl (N-[1-[2-hydroxy-2-(thiophen-2-yl) ethyl]piperidin-4-yl]-N-phenylpropionamide; N-[1-[2-hydroxy-2-(2-thienyl)ethyl]-4-piperidinyl]-N-phenylpropanamide).....9836

ix. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide) 9831

x. Butyrylfentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide, N-(1-phenethylpiperidin-4-yl)-N-phenylbutanamide).....9822

xi. Cyclopentyl fentanyl

xii. Isobutyryl fentanyl

xiii. Furanyl fentanyl.....9834

xiv. Lofentanil

xv. 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide).....9813

xvi. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).....9833

xvii. Ocfentanil

xviii. Ohmefentanyl

xix. Para-~~F~~fluorofentanyl. (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide) 9812

xx. Para-~~F~~fluoroisobutyryl ~~F~~fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4- yl)isobutyramide; 4-fluoroisobutyryl fentanyl.....9824

xxi. Pentanoyl fentanyl

xxii. Thiofentanyl.....9835

xxiii. Valeryl fentanyl

(3) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Acetorphine.....9319

(b) Acetyldihydrocodeine..... 9051

(c) Benzylmorphine..... 9052

(d) Codeine methylbromide..... 9070

(e) Codeine-N-Oxide..... 9053

(f) Cyprenorphine..... 9054

(g) Desomorphine..... 9055

(h) Dihydromorphine..... 9145

(i) Drotebanol..... 9335

(j) Etorphine (except hydrochloride salt)..... 9056

(k) Heroin..... 9200

(l) Hydromorphinol..... 9301

(m) Methyldesorphine..... 9302

(n) Methyldihydromorphine..... 9304

(o) Morphine methylbromide..... 9305

(p) Morphine methylsulfonate..... 9306

(q) Morphine-N-Oxide..... 9307

(r) Myrophine..... 9308

(s) Nicocodeine..... 9309

(t) Nicomorphine..... 9312

(u) Normorphine..... 9313

(v) Pholcodine..... 9314

(w) Thebacon..... 9315

(4) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound mixture, or preparation, which contains any quantity of the following hallucinogenic substances, or which contains any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers, is possible within the specified chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

(a) Alpha-ethyltryptamine..... 7249
Other names: etryptamine; Monase; [alpha]-ethyl-1H-indole-3-ethanamine; 3-(2-aminobutyl) indole; [alpha]-ET; and AET; ET; Trip

(b) Alpha-methyltryptamine..... 7432
Other name: AMT

(c) 4-Bromo-2,5-dimethoxyamphetamine..... 7391
Other names: 4-Bromo-2,5-dimethoxy-[alpha]-methylphenethylamine; 4-bromo-2,5-DMA

(d) 4-Bromo-2,5-dimethoxyphenethylamine..... 7392
Other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C-B; Nexus

(e) 2-(4-Bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine..... 7536
Other names: 25B-NBOMe; 2C-B-NBOMe; 25B; Cimbi-36

(f) Bufotenine.....7433
Other names: 3-([beta]-Dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5-indolol; N,N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine

(g) 2-(4-Chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.....7537
Other names: 25C-NBOMe; 2C-C-NBOMe; 25C; Cimbi-82

(h) Diethyltryptamine..... 7434
Other names: N,N-Diethyltryptamine; DET

(i) 2,5-Dimethoxyamphetamine..... 7396
Other names: 2,5-Dimethoxy-[alpha]-methylphenethylamine; 2,5-DMA

(j) 2,-5-Dimethoxy-4-ethylamphetamine..... 7399
Other name: DOET

(k) 2,-5 Dimethoxy-4-(n)-propylthiophenethylamine..... 7348
Other name: 2C-T-7

(l) Dimethyltryptamine..... 7435
Other name: DMT

(m) Ethylamine analogue of phencyclidine.....
7455
Other names: N-Ethyl-1-phenylcyclohexylamine; (1-phenylcyclohexyl)ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE

(n) Ibogaine..... 7260
Other names: 7-Ethyl-6,6[beta],7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2]azepino[5,4-b]indole; Tabenanthe iboga.

(o) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine.....7538
Other names: 25I-NBOMe; 2C-I-NBOMe; 25I; Cimbi-5

(p) Lysergic acid diethylamide..... 7315
Other name: LSD

(q) Mescaline..... 7381
Other name: Constituent of "Peyote" cacti

(r) 4-Methoxyamphetamine..... 7411
Other names: 4-methoxy-[alpha]-methylphenethylamine; paramethoxyamphetamine; PMA

(s) 5-Methoxy-3,4-methylenedioxyamphetamine..... 7401

(t) 5-Methoxy-N,N-diisopropyltryptamine..... 7439
Other name: 5-MeO-DIPT

(u) 5-~~m~~Methoxy-N,N-dimethyltryptamine .....
7431
Other names: 5-methoxy-3-[2-(dimethylamino)ethyl]indole; 5-MeO-DMT

(v) 4-Methyl-2,-5-dimethoxyamphetamine..... 7395
Other names: 4-methyl-2,5-dimethoxy-[alpha]-methylphenethylamine; DOM; STP

(w) 3,4-Methylenedioxyamphetamine..... 7400

(x) 3,4-Methylenedioxymethamphetamine..... 7405
Other name: MDMA

(y) 3,4-Methylenedioxy-N-ethylamphetamine..... 7404
Other names: N-ethyl-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-ethyl MDA; MDE; MDEA

(z) 3,4-Methylenedioxy-N-methylcathinone..... 7540
Other names: Methylone

(aa) N-Ethyl-3-piperidyl benzilate..... 7482

(bb) N-Hydroxy-3,4-methylenedioxyamphetamine..... 7402
Other names: N-hydroxy-alpha-methyl-3,4(methylenedioxy)phenethylamine; N-hydroxy MDA

(cc) N-methyl-3-piperidyl benzilate..... 7484

(dd) Parahexyl..... 7374
Other names: 3-Hexyl-1-hydroxy-7,8,9,10-tetrahydro-6,6,9-trimethyl-6H-dibenzo[b, d]pyran; Synhexyl

(ee) Peyote..... 7415
Meaning all parts of the plant presently classified botanically as Lophophora williamsii Lamaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant its seeds or extracts. (Interprets 21 USC 812 (c), Schedule 1 (c) (12)(o))

(ff) Psilocybin (constituent of magic mushrooms)..... 7437

(gg) Psilocyn (constituent of magic mushrooms) 7438

(hh) Pyrrolidine analogue of phencyclidine (1-(1-phenylcyclohexyl)-pyrrolidine)..... 7458
Other names: PCPy; PHP

(ii) 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine..... 7473
Other names: TCPy

(jj) 4--Methylmethcathinone 1248
Other names: mephedrone; methpadrone; 4-MMC

(kk) 3,4-Methylenedioxypyrovalerone..... 7535
Other names: MDPV

(ll) 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E)..... 7509

(mm) 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C-D)..... 7508

(nn) 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C)..... 7519

(oo) 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I)..... 7518

(pp) 2-[4-Ethylthio-2,5-dimethoxyphenyl]ethanamine (2C-T-2)..... 7385

(qq) 2-[4-(Isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4) 7532

(rr) 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H)..... 7517

(ss) 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N) 7521

(tt) 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P) 7524

(uu) Thiophene analogue of phencyclidine..... 7470

Other names: 1-[1-(2-thienyl)cyclohexyl]piperidine; 2-thienylanalog of phencyclidine; TPCP; TCP

(vv) 3,4,5-Trimethoxyamphetamine..... 7390

(ww) (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone 7144
Other names: UR-144; 1-pentyl-3-(2,2,3,3-tetramethylcyclopropoyl)indole

(xx) 1-(5-Fluoro-pentyl)-1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone 7011
Other names: 5-fluoro-UR-144; 5-F-UR-144; XLR11; 1-(5-fluoro-pentyl)-3-(2,2,3,3-tetramethylcyclopropoyl)indole

(5) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specified chemical designation:

(a) Etizolam
Other names; Etilaam, Etizola, Sedekopan, Pasaden, Depas

(b) Gamma-hydroxybutyric acid..... 2010
Other names: GHB; gamma-hydroxybutyrate; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate

(c) Mecloqualone..... 2572

(d) Methaqualone..... 2565

(6) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) Alpha-pyrrolidinobutiophenone..... 7546
Other names: [alpha]-PBP; 1-phenyl-2-(pyrrolidin-1-yl)butan-1-one

(b) Alpha-pyrrolidinopentiophenone..... 7545
Other names: [alpha]-PVP; [alpha]-pyrrolidinovalerophenone; 1-phenyl-2-(pyrrolidin-1-yl)pentan-1-one

(c) Aminorex..... 1585
Other names: aminoxophen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine

(d) Butylone..... 7541
Other names: bk-MBDB; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)butan-1-one

(e) Cathinone..... 1235
Other names: 2-amino-1-phenyl-1-propanone; alpha-aminopropiophenone; 2-aminopropiophenone; norphedrone; constituent of *catha edulis or* "Khat" plant

(f) 3-Fluoro-N-methylcathinone..... 1233
Other names: 3-FMC; 1-(3-fluorophenyl)-2-(methylamino)propan-1-one

(g) 4-Fluoro-N-methylcathinone..... 1238
Other names: 4-FMC; flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one

(h) Fenethylline.....1503

(i) Methcathinone..... 1237
Other names: 2-(methylamino)-propiophenone; alpha-(methylamino) propiophenone; 2-(methylamino)-1-phenylpropan-1-one; alpha-N-methylaminopropiophenone; monomethylpropion; ephedrone; N-methylcathinone; methylcathinone; AL-464; AL-422; AL-463; and UR1432;

(j) (+/-) *cis*-4-Methylaminorex (cis isomer)..... 1590
Other name: (+/-)cis-4,5 dihydro-4-methyl-5-phenyl-2-oxazolamine

(k) 4-Methyl-N-ethylcathinone..... 1249
Other names: 4-MEC; 2-(ethylamino)-1-(4-methylphenyl)propan-1-one

(l) 4-Methyl-alpha-pyrrolidinopropiophenone..... 7498
Other names: 4-MePPP; MePPP; 4-methyl-[alpha]-pyrrolidinopropiophenone; 1-(4-methylphenyl)-2-(pyrrolidin-1-yl)-propan-1-one

(m) Naphyrone..... 1258
Other names: naphthylpyrovalerone; 1-(naphthalen-2-yl)-2-(pyrrolidin-1-yl)pentan-1-one

(n) N-Benzylpiperazine..... 7493
Other names: BZP; 1-benzylpiperazine

(o) N-Ethylamphetamine..... 1475

(p) N,N-Dimethylamphetamine..... 1480
Other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenethylamine

(q) Pentedrone,..... 1246
Other names: [alpha]-methylaminovalerophenone; 2-(methylamino)-1-phenylpentan-1-one

(r) Pentylone..... 7542
Other names: bk-MBDP; 1-(1,3-benzodioxol-5-yl)-2-(methylamino)pentan-1-one

(7) Cannabimimetic agents. Unless specifically exempted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, or which contains their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) 5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (CP-47,497) 7297

(b) 5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (cannabicyclohexanol or CP-47,497 C8-homolog) 7298

(c) 1-Pentyl-3-(1-naphthoyl)indole (JWH-018 and AM678) 7118

(d) 1-Butyl-3-(1-naphthoyl)indole (JWH-073) 7173

(e) 1-Hexyl-3-(1-naphthoyl)indole (JWH-019) 7019

(f) 1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (JWH-200) 7200

(g) 1-Pentyl-3-(2-methoxyphenylacetyl)indole (JWH-250) 6250

(h) 1-Pentyl-3-[1-(4-methoxynaphthoyl)]indole (JWH-081) 7081

(i) 1-Pentyl-3-(4-methyl-1-naphthoyl)indole (JWH-122) 7122

(j) 1-Pentyl-3-(4-chloro-1-naphthoyl)indole (JWH-398) 7398

(k) (1-(5-fFluoropentyl)-1H-indazol-3-yl)(naphthalen-1-yl)methanone (THJ-2201)..... 7024

(l) 1-(5-Fluoropentyl)-3-(1-naphthoyl)indole (AM2201).....7201

(m) 1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole (AM694)..... 7694

(n) 1-Pentyl-3-[(4-methoxy)-benzoyl]indole (SR-19 and RCS-4) 7104

(o) 1-Cyclohexylethyl-3-(2-methoxyphenylacetyl)indole (SR-18 and RCS-8) 7008

(p) 1-Pentyl-3-(2-chlorophenylacetyl)indole (JWH-203) 7203

(q) Methyl 2-(1-(cyclohexylmethyl)-1h-indole-3- carboxamido)-3,3-dimethylbutanoate.....7042
Other names: MDMB-CHMICA, MMB-CHMINACA

(r) Methyl 2-(1-(4-fluorobenzyl)-1h-indazole-3- carboxamido)-3,3-dimethylbutanoate.....7020
Other names: MDMB-FUBINACA

(s) Methyl 2-(1-(5-fluoropentyl)-1h-indazole-3- carboxamido)-3-methylbutanoate.....7033
Other names: 5F-AMB

(t) Methyl2-(1-(5-fluoropentyl)-1h-indazole-3- carboxamido)-3,3-dimethylbutanoate.....7034
Other names: 5F-ABDB, 5F-MDMB-PINACA

(uq) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide..... 7048
Other names: APINACA; AKB48

(v) N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole- 3-carboxamide.....7049
Other names: 5F-APINACA, 5F-AKB48

(wr) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide..... 7012
Other names: AB-FUBINACA

(xs) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1(cyclohexylmethyl)-1H-indazole-3-carboxamide.....7031
Other names: AB-CHMINACA

(y) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)1H-indazole-3-carboxamide.....7010

Other names: ADB-FUBINACA

(zt) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide .. 7035
Other names: ADB-PINACA

(aau) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide.....7023
Other names: AB-PINACA

(bbv) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate 7225
Other names: 5-fluoro-PB-22; 5F-PB-22

(ccw) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate 7222
Other names: PB-22; QUPIC

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.02 Controlled Substances in Schedule II

(1) Schedule II consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, thebaine-derived butorphanol, nalmefene, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:

1. Codeine.....9050

2. Dihydroetorphine.....9334

3. Ethylmorphine.....9190

4. Etorphine hydrochloride.....9059

5. Granulated opium.....9640

6. Hydrocodone.....9193

7. Hydromorphone.....9150

8. Metopon.....9260

9. Morphine.....9300

10. Opium extracts.....9610

11. Opium fluid.....9620

12. Oripavine.....9330

13. Oxycodone.....9143

14. Oxymorphone.....9652

15. Powdered opium.....9639

16. Raw opium.....9600

17. Thebaine.....9333

18. Tincture of opium.....9630

(b) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (2)(a) of this rule, except that these substances shall not include the isoquinoline alkaloids of opium

(c) Opium poppy and poppy straw

(d) Coca leaves (9040) and any salt, compound, derivative or preparation of coca leaves (including cocaine (9041) and ecgonine (9180) and their salts, isomers, derivatives and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(e) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy)..... 9670

(3) Opiates. Unless specifically excepted or unless in another schedule any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) Alfentanil.....9737

(b) Alphaprodine.....9010

(c) Anileridine.....9020

(d) Bezitramide.....9800

(e) Carfentanil.....9743

(f) Dextropropoxyphene (bulk, non dosage forms).....9273

(g) Dihydrocodeine.....9120

(h) Diphenoxylate.....9170

(i) Fentanyl.....9801

(j) Isomethadone.....9226

(k) Levo-alphacetylmethadol..... 9648
Other names: levo-alpha-acetylmethadol; levomethadyl acetate; LAAM

(l) Levomethorphan..... 9210

(m) Levorphanol..... 9220

(n) Metazocine..... 9240

(o) Methadone..... 9250

(p) Methadone-Intermediate; 4-cyano-2-dimethylamino-4,4-diphenyl butane..... 9254

(q) Moramide-Intermediate; 2-methyl-3-morpholino-1,1-diphenylpropane-caboxylic acid..... 9802

(r) Pethidine (meperidine)..... 9230

(s) Pethidine-Intermediate-A; 4-cyano-1-methyl-4-phenylpiperidine..... 9232

(t) Pethidine-Intermediate-B; ethyl-4-phenylpiperidine-4-carboxylate..... 9233

(u) Pethidine-Intermediate-C; 1-methyl-4-phenylpiperidine-4-carboxylic acid..... 9234

(v) Phenazocine..... 9715

(w) Piminodine..... 9730

(x) Racemethorphan..... 9732

(y) Racemorphan..... 9733

(z) Remifentanil..... 9739

(aa) Sufentanil..... 9740

(bb) Tapentadol..... 9780

(cc) Thiafentanil..... 9729

(4) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(a) Amphetamine, its salts, optical isomers, and salts of its optical isomers..... 1100

(b) Methamphetamine, its salts, isomers, and salts of its isomers..... 1105

(c) Phenmetrazine and its salts..... 1631

(d) Methylphenidate..... 1724

(e) Lisdexamfetamine, its salts, isomers, and salts of its isomers..... 1205

(5) Depressants. Unless specifically excepted or unless listed in another schedule any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Amobarbital..... 2125

(b) Glutethimide..... 2550

(c) Pentobarbital..... 2270

(d) Phencyclidine..... 7471

(e) Secobarbital..... 2315

(6) Hallucinogenic substances.

(a) Nabilone..... 7379
Other names: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6, 6-dimethyl-9H-dibenzo[b,d]pyran-9-one.

(b) Dronabinol in oral solution in drug product approved for marketing by United States food and drug administration 7365
Other names: Syndros

(7) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances:

(a) Immediate precursor to amphetamine and methamphetamine:

1. Phenylacetone..... 8501

Other names: phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone;

(b) Immediate precursors to phencyclidine (PCP):

1. 1-phenylcyclohexylamine..... 7460

2. 1-piperidinocyclohexanecarbonitrile(PCC)..... 8603

(c) Immediate precursor to fentanyl:

1. 4-anilino-N-phenethyl-4-piperidine (ANPP)..... 8333

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.03 Controlled Substances in Schedule III.

(1) Schedule III consists of the drugs and other substances by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in Schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under 21 C.F.R. 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances..... 1405

(b) Benzphetamine..... 1228

(c) Clorphentermine..... 1645

(d) Clortermine..... 1647

(e) Phendimetrazine..... 1615

(3) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect in the central nervous system:

(a) Any compound, mixture, or preparation containing:

1. Amobarbital 2126

2. Secobarbital 2316

3. Pentobarbital 2271
Or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.

(b) Any suppository dosage form containing:

1. Amobarbital 2126

2. Secobarbital 2316

3. Pentobarbital 2271
Or any salt of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.

(c) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof. Examples include the following drugs: 2100

1. Aprobarbital 2100

2. Butabarbital (secbutabarbital) 2100

3. Butalbital 2100

4. Butobarbital (butethal) 2100

5. Talbutal 2100

6. Thiamylal 2100

7. Thiopental 2100

8. Vinbarbital 2100

(d) Chlorhexadol 2510

(e) Embutramide 2020

(f) Gamma hydroxybutyric acid preparations. Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under § 505 of the federal Food, Drug, and Cosmetic Act, codified in 21 U.S.C. §_301, et seq 2012

(g) Ketamine, its salts, isomers, and salts of isomers 7285
Other name: (±)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone

(h) Lysergic acid 7300

(i) Lysergic acid amide 7310

(j) Methyprylon 2575

(k) Perampanel, and its salts, isomers, and salts of isomers 2261

(l) Sulfondiethylmethane 2600

(m) Sulfonethylmethane..... 2605

(n) Sulfonmethane..... 2610

(o) Tiletamine and zolazepam or any salt of tiletamine or zolazepam..... 7295

1. Other name for a tiletamine-zolazepam combination product: Telazol®;

2. Other name for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone.

3. Other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo[3,4-e],[1,4]-diazepin-7(1H)-one; flupyrazapon

(4) Nalorphine..... 9400

(5) Narcotic Drugs.

(a) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

1. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.....9803

2. Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.....9804

3. Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit with one or more active non-narcotic ingredients in recognized therapeutic amount.....9807

4. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit with one or more active non-narcotic ingredients in recognized therapeutic amounts.....9808

5. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.....9809

6. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, non-narcotic ingredients in recognized therapeutic amounts.....9810

(b) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts:

1. Buprenorphine.....9064

(6) Anabolic steroids. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances, including its salts, esters and ethers:

(a) Anabolic steroids..... 4000

1. 3[alpha],17[beta]-dihydroxy-5a-androstane

2. 17[alpha]-methyl-3[alpha],17[beta]-dihydroxy-5a-androstane

3. 17[alpha]-methyl-3[beta],17[beta]-dihydroxy-5a-androstane

4. 17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-4-ene

5. 17[alpha]-methyl-[delta]1-dihydrotestosterone(17[beta]-hydroxy-17[alpha]-methyl-5[alpha]-androst-1-en-3-one
Other Names: 17-[alpha]-methyl-1-testosterone

6. 17[alpha]-methyl-4-hydroxynandrolone(17[alpha]-methyl-4-hydroxy-17[beta]-hydroxyestr-4-en-3-one)

7. 1-Androstenediol (3[alpha],17[beta]-dihydroxy-5[alpha]-androst-1-ene)

8. 1-Androstenediol (3[beta],17[beta]-dihydroxy-5[alpha]-androst-1-ene)

9. 4-Androstenediol (3[beta],17[beta]-dihydroxy-androst-4-ene)

10. 5-Androstenediol (3[beta],17[beta]-dihydroxy-androst-5-ene)

11. 1-Androstenedione (5[alpha]-androst-1-en-3,17-dione)

12. 4-Androstenedione (androst-4-en-3,17-dione)

13. 5-Androstenedione (androst-5-en-3,17-dione)

14. 3[Beta],17[Beta]-dihydroxy-5a-androstane

15. 13[Beta]-ethyl-17[beta]-hydroxygon-4-en-3-one

16. Androstanedione (5[alpha]-androstan-3,17-dione)

17. Bolasterone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one)

18. Boldenone (17[beta]-hydroxyandrost-1,4-diene-3-one)

19. Boldione (androsta-1,4-diene-3,17-dione)

20. Calusterone (7[beta],17[alpha]-dimethyl-17[beta]-hydroxyandrost-4-en-3-one)

21. Clostebol (4-chloro-17[beta]-hydroxyandrost-4-en-3-one)
Other Names: 4-Chlorotestosterone

22. Dehydrochloromethyltestosterone (4-chloro-17[beta]-hydroxy-17[alpha]-methylandrost-1,4-dien-3-one)

23. [Delta]1-dihydrotestosterone (a.k.a.'1-testosterone') (17[Beta]-hydroxy-5[alpha]-androst-1-en-3-one)

24. Desoxymethyltestosterone (17[alpha]-methyl-5[alpha]-androst-2-en-17[Beta]-ol)
Other name: madol

25. 4-Dihydrotestosterone (17[beta]-hydroxyandrostan-3-one)

26. Drostanolone (17[beta]-hydroxy-2[alpha]-methyl-5[alpha]-androstan-3-one)

27. Ethylestrenol (17[alpha]-ethyl-17[beta]-hydroxyestr-4-ene)

28. Fluoxymesterone (9-fluoro-17[alpha]-methyl-11[beta],17[beta]-dihydroxyandrost-4-en-3-one)

29. Formebolone (2-formyl-17[alpha]-methyl-11[alpha],17[beta]-dihydroxyandrost-1,4-dien-3-one)

30. Furazabol (17[alpha]-methyl-17[beta]-hydroxyandrostano[2,3-c]-furazan)

31. 4-Hydroxy-19-nortestosterone (4,17[beta]-dihydroxyestr-4-en-3-one)

32. 4-Hydroxytestosterone (4,17[beta]-dihydroxyandrost- 4-en-3-one)

33. Mestanolone (17[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androstan-3-one)

34. Mesterolone (1[alpha]-methyl-17[beta]-hydroxy-5[alpha]-androstan-3-one)

35. Methandienone (17[alpha]-methyl-17[beta]-hydroxyandrost-1,4-diene-3-one)

36. Methandranone

37. Methandriol (17[alpha]-methyl-3[beta],17[beta]-dihydroxyandrost-5-ene)

38. Methandrostenolone

39. Methasterone (2[alpha],17[alpha]-dimethyl-5[alpha]-androstan-17[beta]-ol-3-one)

40. Methenolone (1-methyl-17[beta]-hydroxy-5[alpha]-androst-1-en-3-one)

41. Methyldienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4,9(10)-dien-3-one)

42. Methyltestosterone (17[alpha]-methyl-17[beta]-hydroxyandrost-4-en-3-one)

43. Methyltrienolone (17[alpha]-methyl-17[beta]-hydroxyestra-4, 9,11-trien-3-one)

44. Mibolerone (7[alpha],17[alpha]-dimethyl-17[beta]-hydroxyestr-4-en-3-one)

45. Nandrolone (17[beta]-hydroxyestr-4-en-3-one)

46. 19-Nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione)

47. 19-Nor-4-androstenediol (3[alpha],17[beta]-dihydroxyestr-4-ene)

48. 19-Nor-4-androstenediol (3[beta],17[beta]-dihydroxyestr-4-ene)

49. 19-Nor-5-androstenediol (3[alpha],17[beta]-dihydroxyestr-5-ene)

50. 19-Nor-5-androstenediol (3[beta],17[beta]-dihydroxyestr-5-ene)

51. 19-Nor-4-androstenedione (estr-4-en-3,17-dione)

52. 19-Nor-5-androstenedione (estr-5-en-3,17-dione)

53. Norbolethone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4-en-3-one)

54. Norclostebol (4-chloro-17[beta]-hydroxyestr-4-en-3-one)

55. Norethandrolone (17[alpha]-ethyl-17[beta]-hydroxyestr-4-en-3-one)

56. Normethandrolone (17[alpha]-methyl-17[beta]-hydroxyestr-4-en-3-one)

57. Oxandrolone (17[alpha]-methyl-17[beta]-hydroxy-2-oxa-5[alpha]-androstan-3-one)

58. Oxymesterone (17[alpha]-methyl-4,17[beta]-dihydroxyandrost-4-en-3-one)

59. Oxymetholone (17[alpha]-methyl-2-hydroxymethylene-17[beta]-hydroxy-[5[alpha]]-androstan-3-one)

60. Prostanozol (17[beta]-hydroxy-5[alpha]-androstano[3,2-c]pryazole)

61. Stanolone (17[beta]-Hydroxy-5alpha-Androstan-3-One)

62. Stanozolol (17[alpha]-methyl-17[beta]-hydroxy-[5[alpha]]-androst-2-eno[3,2-c]-pyrazole)

63. Stenbolone (17[beta]-hydroxy-2-methyl-[5[alpha]]-androst-1-en-3-one)

64. Testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1, 4-dien-17-oic acid lactone)

65. Testosterone (17[beta]-hydroxyandrost-4-en-3-one)

66. Tetrahydrogestrinone (13[beta],17[alpha]-diethyl-17[beta]-hydroxygon-4, 9,11-trien-3-one)

67. Trenbolone (17[beta]-hydroxyestr-4,9,11-trien-3-one)

(b) Any salt, ester, or isomer of a drug or substance described or listed in subparagraph (a), if such salt, ester, or isomer promotes muscle growth.

(c) Anabolic steroids intended for administration to cattle or other non-human species are exempt from this rule unless such steroids are prescribed, dispensed, or distributed for human use.

(d) Anabolic steroids with a combination of estrogens intended for administration to hormone deficient women are exempt from this rule unless such steroids are prescribed, dispensed, or distributed to women who are not hormone deficient.

(7) Hallucinogenic Substances

(a) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved drug product..... 7369
Other names: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.04 Controlled Substances in Schedule IV.

(1) Schedule IV consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(a) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine

sulfate per dosage unit.....9167

(b) Dextropropoxyphene dosage forms (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane)..... 9278

(3) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) Alfaxalone 2731

(b) Alprazolam..... 2882

(c) Barbital.....2145

(d) Bromazepam.....2748

(e) Camazepam.....2749

(f) Carisoprodol..... 8192
Other name: Soma®

(g) Chloral betaine..... 2460

(h) Chloral hydrate..... 2465

(i) Chlordiazepoxide..... 2744

(j) Clobazam..... 2751

(k) Clonazepam.....2737

(l) Clorazepate.....2768

(m) Clotiazepam..... 2752

(n) Cloxazolam.....2753

(o) Delorazepam.....2754

(p) Diazepam..... 2765

(q) Dichloralphenazone..... 2467

(r) Estazolam.....2756

(s) Eszopiclone..... N/A

(t) Ethchlorvynol.....2540

(u) Ethinamate.....2545

(v) Ethyl Loflazepate.....2758

(w) Fludiazepam.....2759

(x) Flunitrazepam..... 2763

(y) Flurazepam.....2767

(z) Fospropofol..... 2138

(aa) Halazepam..... 2762

(bb) Haloxazolam..... 2771

(cc) Ketazolam..... 2772

(dd) Loprazolam..... 2773

(ee) Lorazepam..... 2885

(ff) Lormetazepam..... 2774

(gg) Mebutamate..... 2800

(hh) Medazepam..... 2836

(ii) Meprobamate..... 2820

(jj) Methohexital..... 2264

(kk) Methylphenobarbital (mephobarbital)..... 2250

(ll) Midazolam..... 2884

(mm) Nimetazepam..... 2837

(nn) Nitrazepam..... 2834

(oo) Nordiazepam..... 2838

(pp) Oxazepam..... 2835

(qq) Oxazolam..... 2839

(rr) Paraldehyde..... 2585

(ss) Petrichloral..... 2591

(tt) Phenobarbital..... 2285

(uu) Pinazepam..... 2883

(vv) Prazepam..... 2764

(ww) Quazepam..... 2881

(xx) Suvorexant..... 2223

(yy) Temazepam..... 2925

(zz) Tetrazepam..... 2886

(aaa) Tramadol..... 9752
Other names: Ultram® and Ultracet®

(bbb) Triazolam..... 2887

(ccc) Zaleplon 2781

(ddd) Zolpidem 2783

(eee) Zopiclone 2784

(4) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances including its salts, isomers (whether optical, positional, or geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(a) Fenfluramine 1670

(b) Dexfenfluramine 1670

(5) Lorcaserin. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

(a) Lorcaserin 1625

(6) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(a) Cathine ((+)-norpseudoephedrine) 1230

(b) Diethylpropion 1610

(c) Fencamfamin 1760

(d) Fenproporex 1575

(e) Mazindol 1605

(f) Mefenorex 1580

(g) Modafinil 1680

(h) Pemoline (including organometallic complexes and chelates thereof) 1530

(i) Phentermine 1640

(j) Pipradol 1750

(k) Sibutramine 1675

(l) SPA ((-)-1-dimethylamino-1,2-diphenylethane) 1635

(7) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

(a) Pentazocine 9709

(b) Butorphanol (including its optical isomers) 9720

(c) Eluxadoline (5-[[[(2S)-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) (including its optical isomers) and its salts, isomers, and

salts of isomers.....9725

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.05 Controlled Substances in Schedule V.

(1) Schedule V consists of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this rule. Each drug or substance bears the federal controlled substance code number assigned to it by the Drug Enforcement Administration.

(2) Narcotic drugs containing non-narcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams.

(b) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams.

(c) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams.

(d) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.

(e) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.

(f) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(3) Stimulants. Unless specifically exempted or excluded, or unless listed in another schedule, any material, compound, mixture or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of the isomers:

(a) Pyrovalerone..... 1485

(4) Depressants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances have a depressant effect on the central nervous system, including its salts:

(a) Brivaracetam ((2S)-2-[(4R)-2-oxo-4- propylpyrrolidin-1-yl] butanamide).....2710

(b) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]..... 2779

(c) Gabapentin [1-(aminomethyl)cyclohexaneacetic acid]

(~~c~~d) Lacosamide [(*R*)-2-acetoamido-*N*-benzyl-3-methoxy-propionamide]..... 2746

(~~e~~d) Pregabalin [(S)-3-(aminomethyl)-5-methylhexonoic acid]..... 2782

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.06 Controlled Substances in Schedule VI.

(1) Marijuana.....7360

(2) Tetrahydrocannabinols..... 7370

(3) Unless specifically excepted or unless listed in another schedule, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity. Examples include the following drugs or their compounds regardless of numerical designation of atomic positions covered:

(a) 1 cis or trans tetrahydrocannabinol, and its optical isomers.

(b) 6 cis or trans tetrahydrocannabinol, and its optical isomers.

(c) 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.07 Controlled Substances in Schedule VII.

(1) Butyl nitrite and any isomer of butyl nitrite

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.08 Non-narcotic Substances Excluded from Controlled Substances

(1) Non-narcotic substances listed in the most current edition of 21 C.F.R. 1308.22, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.09 Chemical preparations excluded from Controlled Substances

(1) Chemical preparations listed in the most current edition of 21 C.F.R. 1308.24, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.10 Veterinary anabolic steroid implant products excluded from Controlled Substances.

(1) Veterinary anabolic steroid implant products listed in the most current edition of 21 C.F.R. 1308.26, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.11 Prescription products excluded from Controlled Substances

(1) Prescription products listed in the most current edition of 21 C.F.R. 1308.32, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.12 Anabolic steroid products excluded from Controlled Substances

(1) Anabolic steroid products listed in the most current edition of 21 C.F.R. 1308.34, are excluded from all schedules.

Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

0940-06-01-.13 Certain cannabis plant material, and products made therefrom, excluded from Controlled Substances

(1) Certain cannabis plant material, and products made therefrom, that contain tetrahydrocannabinols listed in the most current edition of 21 C.F.R. 1308.35, are excluded from all schedules.

Authority: Authority: T.C.A. §§ 4-4-103, 33-1-302, 33-1-303, 33-1-305, 33-1-309, and 39-17-403.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: _____

Signature: _____

Name of Officer: Marie Williams, LCSW

Title of Officer: Commissioner, Tennessee Department of Mental Health and Substance Abuse Services

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Date: _____

Signature: _____

Name of Officer: John J. Dreyzehner, MD, MPH

Title of Officer: Commissioner, Tennessee Department of Health

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

_____
Date

Department of State Use Only

Filed with the Department of State on: _____

_____
Tre Hargett
Secretary of State

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Mental Health & Substance Abuse Services (board/commission/ other authority) on 05/14/2018 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *10/16/17*

Rulemaking Hearing(s) Conducted on: (add more dates). *12/11/17*

Date: 5.14.18

Signature:

Name of Officer: Marie Williams, LCSW

Title of Officer: Commissioner, Tennessee Department of Mental Health and Substance Abuse Services

SUE B. HUNT STATE OF TENNESSEE NOTARY PUBLIC COUNTY OF DAVIDSON

Subscribed and sworn to before me on: May 14, 2018

Notary Public Signature: Sue B. Hunt

My commission expires on: March 8, 2021

Date: 30 May 18

Signature:

Name of Officer: John J. Dreyzehner, MD, MPH

Title of Officer: Commissioner, Tennessee Department of Health

Subscribed and sworn to before me on: May 30, 2018

Notary Public Signature: Kristann A. Floyd

My commission expires on: 3/31/2020

KRISTANN A. FLOYD NOTARY PUBLIC AT LARGE DAVIDSON COUNTY, TENN.

Agency/Board/Commission: _____

Rule Chapter Number(s): _____

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

7/2/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/5/18

Effective on: 10/3/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Health Related Boards / Board of Podiatric Examiners
SUBJECT:	General Rules and Regulations Governing the Practice of Podiatry
STATUTORY AUTHORITY:	Acts 2017, Public Chapter 167
EFFECTIVE DATES:	October 8, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rule amendments establish a registration process for residents, including a new ten dollar registration fee, and add a new paragraph expanding the duties of orthotic and prosthetic assistants.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

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 rules 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 any new compliance or reporting requirements.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

This rule amendment does not establish any new schedules or deadlines.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

This rule amendment does not establish any new compliance or reporting requirements.

(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: Board of Podiatric Medical Examiners

Rulemaking hearing date: February 7, 2018

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 rule amendments will affect those currently certified as orthotic assistants, prosthetic assistants, and the orthotist/prosthetist assistants and orthotists, prosthetists and pedorthists who employ them. Additionally, these rules will affect those applicants seeking to enroll in the residency program. Assistants will be able to provide more services under the proposed rules and practitioners may see a reduction in costs.

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 proposed rule amendments will not affect reporting or recordkeeping and do not involve administrative costs. The new administrative fee for the residency registration is negligible.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   Both small businesses and consumers should be positively impacted by these proposed rule amendments as allowing assistants to provide more services should both decrease the costs to practitioners and enhance services for consumers.

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 methods of achieving the purpose and/or objectives of the proposed rule amendments. On the contrary, these rule amendments could have a positive impact on business.

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 proposed rule amendments do not provide exemptions for 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://publications.tnsosfiles.com/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;

These rule amendments establish a registration process for residents, including a new ten dollar registration fee, and add a new paragraph expanding the duties of orthotic and prosthetic assistants.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rule amendments are required by 2017 Public Chapter No. 167. The legislation requires orthotic and prosthetic residents to register as residents with the Board of Podiatric Medical Examiners prior to beginning their residency and adds a new section that allows orthotists and prosthetists to utilize non-licensed persons to perform certain tasks to be determined by the Board of Podiatric Medical Examiners.

(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 rule amendments will affect those currently certified as orthotic assistants, prosthetic assistants, and the orthotist/prosthetist assistants and orthotists, prosthetists and pedorthists who employ them. Additionally, these rules will affect those applicants seeking to enroll in the residency program. There were no comments received regarding 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;

These rules should not affect state or local government expenditures or revenue.

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

Andrea Huddleston, Chief Deputy 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;

Andrea Huddleston, Chief Deputy 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, Andrea.Huddleston@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 Ave., 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: 07-08-18
Rule ID(s): 7205
File Date: 7/10/18
Effective Date: 10/8/18

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:	Board of Podiatric Medical Examiners
Division:	
Contact Person:	Andrea Huddleston, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Andrea.Huddleston@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**
1155-04	General Rules and Regulations Governing the Practice of Podiatry
Rule Number	**Rule Title**
1155-04-.04	Restrictions on the Practice of Orthotists, Prosthetists, and Pedorthists
1155-04-.05	Necessity of Licensure
1155-04-.09	Fees

Chapter Number	**Chapter Title**
1155-04	General Rules and Regulations Governing the Practice of Podiatry
Rule Number	**Rule Title**
1155-04-.04	Restrictions on the Practice of Orthotists, Prosthetists, and Pedorthists
1155-04-.05	Necessity of Licensure and Registration of Residency
1155-04-.09	Fees

RULES
OF
THE BOARD OF PODIATRIC MEDICAL EXAMINERS
DIVISION OF HEALTH RELATED BOARDS

CHAPTER 1155-04
GENERAL RULES GOVERNING ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

TABLE OF CONTENTS

1155-04-.01	Orthotists	1155-04-.13	Disciplinary Actions, Subpoenas, Declaratory Orders, and Screening Panels
1155-04-.02	Prosthetists	1155-04-.14	Advertising
1155-04-.03	Pedorthists	1155-04-.15	Change of Address and/or Name
1155-04-.04	Restrictions on the Practice of Orthotists, Prosthetists, and Pedorthists	1155-04-.16	"Grandfather" Provisions for Licensure
1155-04-.05	~~Necessity of Licensure~~ Necessity of Licensure and Registration of Residency	1155-04-.17	Sale of Over-the-Counter and Off-the-Shelf Devices
1155-04-.06	Qualifications for Licensure	1155-04-.18	Custom Fabricated and Fitted Devices
1155-04-.07	Procedures for Licensure	1155-04-.19	Other Licensed Health Care Practitioners
1155-04-.08	Examinations	1155-04-.20	Pharmacists, Home Medical Equipment Providers, and Orthosis Manufacturers
1155-04-.09	Fees	1155-04-.21	Therapeutic Footwear
1155-04-.10	Renewal of Licensure		
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1155-04-.12	Continuing Education		

1155-04-.01 ORTHOTISTS.

(1) An "orthotist" is an allied health professional who is specifically trained and educated to provide or manage the provision of a custom-designed, fabricated, modified and fitted external orthosis to an orthotics patient, based on a clinical assessment and a prescription from a health care practitioner authorized by law to write such prescriptions, to restore physiological function or cosmesis.

(2) An "orthosis" is a custom-designed, fabricated, fitted or modified device to correct, support or compensate for a neuro-musculoskeletal disorder or acquired condition. "Orthosis" does not include fabric or elastic supports, corsets, arch supports, low-temperature plastic splints, trusses, elastic hoses, canes, crutches, soft cervical collars, dental appliances, or other similar devices that are carried in stock and sold without modification as "over-the-counter" items by a drug store, department store, corset shop, or surgical supply facility.

(3) "Orthotics" is the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis under an order from a licensed health care practitioner authorized by law to issue such an order for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-201, and 63-3-202.* ***Administrative History:*** *Original rule filed July 13, 2006; effective September 26, 2006.*

1155-04-.02 PROSTHETISTS.

(1) A "prosthetist" is an allied health professional who is specifically trained and educated to provide or manage the provision of a custom designed, fabricated, modified, and fitted external limb prosthesis to a prosthetic patient, based on a clinical assessment and a prescription from a health care practitioner authorized to write such prescriptions, to restore physiological function or cosmesis.

(2) A "prosthesis" is a custom designed, fabricated, fitted, or modified device to replace an absent external limb for purposes of restoring physiological function or cosmesis.

(Rule 1155-04-.02, continued)

"Prosthesis" does not include artificial eyes, ears, or dental appliances, cosmetic devices or other devices that do not have a significant impact on the musculoskeletal functions of the body.

(3) "Prosthetics" is the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis under an order from a licensed health care practitioner authorized by law to issue such order.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-201, and 63-3-202.* ***Administrative History:*** *Original rule filed July 13, 2006; effective September 26, 2006.*

1155-04-.03 PEDORTHISTS.

(1) A "pedorthist" is an allied health professional who is specifically trained and educated to measure, design, fabricate, fit or service a pedorthic device, based on a clinical assessment and a prescription from a health care practitioner authorized to write such prescriptions, for the support or correction of disabilities caused by neuro-musculoskeletal diseases, injuries, or deformities.

(2) The term "pedorthic device" includes therapeutic footwear, foot orthoses for use at the ankle or below, and modified footwear made for therapeutic purposes, as prescribed by a licensed health care practitioner authorized by law to issue such prescription. "Pedorthic device" does not include non-therapeutic accommodative inlays or non-therapeutic accommodative footwear, shoe modifications made for non-therapeutic purposes, unmodified, over-the-counter shoes, or prefabricated foot care products.

(3) "Pedorthics" is the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device under an order from a licensed health care practitioner authorized by law to issue such order for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-201, and 63-3-202.* ***Administrative History:*** *Original rule filed July 13, 2006; effective September 26, 2006.*

1155-04-.04 RESTRICTIONS ON THE PRACTICE OF ORTHOTISTS, PROSTHETISTS AND PEDORTHISTS.

(1) A licensed orthotist, prosthetist or pedorthist may provide care or services only if the care or services are provided pursuant to an order from a licensed health care practitioner authorized to issue such an order.

(2) A licensed orthotist, prosthetist, or pedorthist must provide services at a facility which has appropriate clinical and laboratory space and equipment to allow that licensee to provide comprehensive orthotic, prosthetic, or pedorthic care.

(3) The scope of practice of a licensed orthotist, prosthetist, or pedorthist does not include the right to diagnose a medical problem or condition or the right to give medical advice as to the nature, cause, or treatment for the problem or condition for which the orthosis, prosthesis, or pedorthic device is being dispensed. However, the scope of practice of a licensed orthotist, prosthetist, or pedorthist does include the right to provide information or demonstration regarding the proper use and care of the device and to make adjustments to the device as needed.

(Rule 1155-04-.04, continued)

~~(4) A licensed orthotist, prosthetist, or pedorthist may utilize one or more non-licensed persons to assist in the provision of services, but the non-licensed person shall be limited to the performance of minor repairs on devices which have been previously dispensed to a patient.~~

(4) An individual holding a certification from the American Board for Certification in Orthotics, Prosthetics and Pedorthics (ABC) as an orthotic assistant, prosthetic assistant, or prosthetic-orthotic assistant may perform orthotic and/or prosthetic duties and related tasks set forth by the 2012 ABC Scope of Practice (version effective April 2012) for certified orthotic and prosthetic assistants (www.abcop.org/maintain-certification/Documents/Scope%20of%20Practice.pdf). However, a certified assistant may not deliver a definitive custom-made prosthesis or orthosis or perform an initial evaluation of a patient.

(5) A licensed orthotist, prosthetist, or pedorthist may utilize one or more non-certified persons to assist in the performance of minor repairs of devices which have been previously dispensed to a patient.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-201, 63-3-202, 63-3-206, and 63-3-207.and 63-3-214* ***Administrative History:*** *Original rule filed July 13, 2006; effective September 26, 2006.*

~~**1155-04-.05 NECESSITY OF LICENSURE.** On and after January 1, 2008, except as provided in Tennessee Code Annotated, Title 63, Chapter 3, Sections 205, 208 and 209, no person shall practice orthotics, prosthetics, or pedorthics in Tennessee, or hold himself or herself out as being able to practice such professions, or dispense an orthosis, prosthesis, or pedorthic device, unless such person is licensed in accordance with the requirements of this chapter.~~

1155-04-.05 Necessity of Licensure and Registration of Residency.

(1) On and after January 1, 2008, except as provided in Tennessee Code Annotated, Title 63, Chapter 3, Sections 205, 208 and 209, no person shall practice orthotics, prosthetics, or pedorthics in Tennessee, or hold himself or herself out as being able to practice such professions, or dispense an orthosis, prosthesis, or pedorthic device, unless such person is licensed or registered in accordance with the requirements of this chapter.

(2) Pursuant to T.C.A. § 63-3-209(2)(B), persons seeking to provide services in Tennessee as a resident in an orthotics and/or prosthetics residency program shall register with the Board, on a form notice available through the Board, at least thirty (30) days before providing such services, and the notice shall include the following information:

(a) The full name of the resident;

(b) The date of birth of the resident;

(c) The social security number of the resident;

(d) The mailing and physical address of the resident;

(e) The home telephone or cell phone number of the resident;

(f) Any other health related licenses, certificates, or permits the resident holds in Tennessee or any another state;

(g) The name and address of the facility or facilities where the residency is to be completed;

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(Rule 1155-04-.04, continued)

(h) The name of the resident's direct supervisor who accepts responsibility for the services provided by the resident and written acknowledgment on signed letterhead from the supervisor accepting such responsibility;

(i) Proof of a completed orthotics and/or prosthetics education program as described in Rule 1155-04-.06;

(j) Proof of a baccalaureate degree (or proof of successfully completing the number of semester hours which is equivalent to four years of study at a four-year college or university), as described in Rule 1155-04-.06;

(k) Proof of successful completion of all examinations required by Rule 1155-04-.08; and

(l) Payment of the ten dollar ($10) Orthotic/ Prosthetic Residency Registration Fee.

(3) Orthotic and prosthetic residents already in a clinical residency when Rule 1155-04-.05(2) takes effect shall register with the Board, on a form notice available through the Board, within sixty (60) days of Rule 1155-04.-05(2) taking effect, and such notice shall include all the information listed in Rule 1155-04.-05(2).

(4) Registration under this rule shall authorize only such practice in Tennessee as is authorized by and under the supervision of the residency program, which must be accredited by the National Commission on Orthotic and Prosthetic Education. Termination from the residency program terminates the registration and any authority to practice in Tennessee. The director of the residency program shall immediately notify the Board in writing of any registrant's termination from the program.

(5) Registrations shall expire twenty-four (24) months from the date of issuance and may be renewed only once, for good cause and subject to Board approval. Residency registrants shall submit to the Board written confirmation of residency status once every six (6) months, containing the signature of the direct supervisor who accepts responsibility for the services provided by that resident.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-202, 63-3-203, 63-3-205, 63-3-208, and 63-3-209, and 63-3-214.* ***Administrative History:*** *Original rule filed July 13, 2006; effective September 26, 2006.*

1155-04-.06 QUALIFICATIONS FOR LICENSURE.

(1) Orthotist – To qualify for a license to practice orthotics, a person shall:

(a) Complete an orthotics education program which is accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organization; and

(b) Possess a baccalaureate degree (or have successfully completed the number of semester hours which is equivalent to four [4] years of study at a four-year college or university). The curriculum of the program of study completed by such person must include mathematics, physics, biology, chemistry, anatomy, biomechanics, pathology and psychology courses; and

(c) Successfully complete a clinical residency in orthotics. The majority of training must be devoted to services performed under the supervision of an orthotist licensed in Tennessee or a person in another state who has obtained certification from the American Board for Certification in Orthotics and Prosthetics, Inc. or the Board for Orthotist/Prosthetist Certification; and

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(Rule 1155-04-.06, continued)

(d) Successfully complete all examinations required by Rule 1155-04-.08.

(2) Prosthetist – To qualify for a license to practice prosthetics, a person shall:

(a) Complete a prosthetic education program which is accredited by the Commission on Accreditation of Allied Health Education Programs or its successor organization; and

(b) Possess a baccalaureate degree (or have successfully completed the number of semester hours which is equivalent to four (4) years of study at a four-year college or university). The curriculum of the program of study completed by such person must include math, physics, biology, chemistry, anatomy, biomechanics, pathology and psychology courses; and

(c) Successfully complete a clinical residency in prosthetics. The majority of training must be devoted to services performed under the supervision of a prosthetist licensed in Tennessee or a person in another state who has obtained certification from the American Board for Certification in Orthotics and Prosthetics, Inc. or the Board for Orthotist/Prosthetist Certification; and

(d) Successfully complete all examinations required by Rule 1155-04-.08.

(3) Pedorthist – To qualify for a license to practice pedorthics, a person shall:

(a) Possess a high school diploma or comparable credential approved by the Board; and

(b) Successfully complete a pedorthics education program accredited by the Board for Certification in Pedorthics, or a pedorthics education program approved by the board, which includes:

1. A basic curriculum of instruction in foot-related pathology of diseases, anatomy, and biomechanics;

2. A specific curriculum in pedorthics courses, including but not limited to lectures covering shoes, foot orthoses, and shoe modifications, pedorthics components and materials, training and functional capabilities, pedorthics performance evaluation, prescription considerations, etiology of disease processes necessitating use of pedorthics devices, medical management, and subject matter related to pediatric and geriatric problems; and

3. Lectures, demonstrations, and laboratory experiences related to the entire process of measuring and casting, fitting, fabricating, aligning, and completing pedorthic devices; and

(c) Successfully complete a qualified work experience program or internship in pedorthics in accordance with the following standards and procedures:

1. The program or internship shall be no less than sixty (60) hours of work experience.

2. The program or internship shall be under the direct supervision of a currently licensed pedorthist, orthotist, or podiatrist.

3. Direct supervision, as used in this subparagraph, shall mean the requirement of the supervisor to direct, coordinate, review, inspect, and approve each act or

(Rule 1155-04-.08, continued)

(d) The scope and content of the examination shall be determined by the Board but limited to:

1. Statutes and regulations governing the practice of orthotics, prosthetics, or pedorthics (T.C.A. §§ 63-3-201 et seq., and Chapter 1155-04 of the Official Compilation, Rules and Regulations of the State of Tennessee); and

2. The following ethics documents, as applicable for the type licensure being sought:

(i) The Canons of Ethics of the American Board for Certification in Orthotics and Prosthetics Inc.

(ii) The Code of Ethics of the Board for Orthotist/Prosthetist Certification.

(iii) The Code of Ethical Conduct of the Board for Certification in Pedorthics, Inc.

(e) Information regarding how to acquire copies of the applicable statutes, regulations and ethics documents is available upon request from the Board's administrative office.

(f) The format of the examination shall be "open-book."

(g) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.

(h) Applicants who fail to successfully complete the jurisprudence examination must continue to retake the examination until it has been successfully completed before the application will be deemed complete and presented to the Board for consideration.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-202, 63-3-203, and 63-3-205.* ***Administrative History:*** *Original rule filed July 13, 2006; effective September 26, 2006.*

1155-04-.09 FEES. All fees except the State Regulatory fee are non-refundable.

(1)	Application	$300.00
(2)	Renewal (biennial)	$200.00
(3)	Late Renewal	$100.00
(4)	Reinstatement	$300.00
(5)	Duplicate or Replacement License	$25.00
(6)	Continuing Education Course Accreditation	$50.00
(7)	State Regulatory (biennial)	$10.00
(8)	Orthotic/ Prosthetic Residency Registration	$10.00

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-3-106, 63-3-106(1), 63-3-202, 63-3-203, and 63-3-205 and 63-3-214.* ***Administrative History:*** *Original rule filed July 13, 2006; effective September 26, 2006. Amendment filed August 25, 2009; effective November 23, 2009.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
David J. Sables, D.P.M.	X				
Karl M. Fillauer, C.P.O.	X				
Sheila Schuler, D.P.M.	X				
Ramesh Pavuluri, D.P.M.				X	
Tyrone T. Davis, D.P.M.	X				
Martha Kay Oglesby	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Podiatric Medical Examiners (board/commission/ other authority) on 02/07/2018 (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: *11/02/17 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *02/07/18 (mm/dd/yy)*

Date: 2-15-18

Signature:

Name of Officer: Andrea Huddleston

Title of Officer: Assistant General Counsel
Department of Health

Subscribed and sworn to before me on: February 15, 2018

Notary Public Signature:

My commission expires on: March 8, 2021

Agency/Board/Commission: Board of Podiatric Medical Examiners

Rule Chapter Number(s): 1155-04

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

7/2/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/10/18

Effective on: 10/8/18

Tre Hargett
Secretary of State

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PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Health Related Boards / Board of Medical Examiners
SUBJECT:	General Rules and Regulations Governing the Practice of Medicine
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 63-1-153 and 63-6-105
EFFECTIVE DATES:	October 29, 2018 through June 30, 2019
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The amendment to Rule 0880-02-.01 adds a new definition for "Medical Spa." The amendment to Rule 0880-02-.02 adds a new registration fee for medical spas. New Rule, 0880-02-.24, establishes the registration process for medical spas pursuant to T.C.A. §§ 63-1-153 and 63-6-105.

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

There were no public 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 rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.**

   These rules do not overlap, duplicate, or conflict with other state or local governmental rules.

2. **Clarity, conciseness, and lack of ambiguity in the rule or rules.**

   These rules exhibit clarity, conciseness, and lack of ambiguity.

3. **The establishment of flexible compliance and/or reporting requirements for small business.**

   The compliance and reporting requirements contained in the rules are the same for large or small businesses and are as required pursuant to T.C.A. §§ 63-1-153 and 63-6-105.

4. **The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.**

   The compliance and reporting requirements contained in the rules are the same for large or small businesses and are as required pursuant to T.C.A. §§ 63-1-153 and 63-6-105.

5. **The consolidation or simplification of compliance or reporting requirements for large or small businesses.**

   Compliance requirements contained in the rules are the same for large or small businesses.

6. **The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rules.**

   These rules do not establish performance, design, or operational standards.

7. **The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.**

   These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Board of Medical Examiners

Rulemaking hearing date: May 20, 2018

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 affect all physicians or businesses in Tennessee offering cosmetic medical services with a medical doctor as the medical director or supervising physician. These physicians or businesses will bear the burden of submitting the required registration information to the Board as well as the financial burden of paying the registration fee. There are currently 375 such entities registered.

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 do not create any additional reporting or recordkeeping requirements beyond what is required by T.C.A. §§ 63-1-153 and 63-6-105.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   These rules require annual registration of these businesses (which requires completion of a short and simple form and payment of a $175 annual fee).

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 or objectives of these proposed rules.

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 exemptions for 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The amendment to Rule 0880-02-.01 adds a new definition for "Medical Spa."

The amendment to Rule 0880-02-.02 adds new registration fee for medical spas.

New Rule, 0880-02-.24, establishes the registration process for medical spas pursuant to T.C.A. §§ 63-1-153 and 63-6-105.

(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. §§ 63-1-153 and 63-6-105.

(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 affect all physicians or businesses in Tennessee offering cosmetic medical services with a medical doctor as the medical director or supervising physician.

(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 affect state or local government revenues or expenditures.

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

Mary Katherine Bratton, Chief Deputy 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;

Mary Katherine Bratton, Chief Deputy 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, Mary.Bratton@tn.gov.

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

None.

Department of State
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312 Rosa L. Parks Ave., 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: 07-23-18
Rule ID(s): 7219
File Date: 7/31/18
Effective Date: 10/29/18

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Board of Medical Examiners
Division:	
Contact Person:	Mary Katherine Bratton, Chief Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Mary.Bratton@tn.gov

Revision Type (check all that apply):
X Amendment
X New
___ Repeal

Rule(s) (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

Chapter Number	**Chapter Title**
0880-02	General Rules and Regulations Governing the Practice of Medicine
Rule Number	**Rule Title**
0880-02-.01	Definitions
0880-02-.02	Fees
0880-02-.03	Licensure Process-U.S. and Canada Medical School Graduates
0880-02-.04	Licensure Process-International Medical School Graduates
0880-02-.05	Licensure of Out-Of-State and International Applicants
0880-02-.06	Training Licenses and Licensure Exemptions
0880-02-.07	Application Review, Approval, Denial, Interviews and Conditioned, Restricted and Locum Tenens Licensure
0880-02-.08	Examination
0880-02-.09	Licensure Renewal and Reinstatement
0880-02-.10	Licensure Retirement/Inactivation and Reactivation
0880-02-.11	Officers, Records, Meeting Requests, Certificates of Fitness, Replacement Licenses, Consultants, Advisory Rulings, Declaratory Orders and Screening Panels
0880-02-.12	Licensure Discipline and Civil Penalties
0880-02-.13	Advertising
0880-02-.14	Specially Regulated Areas and Aspects of Medical Practice

0880-02-.15	Medical Records
0880-02-.16	Telemedicine Licensure and the Practice of Telemedicine
0880-02-.17	Consumer Right-To-Know Requirements
0880-02-.18	Supervision of Physician Assistants
0880-02-.19	Continuing Medical Education
0880-02-.20	Medical Professional Corporations and Medical Professional Limited Liability Companies
0880-02-.21	Office Based Surgery
0880-02-.22	Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements
0880-02-.23	Tamper-Resistant Prescriptions

Chapter Number	**Chapter Title**
0880-02	General Rules and Regulations Governing the Practice of Medicine
Rule Number	**Rule Title**
0880-02-.01	Definitions
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0880-02-.03	Licensure Process-U.S. and Canada Medical School Graduates
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0880-02-.15	Medical Records
0880-02-.16	Telemedicine Licensure and the Practice of Telemedicine
0880-02-.17	Consumer Right-To-Know Requirements
0880-02-.18	Supervision of Physician Assistants
0880-02-.19	Continuing Medical Education
0880-02-.20	Medical Professional Corporations and Medical Professional Limited Liability Companies
0880-02-.21	Office Based Surgery
0880-02-.22	Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements
0880-02-.23	Tamper-Resistant Prescriptions
0880-02-.24	Medical Spa Registration

RULES
OF
TENNESSEE BOARD OF MEDICAL EXAMINERS

CHAPTER 0880-02
GENERAL RULES AND REGULATIONS GOVERNING THE PRACTICE OF MEDICINE

TABLE OF CONTENTS

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0880-02-.18 Supervision of Physician Assistants
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0880-02-.21 Office Based Surgery
0880-02-.22 Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements
0880-02-.23 Tamper-Resistant Prescriptions
0880-02-.24 Medical Spa Registration

0880-02-.01 DEFINITIONS. As used in this Chapter of Rules the following terms and acronyms shall have the following meanings ascribed to them:

(1) Board - The Tennessee Board of Medical Examiners.

(2) Board's Administrative Office - The office of the administrator assigned to the Tennessee Board of Medical Examiners and housed within the Division.

(3) Board Designee - Any person who has received written delegation of authority from the Board to perform Board functions subject to review and ratification by the full Board where provided by these rules.

(4) Derogatory Information - As this term is used in T.C.A. § 63-6-210, shall mean wherever it appears in these rules any communication or information received during the licensure, renewal or reinstatement process which indicates either legal, ethical, competency, mental or physical problems which reflect in any manner not inconsistent with the Americans With Disabilities Act on the individuals fitness or competency to safely practice or continuing to safely practice medicine in Tennessee without restriction. Such communications or information include but are not limited to, conviction of a crime, malpractice lawsuits, loss or restriction of hospital privileges, licensure discipline in another state or country, previous licensure action either formal or informal in this state, ongoing investigation or prosecution of a disciplinary action in this or any other state or country and any physical/medical condition which is not otherwise ameliorated by compliance with physician orders, treatment program requirements or voluntary restrictions of the individual in compliance with the Americans With Disabilities Act.

(5) Division - The Tennessee Department of Health, Division of Health Related Boards, from which the Board receives administrative support.

(Rule 0880-02-.01, continued)

(6) E.C.F.M.G. - The Educational Committee for Foreign Medical Graduates or its successor organization.

(7) FCVS - The Federation Credentials Verification Service which is a service offered by the Federation of State Medical Boards that provides primary source identification and verification of physician core credentials as required in licensure applications by the states.

(8) FLEX - The Federation Licensing Examination I -II.

(9) Formulary - A list of legend and non-legend drugs arranged by therapeutic categories, included in the protocols, that are approved to be prescribed and/or issued by a physician assistant, which may include controlled substances listed in Schedules II, III, IV and V of the Tennessee Code Annotated, Title 39, Chapter 17, Part 4.

(10) Licensee - Any person who has been lawfully issued a license to practice medicine in Tennessee by the Board.

(11) Medical Spa - any entity, however named or organized, which offers or performs cosmetic medical services as defined in T.C.A. § 63-1-153, provided that a medical spa shall not include an individual physician's office or practice owned by a physician unless that physician's office or practice either (1) advertises or holds itself out as a medical spa or (2) primarily engages in the performance of elective cosmetic medical services such that more than 50% of the patients seen by the office or practice during the preceding twelve months receive an elective cosmetic medical service.

(12)~~(11)~~ N.B.M.E. - The National Board of Medical Examiners examination.

(13)~~(12)~~ Physician Assistant - A person who is licensed to practice as a physician assistant in Tennessee pursuant to T.C.A. § 63-19-105

(14)~~(13)~~ Protocols - Written guidelines for medical management developed jointly by the supervising physician and the physician assistant.

(15)~~(14)~~ Supervising Physician - A licensed and actively practicing physician who has been identified as accepting responsibility for supervising a physician assistant.

(16)~~(15)~~ U.S.M.L.E. - The United States Medical Licensing Examination.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-6-101, 63-19-104, 63-6-207, and Public Chapter 33, Public Acts of 1999.* ***Administrative History:*** *Original rule filed October 13, 1983; effective November 14, 1983. Subsequently repealed and replaced twice, the last replacement was effective April 12, 1991. Amendment filed April 14, 1994; effective June 28, 1994. Amendment filed February 23, 1995; effective May 9, 1995. Amendment filed September 22, 1997; effective December 6, 1997. Amendment filed February 3, 1998; effective April 19, 1998. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed September 5, 2002; effective November 19, 2002. Amendment filed September 3, 2014; effective December 2, 2014.*

0880-02-.02 FEES.

(1) The fees authorized by the Tennessee Medical Practice Act (T.C.A. §§63-6-101 through 63-6-104 and T.C.A. §§63-6-201 through 63-6-227) and other applicable statutes to be established by the Board are established as follows:

(Rule 0880-02-.02, continued)

(a) Application Fee - a non refundable fee to be paid by all licensure applicants regardless of the type of license applied for. It must be paid each time an application for licensure is filed. $400.00

(b) Examination Fee - This fee is to be paid each time the USMLE Step 3 examination is taken. $100.00

(c) Inactive Pro Bono Licensure Renewal Fee ..... $ 00.00

(d) Special Training License Fee ..... $ 25.00

(e) Licensure Exemption Fee - Visiting Faculty Member. This fee is paid annually for each year of exemption. ..... $ 50.00

(f) Licensure Renewal Fee - To be paid biennially by all licensees except Inactive Pro Bono licensees. This fee also applies to licensees who reactivate a retired license or who reactivate an inactive license $225.00

(g) Annual State Regulatory Fee - To be paid by all licensees upon application and biennially upon renewal. ($10.00 biennially) $5.00

(h) Late Licensure Renewal Fee - To be paid when a licensee fails to timely renew licensure 200.00

(i) Duplicate License Fee. 25.00

(j) Licensure Inactivation Fee - To be paid at the time a licensee applies for an inactive license. 50.00

(k) Licensure Exemption Fee - Interns, Residents or Clinical Fellows. This fee is paid annually for each year of exemption. 10.00

(l) Medical Spa Registration Fee $175.00

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(2) 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. 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 Tennessee Board of Medical Examiners.

Authority: *T.C.A. §§ 4-3-1011, 4-5-202, 4-5-204, 63-1-106, 63-6-101, 63-6-201, 63-6-207, 63-6-210, 63-6-211, and 63-6-230.* ***Administrative History:*** *Original rule filed October 13, 1983; effective November 14, 1983. Subsequently repealed and replaced twice, the last replacement was effective April 12, 1991. Amendment filed April 14, 1994; effective June 28, 1994. Amendment filed February 23, 1995; effective May 9, 1995. Amendment filed May 2, 1995; effective July 16, 1995. Amendment filed June 12, 1995; effective August 26, 1995. Amendment filed July 12, 1995; effective November 28, 1995. Public Necessity rule filed and effective November 28, 1995. Amendment filed March 25, 1996; effective June 8, 1996, expired by GOC, August 1996. Amendment filed September 4, 1998; effective November 11, 1998. Amendment filed August 25, 2000; effective November 8, 2000. Amendment filed August 16, 2002; effective October 30, 2002. Amendment filed September 5, 2002; effective November 19, 2002. Amendment filed December 5, 2003; effective February 18, 2004. Amendment filed August 23, 2005; effective November 6, 2005.*

(Rule 0880-02-.23, continued)

prescriber may, but is not required to, document the means by which the prescription was transmitted.

Authority: *Chapter 1035 of the Public Acts of 2008 and T.C.A. §§ 53-10-401, 63-6-101, and 63-6-236. [effective October 1, 2008 for TennCare prescriptions and July 1, 2009 for non-TennCare prescriptions].* ***Administrative History:*** *Public necessity rule filed June 25, 2009; effective through December 7, 2009. Public necessity rule filed June 25, 2009 expired; on December 8, 2009, the rule reverted to its prior status. Emergency rule filed December 21, 2009; effective through June 19, 2010. Original rule filed March 22, 2010; effective June 20, 2010.*

0880-02-.24 Medical Spa Registration.

(1) Any medical spa offering cosmetic medical services, as those terms are defined in T.C.A. §§ 63-1-153 and 63-6-105, in Tennessee must register with the Tennessee Board of Medical Examiners, prior to operation or within sixty calendar days of the effective date of this rule, by providing Board staff with the following:

(a) A completed Application for Registration of a Medical Spa along with the non-refundable Medical Spa Registration Fee required pursuant to Rule 0880-02-.02; and

(b) The name and physical address of the medical spa; and

(c) The name and Tennessee license number of the medical director or supervising physician responsible for services at the practice; and

(d) The name and physical address of the primary practice of the medical director or supervising physician; and

(e) Certification information of the medical director or supervising physician as required by T.C.A. § 63-1-153(b) and (c); and

(f) An attestation that the medical director or supervising physician registering the medical spa assumes and accepts responsibility for the cosmetic medical services provided at the medical spa.

(2) Registration is valid for twelve (12) months. Prior to expiration, the medical spa must complete a new Application for Registration of a Medical Spa and pay the registration fee.

(3) The medical director or supervising physician who is responsible for or supervises a medical spa is responsible for providing the Board with the information described in paragraph (1) of this rule; ensuring the annual registration of the medical spa; and complying with the signage and advertisement requirements contained in T.C.A. § 63-1-153.

(4) The medical director or supervising physician must be a medical doctor or osteopathic physician with an active Tennessee license and an active medical practice in Tennessee.

(5) Operation without current registration constitutes unprofessional conduct on the part of the medical director or any supervising physician providing services, including supervision services, at such unregistered medical spa and is grounds for disciplinary action by the licensing board of such physician.

Authority: T.C.A. §§ 63-6-101, 63-1-153 and 63-6-105.

* 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)
Michael D. Zanolli, M.D.	X				
Subhi D. Ali, M.D.	X				
Phyllis E. Miller, MD	X				
Charles R. Handorf, M.D.	X				
Melanie Blake, MD	X				
Neal Beckford, M.D.	X				
Deborah Christiansen, MD	X				
John W. Hale., MD	X				
Jennifer Claxton	X				
Robert Ellis			X		
Julianne Yeiser Cole	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 Tennessee Board of Medical Examiners (board/commission/ other authority) on 03/20/2018 (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: *01/08/18 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *03/20/18 (mm/dd/yy)*

Date: 3/21/18

Signature: Mary Katherine Bratton

Name of Officer: Mary Katherine Bratton

Title of Officer: Chief Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 3-21-18

Notary Public Signature: Suzanne Mechkowski

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI
STATE OF TENNESSEE
NOTARY PUBLIC
SUMNER COUNTY

Agency/Board/Commission: Tennessee Board of Medical Examiners

Rule Chapter Number(s): 0880-02

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

7/25/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/31/18

Effective on: 10/29/18

Tre Hargett
Secretary of State

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HIGH COURTS

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Health
DIVISION:	Board for Licensing Health Care Facilities
SUBJECT:	Standards for Health Care Facilities
STATUTORY AUTHORITY:	None
EFFECTIVE DATES:	October 8, 2018 through June 30, 2019
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The amendment to Rule 1200-08-01-.01(24) deletes the current definition of "dietitian" and replaces it with new language. New paragraph 1200-08-01-.01(45) adds a definition for "licensed health care professional." The amendment to Rule 1200-08-01-.05(1) adds the term "inpatient" and requires every person admitted as an inpatient to be under the supervision of a physician with an unlimited license to practice as well as requiring that physician to be documented on the patient's medical record. The amendment to Rule 1200-08-01-.05(2) deletes the current language which lists specific practitioners (dentists, podiatrists, and certified nurse midwives) and adds new language which clarifies that all licensed practitioners are allowed, under the supervision of a credentialed medical doctor or doctor of osteopathy, to write orders for the care and treatment of patients if allowed to do so under the hospital bylaws. The amendment to Rule 1200-08-01-.05(5) allows physical therapy, occupational therapy, or speech language pathology services, without an order from a physician, dentist, or podiatrist, if those services are being provided on an outpatient basis and are being provided consistent with the scope of practice of physical therapists,

occupational therapists, and speech language pathologists as set forth in their respective practice acts found in Tennessee Code Annotated, Title 63, Chapters 13 and 17 as well as state that, except in emergencies, no medication or treatment shall be given or administered to any inpatient in a hospital except on the order or referral of a licensed practitioner lawfully authorized to give such an order.

The amendment to Rule 1200-08-01-.06(9)(e)1 and 2 clarifies the involvement of dietitians in caring for patients' dietary needs in a hospital setting and allows dietitians to order a therapeutic diet under certain conditions.

The amendment to Rule 1200-08-01-.07 deletes subparagraph (6)(e) and amends the subparagraph to require that services be provided according to a written treatment plan in accordance with the practice acts of the practitioners.

The amendment to Rule 1200-08-06-.01 deletes the term "patient abuse."

The amendment to Rule 1200-08-10-.04(20)(b)(3) and (20)(b)(4) removes the specific items that shall be provided to patients in the Ambulatory Surgical Treatment Center (ASTC).

The amendment to Rule 1200-08-10-.11(3) adds the word "patient" between the words "each" and "case" and adds the following sentence: "The ASTC will monitor outbreaks of communicable diseases in the nearby geographical area of the facility and inform the ASTC staff of these outbreaks in order for the employee to contact their personal physician for consultation regarding their vaccination status."

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The amendment to Rule 1200-08-25-.03(9)(b)3 raises the minimum age for becoming licensed as an administrator of an assisted care living facility from eighteen (18) to twenty-one (21).

The amendment to Rule 1200-08-25-.07(5)(b) includes certified professionals and limits the duties of the "medication aide." The amendment to Rule 1200-08-25-.07(5)(c) clarifies the manner in which assisted-care living facilities should store residents' medications.

The amendment to Rule 1200-08-25-.07(5)(d) reads: "[f]acility staff shall not repackage medication and shall not administer medication from repackaging."

The amendment to Rule 1200-08-25-.07(6)(f) provides that a certified health professional can dispose of medication.

The amendment to Rule 1200-08-25-.08 removes a reference in (9)(a) to a social worker.

The amendment to Rule 1200-08-25-.10(2)(i) adds allowance for cooking appliances with certain restrictions.

The amendment to Rule 1200-08-25-.10(2)(n) removes specific references to certain types of fire extinguishers permissible under National Fire Protection Association (NFPA) 10.

The amendment to Rule 1200-08-34-.05(10) removes a reference to "Division of Mental Retardation Services (DMRS)" and replaces it with "Department of Intellectual and Developmental Disabilities (DIDD)."

Public Hearing Comments

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

Board for Licensing Health Care Facilities
Rulemaking Hearing
February 8, 2017

Public Comments

The Department received two written comments and one oral comment regarding the proposed new rule chapter.

One written comment was submitted by the Tennessee Medical Association ("TMA"). TMA requested that the following corrections be made to the proposed new rule chapter:

"Licensed or certified health care professional" should be defined. Further, on page 6, LPN and RN should be deleted from the list of licensed or certified health care professionals. Additionally, on page 17, TMA suggested language clarifying that categories of practitioners could admit and/or deliver on-call services if it is provided for in the medical staff bylaws.

A second written comment was received from John Williams of Tune, Entrekin & White, P.C. on behalf of the state association of podiatrists. As written, the proposed change to Rule 1200-08-01-.05(2) would eliminate the ability of a podiatrist or dentist to admit a patient to a hospital "with the concurrence of a physician member of the medical staff." Mr. Williams wanted to know whether the change was inadvertent or intentional. On behalf of the association, Mr. Williams did not want the ability of podiatrists and dentists to admit patients to be removed.

During the rulemaking hearing, Christopher Puri, on behalf of THCA, suggested the following revision to Rule 1200-08-25-.10(2)(i) in regard to cooking appliances in Assisted Care Living Facilities:

"Ensure that upon entering the ACLF that the resident or his or her responsible party is asked if they wish to have a cooking appliance that is appropriate for their level of cognition. If the facility chooses to provide a requested cooking appliance, it shall be used in accordance with the facility's policies. If the resident or his or her responsible party wishes to provide their own cooking appliance, it shall meet the facility's policies and safety standards. The cooking appliances shall be designed so that they can be disconnected and removed for resident safety or if the resident chooses not have cooking capability within his or her apartment. The cooking appliance shall have an automatic timer."

The Board took into consideration all of the written comments as well as the oral comment and voted to adopt the suggested changes to the proposed rules made by the three commenters.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

(1) The extent to which the rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules.

These rules do not overlap, duplicate, or conflict with other federal, state, or local governmental rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule or rules.

These rules exhibit clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and/or reporting requirements for small businesses.

These rules do not contain reporting requirements for small businesses.

(4) The establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.

These rules do not contain reporting requirements for small businesses.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

These rules do not contain reporting requirements for small businesses.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule.

These rules do not establish performance, design, or operational standards.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

These rules do not create unnecessary barriers or stifle entrepreneurial activity or innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board for Licensing Health Care Facilities

Rulemaking hearing date: February 8, 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 rule amendments will affect licensees and patients of the following facilities: Hospitals, Nursing Homes, Ambulatory Surgical Treatment Centers, Homes for the Aged, Assisted-Care Living Facilities, Home Care Organizations Providing Home Medical Equipment, and Home Care Organizations Providing Professional Support Services. The licensees and patients of these facilities will benefit from these amendments as the new rules will clarify definitions and procedures for these facilities.

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 rule amendments will not affect reporting, recordkeeping or other administrative costs.

3. **Statement of the probable effect on impacted small businesses and consumers:**

   These rule amendments should positively impact small businesses as the rules clarify rule provisions that currently result in frequent citations. Consumers should benefit from the proposed rules and the clarity they will provide as well.

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 or objectives of these proposed rules.

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 rule amendments do not provide for 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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

The proposed rule amendments should not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The amendment to Rule 1200-08-01-.01(24) deletes the current definition of "dietitian" and replaces it with new language.

New paragraph 1200-08-01-.01(45) adds a definition for "licensed health care professional."

The amendment to Rule 1200-08-01-.05(1) adds the term inpatient and requires every person admitted as an inpatient to be under the supervision of a physician with an unlimited license to practice as well as requiring that physician to be documented on the patient's medical record.

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The amendment to Rule 1200-08-34-.05(10) remove a reference to "Division of Mental Retardation Services (DMRS)" and replaces it with "Department of Intellectual and Developmental Disabilities (DIDD)."

(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 rule amendments will affect licensees and patients of the following facilities: Hospitals, Nursing Homes, Ambulatory Surgical Treatment Centers, Homes for the Aged, Assisted-Care Living Facilities, and Home Care Organizations Providing Professional Support Services.

(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;

Kyonzté Hughes-Toombs, Office of 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;

Kyonzté Hughes-Toombs, Office of 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, Kyonzte.Hughes-Toombs@tn.gov.

(l) 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 Ave., 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: 07-07-18
Rule ID(s): 7199-7204
File Date: 7/10/18
Effective Date: 10/8/18

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 Health
Division:	Board for Licensing Health Care Facilities
Contact Person:	Kyonzte Hughes-Toombs, Deputy General Counsel
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Kyonzte.Hughes-Toombs@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**
1200-08-01	Standards for Hospitals
Rule Number	**Rule Title**
1200-08-01-.01	Definitions
1200-08-01-.05	Admissions, Discharges, and Transfers
1200-08-01-.06	Basic Hospital Functions
1200-08-01-.07	Optional Hospital Services

Chapter Number	**Chapter Title**
1200-08-06	Standards for Nursing Homes
Rule Number	**Rule Title**
1200-08-06-.01	Definitions

Chapter Number	**Chapter Title**
1200-08-10	Standards for Ambulatory Surgical Treatment Centers
Rule Number	**Rule Title**
1200-08-10-.04	Administration
1200-08-10-.11	Records and Reports

Chapter Number	Chapter Title
1200-08-11	Standards for Homes for the Aged
Rule Number	**Rule Title**
1200-08-11-.01	Definitions

Chapter Number	Chapter Title
1200-08-25	Standards for Assisted-Care Living Facilities
Rule Number	**Rule Title**
1200-08-25-.02	Definitions
1200-08-25-.03	Licensing Requirements
1200-08-25-.07	Services Provided
1200-08-25-.08	Admissions, Discharges, and Transfers
1200-08-25-.10	Life Safety

Chapter Number	Chapter Title
1200-08-34	Standards for Home Care Organizations Providing Professional Support Services
Rule Number	**Rule Title**
1200-08-34-.05	Admissions, Discharges, and Transfers

RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-01
STANDARDS FOR HOSPITALS

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1200-08-01-.08	Building Standards	1200-08-01-.15	Appendix I

1200-08-01-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Acceptable Plan of Correction. The Licensing Division shall approve a hospital's acceptable plan to correct deficiencies identified during an on-site survey conducted by the Survey Division or its designated representative. The plan of correction shall be a written document and shall provide, but not limited to, the following information:

(a) How the deficiency will be corrected.

(b) Who will be responsible for correcting the deficiency.

(c) The date the deficiency will be corrected.

(d) How the facility will prevent the same deficiency from re-occurring.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) Board. The Tennessee Board for Licensing Health Care Facilities.

(7) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a patient to make health care decisions while having the capacity to do so. A patient shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a patient shall have the burden of proving lack of capacity.

(Rule 1200-08-01-.01, continued)

(8) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.

(9) Certified Master Social Worker. A person currently certified as such by the Tennessee Board of Social Worker Certification and Licensure.

(10) Certified Nurse Practitioner. A person who is licensed as a registered nurse and has further been issued a certificate of fitness to prescribe and/or issue legend drugs by the Tennessee Board of Nursing.

(11) Certified Registered Nurse Anesthetist. A registered nurse currently licensed by the Tennessee Board of Nursing who is currently certified as such by the American Association of Nurse Anesthetists.

(12) Certified Respiratory Therapist. A person currently certified as such by the Tennessee Board of Medical Examiners' Council on Respiratory Care.

(13) Certified Respiratory Therapy Technician. A person currently certified as such by the Tennessee Board of Medical Examiners' Council on Respiratory Care.

(14) Clinical Laboratory Improvement Act (CLIA). The federal law requiring that clinical laboratories be approved by the U.S. Department of Health and Human Services, Health Care Financing Administration.

(15) Collaborative Practice. The implementation of the collaborative plan that outlines procedures for consultation and collaboration with other health care professional, e.g., licensed physicians and mid-level practitioners.

(16) Collaborative Plan. The formal written plan between the mid-level practitioners and a licensed physician.

(17) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(18) Competent. A patient who has capacity.

(19) Critical Access Hospital. A hospital located in a rural area, certified by the Department as being a necessary provider of health care services to residents of the area, which makes available twenty-four (24) hour emergency care; is a designated provider in a rural health network; provides not more than twenty-five (25) acute care inpatient beds for providing inpatient care not to exceed an annual average of ninety-six (96) hours, and has a quality assessment and performance improvement program and procedures for utilization review. If swing-bed approval has been granted, all twenty-five (25) beds can be used interchangeably for acute or Skilled Nursing Facility (SNF/swing-bed) level of care services.

(20) Dentist. A person currently licensed as such by the Tennessee Board of Dentistry.

(21) Department. The Tennessee Department of Health.

(22) Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the

(Rule 1200-08-01-.01, continued)

absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(23) Designation. An official finding and recognition by the Department of Health that an acute care hospital meets Tennessee State Rural Health Care Plan requirements to be a Critical Access Hospital.

~~(24) Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners. Persons exempt from licensure shall be registered with the American Dietetics Association pursuant to T.C.A. § 63-25-104.~~

(24) Dietitian. As used in the chapter, the term "dietitian" means:

(a) A person who is currently licensed by the Tennessee Board of Dietitian/Nutritionist Examiners as a dietitian/nutritionist; or

(b) An employee of a Tennessee hospital who is exempt from Tennessee licensure pursuant to T.C.A. § 63-25-104(b)(6) but holds the credential of Registered Dietitian (RD) or Registered Dietitian Nutritionist (RDN) from the Commission on Dietetic Registration.

(25) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(26) Electronic Signature. The authentication of a health record document or documentation in an electronic form achieved through electronic entry of an exclusively assigned, unique identification code entered by the author of the documentation.

(27) Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(28) Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(29) Graduate Registered Nurse Anesthetist. A registered nurse currently licensed in Tennessee who is a graduate of a nurse anesthesia educational program that is accredited by the American Association of Nurse Anesthetist's Council on Accreditation of Nurse Anesthesia Educational Programs and awaiting initial certification examination results, provided that initial certification is accomplished within eighteen (18) months of completion of an accredited nurse anesthesia educational program.

(30) Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(31) Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state or federal regulations.

(32) Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(33) Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(34) Health Care Decision-maker. In the case of a patient who lacks capacity, the patient's health care decision-maker is one of the following: the patient's health care agent as specified in an

(Rule 1200-08-01-.01, continued)

advance directive, the patient's court-appointed guardian or conservator with health care decision-making authority, the patient's surrogate as determined pursuant to Rule 1200-08-01-.13 or T.C.A. § 33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(35) Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(36) Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(37) Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with services of a physician or dentist, to one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment. All hospitals shall provide basic hospital functions and may provide optional services as delineated in these rules. A hospital shall be designated according to its classification and shall confine its services to those classifications described below.

(a) General Hospital. To be licensed as a general hospital, the institution shall maintain and operate organized facilities and services to accommodate one or more non-related persons for a period exceeding twenty-four (24) hours for the diagnosis, treatment or care of such persons and shall provide medical and surgical care of acute illness, injury or infirmity and obstetrical care. All diagnosis, treatment and care shall be administered by or performed under the direction of persons currently licensed to practice the healing arts in the State of Tennessee. In addition, a general hospital must specifically provide:

1. An organized staff of professional, technical and administrative personnel.

2. A laboratory with sufficient equipment and personnel necessary to perform biochemical, bacteriological, serological and parasitological tests.

3. X-ray facilities which shall include, as a minimum requirement, a complete diagnostic radiographic unit.

4. A separate surgical unit which shall include, as minimum requirements, one operating room, a sterilizing room, a scrub-up area and workroom.

5. Obstetrical facilities which shall include, as minimum requirements, one delivery room, a labor room, a newborn nursery, an isolation nursery, and patient rooms designated exclusively for obstetrical patients.

6. An emergency department in accordance with rule 1200-08-01-.07(5) of these standards and regulations.

(b) Satellite Hospital. A satellite hospital may be licensed with a parent hospital upon approval by the Board for Licensing Health Care Facilities when they are on separate premises and are operated under the same management.

(c) Chronic Disease Hospital. To be licensed as a chronic disease hospital, the institution shall be devoted exclusively to the diagnosis, treatment or care of persons needing medical, surgical or rehabilitative care for chronic or long-term illness, injury, or infirmity. The diagnosis, treatment or care shall be administered by or performed under the direction of persons currently licensed to practice the healing arts in the State of Tennessee. A chronic disease hospital shall meet the requirements for a general

(Rule 1200-08-01-.01, continued)

hospital except that obstetrical facilities are not required and, if the hospital provides no surgical services, an emergency department is not required.

(d) Orthopedic Hospital. To be licensed as an orthopedic hospital, the institution shall be devoted primarily to the diagnosis and treatment of orthopedic conditions. An orthopedic hospital shall meet the requirements for a general hospital except that obstetrical services are not required and, if the hospital provides no surgical services, an emergency department is not required.

(e) Pediatric Hospital. To be licensed as a pediatric hospital, the institution shall be devoted primarily to the diagnosis and treatment of pediatric cases and have on staff professional personnel especially qualified in the diagnosis and treatment of the diseases of children. A pediatric hospital shall meet the requirements of a general hospital except that obstetrical facilities are not required and if the hospital provides no surgical services, an emergency department is not required.

(f) Eye, Ear, Nose, and Throat Hospital or any one of these. To be licensed as an eye, ear, nose and throat hospital, the institution shall be devoted primarily to the diagnosis and treatment of the diseases of the eye, ear, nose, and throat. The hospital shall have on staff professional personnel especially qualified in the diagnosis and treatment of diseases of the eye, ear, nose and throat. An eye, ear, nose and throat hospital shall meet the requirements for a general hospital except that obstetrical facilities are not required and, if the hospital provides no surgical services, an emergency department is not required.

(g) Rehabilitation Hospital. To be licensed as a rehabilitation hospital, the institution shall be devoted primarily to the diagnosis and treatment of persons requiring rehabilitative services. A rehabilitation hospital shall meet the requirement of a general hospital except that radiology services, a surgical unit, obstetrical facilities, and an emergency department are not required.

(38) Hospitalization. The reception and care of any person for a continuous period longer than twenty-four (24) hours, for the purpose of giving advice, diagnosis, nursing service or treatment bearing on the physical health of such persons, and maternity care involving labor and delivery for any period of time.

(39) Incompetent. A patient who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(40) Individual instruction. An individual's direction concerning a health care decision for the individual.

(41) Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(42) Involuntary Transfer. The movement of a patient between hospitals, without the consent of the patient, the patient's legal guardian, next of kin or representative.

(43) Justified Emergency. Includes, but is not limited to, the following events/ occurrences:

(a) An influx of mass casualties;

(b) Localized and/or regional catastrophes such as storms, earthquakes, tornadoes, etc. or,

(Rule 1200-08-01-.01, continued)

(c) Epidemics or episodes of mass illness such as influenza, salmonella, etc.

(44) Licensed Clinical Social Worker. A person currently licensed as such by the Tennessee Board of Social Workers.

(45) Licensed health care professional. Any health care professional currently licensed by the State of Tennessee to practice within the scope of a regulated profession, such as a nurse practitioner, dietitian, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, podiatrist, psychologist, clinical social worker, speech language pathologist, and emergency service personnel.

(46)~~(45)~~ Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(47)~~(46)~~ Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(48)~~(47)~~ Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(49)~~(48)~~ Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part, which includes labor when delivery is imminent, when there is inadequate time to effect safe transfer to another hospital prior to delivery, or when a transfer may pose a threat to the health and safety of the patient or the unborn child.

(50)~~(49)~~ Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations. and other written electronics, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to patients admitted or receiving care.

(51)~~(50)~~ Medical Staff. An organized body composed of individuals appointed by the hospital governing board that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital. All members of the medical staff shall be licensed to practice in Tennessee, with the exception of interns and residents.

(52)~~(51)~~ Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the patient or other medical or surgical treatments to achieve the expressed goals of the informed patient. In the case of the incompetent patient, the patient's representative expresses the goals of the patient.

(53)~~(52)~~ Member of the Professional Medical Community. A professional employed by the hospital and on the premises at the time of a voluntary delivery.

(54)~~(53)~~ Mid-Level Practitioner. Either a certified nurse practitioner or a physician assistant.

(55)~~(54)~~ Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(56)~~(55)~~ Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of

(Rule 1200-08-01-.01, continued)

medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(57)~~(56)~~ N.F.P.A. The National Fire Protection Association.

(58)~~(57)~~ Nuclear Medicine Technologist. A person currently registered as such by the National Association for Nuclear Medicine Technology.

(59)~~(58)~~ Nurse Midwife. A person currently licensed by the Tennessee Board of Nursing as a registered nurse (R.N.) and qualified to deliver midwifery services or certified by the American College of Nurse-Midwives.

(60)~~(59)~~ Occupational Therapist. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(61)~~(60)~~ Occupational Therapy Assistant. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(62)~~(61)~~ Optometrist. A person currently licensed as such by the Tennessee Board of Optometry.

(63)~~(62)~~ Patient. Includes but is not limited to any person who is suffering from an acute or chronic illness or injury or who is crippled, convalescent or infirm, or who is in need of obstetrical, surgical, medical, nursing or supervisory care.

(64)~~(63)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(65)~~(64)~~ Personally Informing. A communication by any effective means from the patient directly to a health care provider.

(66)~~(65)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(67)~~(66)~~ Physical Therapist. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(68)~~(67)~~ Physical Therapy Assistant. A person currently certified as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(69)~~(68)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(70)~~(69)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(71)~~(70)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(Rule 1200-08-01-.01, continued)

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;
2. Specify other medical interventions that are to be provided or withheld; or
3. Specify both 1 and 2.

(72)~~(71)~~ Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.

(73)~~(72)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(74)~~(73)~~ Psychologist. A person currently licensed as such by the Tennessee Board of Examiners in Psychology.

(75)~~(74)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(76)~~(75)~~ Radiological Technologist. A person currently registered as such by the American Society of Radiological Technologists.

(77)~~(76)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the patient's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(78)~~(77)~~ Registered Health Information Administrator (RHIA). A person currently registered as such by the American Health Information Management Association.

(79)~~(78)~~ Registered Health Information Technician (RHIT). A person currently accredited as such by the American Health Information Management Association.

(80)~~(79)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(81)~~(80)~~ Rural Area. A county classified by the federal Office of Management and Budget (OMB) as rural, all counties, excluding Davidson, Hamilton, Knox, and Shelby, currently defined as rural in Chapter 1200-20-11 of the Tennessee Comprehensive Rules and Regulations, or an area outside of a county or part of a county previously classified as rural by the OMB and reclassified by the OMB as a metropolitan statistical area as of June 6, 2003.

(82)~~(81)~~ Satellite Hospital. A freestanding hospital licensed with a parent hospital that is on separate premises and operated under the same management.

(83)~~(82)~~ Shall or Must. Compliance is mandatory.

(84)~~(83)~~ Social Worker. A person who has at least a bachelor's degree in Social Work or related field, and preferably, two (2) years medical social work or other community based work experience.

(Rule 1200-08-01-.01, continued)

(85)~~(84)~~ Stabilize. To provide such medical treatment of the emergency medical condition as may be necessary to assure, within reasonable medical probability, that the condition will not materially deteriorate due to the transfer as determined by a physician or other qualified medical personnel when a physician is not readily available.

(86)~~(85)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(87)~~(86)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board.

(88)~~(87)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(89)~~(88)~~ Surgical Technologist. A person who works under supervision to facilitate the safe and effective conduct of invasive surgical procedures. This individual is usually employed by a hospital, medical office, or surgical center and supervised during the surgical procedure according to institutional policy and procedure to assist in providing a safe operating room environment that maximizes patient safety by performing certain tasks including, but not limited to:

(a) Preparation of the operating room and the sterile field for surgical procedures by preparing sterile supplies, instruments, and equipment using sterile technique;

(b) Preparation of the operating room for surgical procedures by ensuring that surgical equipment is functioning properly and safely; and

(c) Passing instruments, equipment or supplies to a surgeon, sponging or suctioning an operative site, preparing and cutting suture material, holding retractors, transferring but not administering fluids or drugs, assisting in counting sponges, needles, supplies, and instruments, and performing other similar tasks as directed during a surgical procedure.

(90)~~(89)~~ Surrogate. An individual, other than a patient's agent or guardian, authorized to make a health care decision for the patient.

(91)~~(90)~~ Transfer. The movement of a patient between hospitals at the direction of a physician or other qualified medical personnel when a physician is not readily available but does not include such movement of a patient who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons and does not apply to the discharge or release of a patient no longer in medical need of hospital care or to a hospital's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for hospital care.

(92)~~(91)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the patient.

(93)~~(92)~~ Treating Physician. The physician selected by or assigned to the patient and who has the primary responsibility for the treatment and care of the patient. Where more than one physician shares such responsibility, any such person may be deemed to be the "treating physician."

(94)~~(93)~~ Voluntary Delivery. The action of a mother in leaving an unharmed infant aged seventy-two (72) hours or younger on the premises of a hospital with any hospital employee or

(Rule 1200-08-01-.01, continued)

member of the professional medical community without expressing any intention to return for such infant, and failing to visit or seek contact with such infant for a period of thirty (30) days thereafter.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-202, 68-11-204, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-255, 68-11-1802, 68-57-101, 68-57-102, and 68-57-105.* ***Administrative History:*** *Original rule certified June 7, 1974. Amendment filed April 3, 1974; effective May 3, 1974. Amendment filed November 30, 1984; effective December 30, 1984. Repeal and new rule filed May 22, 1986; effective June 21, 1986. Amendment filed April 26, 1996; effective July 8, 1996. Amendment filed November 30, 1999; effective February 6, 2000. Repeal, except for Paragraphs (1), (5), (8), (10), (11), (13), (16), (29) and (37) as promulgated February 6, 2000, and new rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed September 17, 2002; effective December 1, 2002. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendment filed August 27, 2004; effective November 10, 2004. Amendments filed September 6, 2005; effective November 20, 2005. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendments filed March 18, 2010; effective June 16, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendment filed April 25, 2016; effective July 24, 2016.*

1200-08-01-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any hospital without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the hospital.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) Each applicant for a license shall pay an annual license fee based on the number of hospital beds. The fee must be submitted with the application and is not refundable.

(c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Patients shall not be admitted to the hospital until a license has been issued. Applicants shall not hold themselves out to the public as being a hospital until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations including submission of all information required by T.C.A. §68-11-206(1), or as later amended, and of all information required by the Commissioner.

(d) The applicant must prove the ability to meet the financial needs of the facility.

(e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an individual has been denied a license or has had a license disciplined or has attempted to avoid inspection and review process.

(f) The applicant shall allow the hospital to be inspected by a Department surveyor. In the event that deficiencies are noted, the applicant shall submit a plan of corrective action

(Rule 1200-08-01-.04, continued)

(13) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

(14) Informed Consent

(a) Any hospital in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed shall conspicuously post a sign in a location defined below so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of the person's relationship to you, to coerce you into having or to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened criminal offense to coerce an abortion.

(b) The sign shall be printed in languages appropriate for the majority of clients of the hospital with lettering that is legible and that is Arial font, at least 40-point bold-faced type.

(c) A hospital in which abortions are performed that is not a private physician's office or ambulatory surgical treatment center shall post the required sign in the admissions or registration department used by patients on whom abortions are performed.

(d) A hospital shall be assessed a civil penalty by the board for licensing health care facilities of two thousand five hundred dollars ($2,500.00) for each day of violation in which:

1. The sign required above was not posted during business hours when patients or prospective patients are present; and

2. An abortion other than an abortion necessary to prevent the death of the pregnant female was performed in the hospital.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-15-202, 39-17-1803, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, 68-11-268 and 71-6-121.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed December 2, 2003; effective February 15, 2004. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed December 23, 2009; effective March 23, 2010. Amendments filed February 22, 2010; effective May 23, 2010. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-01-.05 ADMISSIONS, DISCHARGES, AND TRANSFERS.

~~(1) Every person admitted for care or treatment to any hospital covered by these rules shall be under the supervision of a physician who holds an unlimited license to practice in Tennessee. The name of the patient's attending physician shall be recorded in the patient's medical record.~~

(1) Every person admitted for care or treatment as an inpatient to any hospital covered by these rules shall be under the supervision of a physician who holds an unlimited license to practice in Tennessee. The name of the patient's attending physician shall be recorded in the patient's medical record.

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(Rule 1200-08-01-.05, continued)

~~(2) The above does not preclude the admission of a patient to a hospital by a dentist or podiatrist or certified nurse midwife licensed to practice in Tennessee with the concurrence of a physician member of the medical staff.~~

(2) The above does not preclude the admission of a patient to a hospital by licensed health care professional, licensed to practice in Tennessee with the concurrence of a credentialed MD/DO also licensed to practice in Tennessee if admission by a category of licensed health care professionals is provided for in the medical staff bylaws. The licensed health care professional may also provide on call services to patients in the hospital if on call services for a category of licensed health care professionals is so provided for in the medical staff bylaws. The name of the attending licensed health care professional shall be recorded in the patient medical record as well as the name of the credentialed MD/DO. If a hospital allows these licensed health care professionals to admit and care for patients, as allowed by state law, the governing body and medical staff shall establish policies and bylaws, if necessary, to ensure that the requirements of 42 CFR part 482 are met.

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(3) This does not preclude qualified oral and maxillo-facial surgeons from admitting patients and completing the admission history and physical examination and assessing the medical risk of the procedure on their patients. A physician member of the medical staff is responsible for the management of medical problems.

(4) A diagnosis must be entered in the admission records of the hospital for every person admitted for care or treatment.

~~(5) Except in emergencies, no medication or treatment shall be given or administered to any patient in a hospital except on the order of a physician, dentist or podiatrist lawfully authorized to give such an order.~~

(5) Except in emergency situations, no medication or treatment shall be given or administered to any inpatient in a hospital except on the order of a physician, dentist, or podiatrist lawfully authorized to give such an order. This requirement shall not apply to physical therapy, occupational therapy or speech language pathology services being provided in an outpatient setting when the services are being provided consistent with the scope of practice of physical therapists, occupational therapists and speech language pathologists as set forth in their respective practice acts found in Tennessee Code Annotated, Title 63, Chapters 13 and 17.

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(6) The facility shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the facility. The facility shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

(7) For purposes of this chapter, the requirements for signature or countersignature by a physician, dentist, podiatrist or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established hospital protocol or rules.

(8) The hospital must ensure continuity of care and provide an effective discharge planning process that applies to all patients. The hospital's discharge planning process, including discharge policies and procedures, must be specified in writing and must:

(Rule 1200-08-01-.05, continued)

(a) Be developed and/or supervised by a registered nurse, social worker or other appropriately qualified personnel;

(b) Begin upon admission of any patient who is likely to suffer adverse health consequences;

(c) Be provided when identified as a need by the patient, a person acting on the patient's behalf, or by the physician;

(d) Include the likelihood of a patient's capacity for self-care or the possibility of the patient returning to his or her pre-hospitalization environment;

(e) Identify the patient's continuing physical, emotional, housekeeping, transportation, social and other needs and must make arrangements to meet those needs;

(f) Be completed on a timely basis to allow for arrangement of post-hospital care and to avoid unnecessary delays in discharge;

(g) Involve the patient, the patient's family or individual acting on the patient's behalf, the attending physician, nursing and social work professionals and other appropriate staff, and must be documented in the patient's medical record; and

(h) Be conducted on an ongoing basis throughout the continuum of hospital care. Coordination of services may involve promoting communication to facilitate family support, social work, nursing care, consultation, referral or other follow-up.

(9) A discharge plan is required on every patient, even if the discharge is to home.

(10) The hospital must arrange for the initial implementation of the patient's discharge plan and must reassess the patient's discharge plan if there are factors that may affect continuing care needs or the appropriateness of the discharge plan.

(11) As needed, the patient and family members or interested persons must be taught and/or counseled to prepare them for post-hospital care.

(12) The hospital must transfer or refer patients, along with necessary medical information, to appropriate facilities, agencies, or outpatient services, as needed, for follow-up or ancillary care.

(13) The governing body of each hospital must adopt transfer and acceptance policies and procedures in accordance with these rules and the provisions of T.C.A. §§ 68-11-701 through 68-11-705. These policies must include a review of all such involuntary transfers, with special emphasis on those originating in the emergency room.

(14) Transfer agreements with other health care facilities are subject to these statutory and regulatory provisions.

(15) When a hospital proceeding in compliance with these rules seeks to appropriately transfer a patient to another hospital, the proposed receiving hospital may not decline the transfer for reasons related to the patient's ability to pay or source of payment, rather than the patient's need for medical services. The determination of the availability of space at the receiving hospital may not be based on the patient's ability to pay or source of payment.

(16) Anyone arriving at a hospital and/or the emergency department of a hospital requesting or requiring an examination or treatment for a medical condition must be provided an

(Rule 1200-08-01-.05, continued)

appropriate medical screening examination within the capability of the hospital's staff to determine whether or not a medical emergency exists.

(17) The hospital must provide further medical examination and treatment as may be required to stabilize the medical emergency within the hospital's available staff and facilities. Such treatment may include, but is not limited to, the following:

(a) Establishing and assuring an adequate airway and adequate ventilation;

(b) Initiating control of hemorrhage;

(c) Stabilizing and splinting the spine or fractures;

(d) Establishing and maintaining adequate access routes for fluid administration;

(e) Initiating adequate fluid and/or blood replacement; and

(f) Determining that the patient's vital signs (including blood pressure, pulse, respiration, and urinary output, if indicated) are sufficient to sustain adequate perfusion.

(18) A hospital is deemed to meet the requirements of this section with respect to an individual if:

(a) The hospital offers to provide the further medical examination and treatment necessary but the individual, or legally responsible person acting on the individual's behalf, refuses to consent to the examination or treatment; or

(b) The hospital offers to transfer the individual to another hospital in accordance with this section but the individual, or legally responsible person acting on the individual's behalf, refuses to consent to the transfer.

(19) If a patient at a hospital has not been or cannot be stabilized within the meaning of this section, the hospital may not transfer the patient unless:

(a) The patient, or legally responsible person acting on the patient's behalf, requests that a transfer be implemented after having been given complete and accurate information about matters pertaining to the transfer decision including:

1. The medical necessity of the movement;

2. The availability of appropriate medical services at both the transferring and receiving hospitals;

3. The availability of indigent care at the hospital initiating the transfer and the facility's legal obligations, if any, to provide medical services without regard to the patient's ability to pay; and,

4. Any obligation of the hospital through its participation in medical assistance programs of the federal, state or local government to accept the medical assistance program's reimbursement as payment in full for the needed medical care.

(b) A physician, or other appropriately qualified medical personnel when a physician is not available, makes a determination based upon the reasonable risk, expected benefits to the patient, and current available information that the medical benefits reasonably expected from the provision of appropriate medical treatment at another hospital

(Rule 1200-08-01-.05, continued)

outweigh the increased risk to the individual's medical condition resulting from a transfer; and

(c) The transfer is appropriate within the meaning of this section.

(20) An appropriate transfer includes:

(a) A physician at the receiving hospital agreeing to accept transfer of the patient and to provide appropriate medical treatment;

(b) The receiving hospital having space available and personnel qualified to treat the patient;

(c) The transferring hospital providing the receiving hospital with appropriate medical records, or copies thereof, of any examination and/or treatment initiated by the transferring hospital; and

(d) The transfer being effected with qualified personnel, appropriate transportation equipment, and the use of necessary and medically appropriate life support measures as required.

(21) Transfers made pursuant to a regionalized plan for the delivery of health care services, approved by the department or other authorized governmental planning agency, are presumed to be appropriate.

(22) After an appropriate transfer has been effected, the receiving hospital may transfer the patient back to the original hospital, and the original hospital may accept the patient, if:

(a) The original receiving hospital has stabilized the medical emergency or provided treatment of the active labor and the patient no longer has a medical emergency; and

(b) The transfer is made in accordance with (21) of this section.

(23) When a hospital determines the need to exceed its licensed bed capacity upon an occurrence of a justified emergency, the following procedures must be followed:

(a) The hospital's administrator must make written notification to the Department within forty-eight (48) hours of exceeding its licensed bed capacity.

(b) The notification must include a detailed description of the emergency including:

1. Why the licensed bed capacity was exceeded, i.e., lack of hospital beds in vicinity, specialized resources only available at the facility, etc.;

2. The estimated length of time the licensed bed capacity is expected to be exceeded; and,

3. The number of admissions in excess of the facility's licensed bed capacity.

(c) As soon as the hospital returns to its licensed bed capacity, the administrator must notify the department in writing of the effective date of its return to compliance.

(d) Staff will review all notifications of excess bed capacity with the Chairman of the Board. If, upon review of the notification, department staff concurs that a justified emergency existed, staff will notify the facility in writing. A report of the occurrence will be made to the board at the next regularly scheduled meeting as information purposes only.

(Rule 1200-08-01-.05, continued)

(e) However, if department staff does not concur that a justified emergency existed, the facility will be notified in writing that a representative is required to appear at the next regularly scheduled board meeting to justify the need for exceeding its licensed bed capacity.

(24) Infant Abandonment.

(a) Any hospital shall receive possession of any newborn infant left on hospital premises with any hospital employee or member of the professional medical community, if the infant:

1. Was born within the preceding seventy-two (72) hour period, as determined within a reasonable degree of medical certainty;

2. Is left in an unharmed condition; and

3. Is voluntarily left by a person who purported to be the child's mother and who did not express an intention of returning for the infant.

(b) The hospital, any hospital employee and any member of the professional medical community at such hospital shall inquire whenever possible about the medical history of the mother or newborn and whenever possible shall seek the identity of the mother, infant, or the father of the infant. The hospital shall also inform the mother that she is not required to respond, but that such information will facilitate the adoption of the child. Any information obtained concerning the identity of the mother, infant or other parent shall be kept confidential and may only be disclosed to the Department of Children's Services. The hospital may provide the parent contact information regarding relevant social service agencies, shall provide the mother the name, address and phone number of the department contact person, and shall encourage the mother to involve the Department of Children's Services in the relinquishment of the infant. If practicable, the hospital shall also provide the mother with both orally delivered and written information concerning the requirements of these rules relating to recovery of the child and abandonment of the child.

(c) The hospital, any hospital employee and any member of the professional medical community at such hospital shall perform any act necessary to protect the physical health or safety of the child.

(d) As soon as reasonably possible, and no later than twenty-four (24) hours after receiving a newborn infant, the hospital shall contact the Department of Children's Services, but shall not do so before the mother leaves the hospital premises. Upon receipt of notification, the department shall immediately assume care, custody and control of the infant.

(e) Notwithstanding any provision of law to the contrary, any hospital, any hospital employee and any member of the professional medical community shall be immune from any criminal or civil liability for damages as a result of any actions taken pursuant to the requirements of these rules, and no lawsuit shall be predicated thereon; provided, however, that nothing in these rules shall be construed to abrogate any existing standard of care for medical treatment or to preclude a cause of action based upon violation of such existing standard of care for medical treatment.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, and 68-11-255.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed September 17, 2002; effective December 1, 2002.*

1200-08-01-.06 BASIC HOSPITAL FUNCTIONS.

(1) Performance Improvement.

(a) The hospital must ensure that there is an effective, hospital-wide performance improvement program to evaluate and continually improve patient care and performance of the organization.

(b) The performance improvement program must be ongoing and have a written plan of implementation which assures that:

1. All organized services including services furnished by a contractor, are evaluated (all departments including engineering, housekeeping, and accounting need to show evidence of process improvement.);

2. Nosocomial infections and medication therapy are evaluated;

3. All medical and surgical services performed in the hospital are evaluated as to the appropriateness of diagnosis and treatment;

4. The competency of all staff is evaluated at least annually; and

5. The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program, central venous catheter insertion process, and influenza vaccination program.

(c) The hospital must have an ongoing plan, consistent with available community and hospital resources, to provide or make available social work, psychological, and educational services to meet the medically-related needs of its patients which assures that:

1. Discharge planning is initiated in a timely manner; and

2. Patients, along with their necessary medical information, are transferred or referred to appropriate facilities, agencies or outpatient services, as needed, for follow-up or ancillary care.

(d) The hospital must develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.

(e) The hospital must demonstrate that the appropriate governing board or board committee is regularly apprised of process improvement activities, including identified deficiencies and the outcomes of remedial action.

(2) Medical Staff.

(a) The hospital shall have an organized medical staff operating under bylaws adopted by the medical staff and approved by the governing body, to facilitate the medical staff's responsibility in working toward improvement of the quality of patient care.

(b) The hospital and medical staff bylaws shall contain procedures, governing decisions or recommendations of appropriate authorities concerning the granting, revocation, suspension, and renewal of medical staff appointments, reappointments, and/or delineation of privileges. At a minimum, such procedures shall include the following

(Rule 1200-08-01-.06, continued)

elements: A procedure for appeal and hearing by the governing body or other designated committee if the applicant or medical staff feels the decision is unfair or wrong.

(c) The governing body shall be responsible for appointing medical staff and for delineating privileges. Criteria for appointment and delineation of privileges shall be clearly defined and included in the medical staff bylaws, and related to standards of patient care, patient welfare, the objectives of the institution or the character or competency of the individual practitioner. Independent patient admission privileges shall only be granted to currently licensed doctors of medicine, osteopathy, podiatry, or dentistry.

(d) The medical staff must adopt and enforce bylaws to effectively carry out its responsibilities and the bylaws must:

1. Be approved by the governing body;

2. Include a statement of the duties and privileges of each category of medical staff;

3. Describe the organization of the medical staff;

4. Describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body;

5. Include criteria for determining the privileges to be granted to individual practitioners and a procedure for applying the criteria to individuals requesting privileges; and

6. Include provisions for medical staff appointments granting active, associate, or courtesy medical staff membership, and/or provisions for the granting of clinical privileges. Such individuals must practice within the scope of their current Tennessee license, and the overall care of each patient must be under the supervision of a physician member of the medical staff.

(e) To be eligible for staff membership, an applicant must be a graduate of an approved program of medicine, dentistry, osteopathy, podiatry, optometry, psychology, or nurse-midwifery, currently licensed in Tennessee, competent in his or her respective field, and worthy in character and in matters of professional ethics.

(f) The medical staff shall be composed of currently licensed doctors of medicine, osteopathy, dentistry, and podiatry and may include optometrists, psychologists, and nurse-midwives. The medical staff must:

1. Periodically conduct appraisals of its members;

2. Examine the credentials of candidates for medical staff membership and make recommendations to the hospital on the appointment of the candidates; and

3. Participate actively in the hospital's process improvement plan implementation for the improvement of patient care delivery plans.

(g) The medical staff must be structured in a manner approved by the hospital or its governing body, well organized, and accountable to the hospital for the quality of the medical care provided to the patient. Disciplinary action involving medical staff taken by the hospital shall be reported to the appropriate licensing board or professional society.

(Rule 1200-08-01-.06, continued)

(h) If the medical staff has an executive committee, a majority of the members of the committee must be doctors of medicine or osteopathy.

(i) The responsibility for organization and conduct of the medical staff must be assigned only to an individual doctor of medicine or osteopathy, or a doctor of dental surgery or dental medicine.

(j) All physicians and non-employee medical personnel working in the hospital must adhere to the policies and procedures of the hospital. The chief executive officer or his or her designee shall provide for the adequate supervision and evaluation of the clinical activities of non-employee medical personnel which occur within the responsibility of the medical staff service.

(3) Infection Control.

(a) The hospital must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active performance improvement program for the prevention, control, and investigation of infections and communicable diseases.

(b) The chief executive officer or administrator shall assure that an infection control committee including members of the medical staff, nursing staff and administrative staff develop guidelines and techniques for the prevention, surveillance, control and reporting of hospital infections. Duties of the committee shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the hospital;

3. Written procedures governing the use of aseptic techniques and procedures in all areas of the hospital, including adoption of a standardized central venous catheter insertion process which shall contain these key components:

(i) Hand hygiene (as defined in 1200-08-01-.06(3)(g));

(ii) Maximal barrier precautions to include the use of sterile gowns, gloves, mask and hat, and large drape on patient;

(iii) Chlorhexidine skin antisepsis;

(iv) Optimal site selection;

(v) Daily review of line necessity; and

(vi) Development and utilization of a procedure checklist;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and patient wastes, traffic control and visiting rules in high risk areas, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

6. A method of control used in relation to the sterilization of supplies and water, and a written policy addressing reprocessing of sterile supplies;

(Rule 1200-08-01-.06, continued)

7. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing and scrubbing practices, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient care equipment and supplies; and

8. Continuing education provided for all hospital personnel on the cause, effect, transmission, prevention, and elimination of infections, as evidenced by front line employees verbalizing understanding of basic techniques.

(c) The administrative staff shall ensure the hospital prepares, and has readily available on site, an Infection Control Risk Assessment for any renovation or construction within existing hospitals. Components of the Infection Control Risk Assessment may include, but are not limited to, identification of the area to be renovated or constructed, patient risk groups that will potentially be affected, precautions to be implemented, utility services subject to outages, risk of water damage, containment measures, work hours for project, management of traffic flow, housekeeping, barriers, debris removal, plans for air sampling during or following project, anticipated noise or vibration generated during project.

(d) The chief executive officer, the medical staff and the chief nursing officer must ensure that the hospitalwide performance improvement program and training programs address problems identified by the infection control committee and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(e) The facility shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

(f) A Hospital shall have an annual influenza vaccination program which shall include at least:

1. The offer of influenza vaccination to all staff and independent practitioners at no cost to the person or acceptance of documented evidence of vaccination from another vaccine source or facility. The Hospital will encourage all staff and independent practitioners to obtain an influenza vaccination;

2. A signed declination statement on record from all who refuse the influenza vaccination for reasons other than medical contraindications (a sample form is available at http://tennessee.gov/health/topic/hcf-provider);

3. Education of all employees about the following:

   (i) Flu vaccination,

   (ii) Non-vaccine control measures, and

   (iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and

(Rule 1200-08-01-.06, continued)

5. A statement that the requirements to complete vaccinations or declination statements shall be suspended by the administrator in the event of a vaccine shortage as declared by the Commissioner or the Commissioner's designee.

(g) All hospitals shall each year from October 1 through March 1 offer the immunization for influenza and pneumococcal diseases to any inpatient who is sixty-five (65) years of age or older prior to discharging. This condition is subject to the availability of the vaccine.

(h) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:

1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;

2. Use of gloves during each patient contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves changed before and after each patient contact;

3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and

4. Health care worker education programs which may include:

(i) Types of patient care activities that can result in hand contamination;

(ii) Advantages and disadvantages of various methods used to clean hands;

(iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from patients; and

(iv) Morbidity, mortality, and costs associated with health care associated infections.

(i) All hospitals shall adopt appropriate policies regarding the testing of patients and staff for human immunodeficiency virus (HIV) and any other identified causative agent of acquired immune deficiency syndrome.

(j) Each department of the hospital performing decontamination and sterilization activities must develop policies and procedures in accordance with the current editions of the CDC guidelines for "Prevention and Control of Nosocomial Diseases" and "Isolation in Hospitals".

(k) The central sterile supply area(s) shall be supervised by an employee, qualified by education and/or experience with a basic knowledge of bacteriology and sterilization principles, who is responsible for developing and implementing written policies and procedures for the daily operation of the central sterile supply area, including:

1. Receiving, decontaminating, cleaning, preparing, and disinfecting or sterilizing reusable items;

2. Assembling, wrapping, removal of outer shipping cartons, storage, distribution, and quality control of sterile equipment and medical supplies;

(Rule 1200-08-01-.06, continued)

3. Proper utilization of sterilization process monitors, including temperature and pressure recordings, and use and frequency of appropriate chemical indicator or bacteriological spore tests for all sterilizers; and

4. Provisions for maintenance of package integrity and designation of event-related shelf life for hospital-sterilized and commercially prepared supplies;

5. Procedures for recall and disposal or reprocessing of sterile supplies; and

6. Procedures for emergency collection and disposition of supplies and the timely notification of attending physicians, general medical staff, administration and the hospital's risk management program when special warnings have been issued or when warranted by the hospital's performance improvement process.

(l) Precautions shall be taken to prevent the contamination of sterile supplies by soiled supplies. Sterile supplies shall be packaged and stored in a manner that protects the sterility of the contents. Sterile supplies may not be stored in their outermost shipping carton. This would include both hospital and commercially prepared supplies. Decontamination and preparation areas shall be separated.

(m) Space and facilities for housekeeping equipment and supply storage shall be provided in each hospital service area. Storage for bulk supplies and equipment shall be located away from patient care areas. Storage shall not be allowed in the outermost shipping carton. The building shall be kept in good repair, clean, sanitary and safe at all times.

(n) The hospital shall appoint a housekeeping supervisor who is qualified for the position by education, training and experience. The housekeeping supervisor shall be responsible for:

1. Organizing and coordinating the hospital's housekeeping service;

2. Acquiring and storing sufficient housekeeping supplies and equipment for hospital maintenance;

3. Assuring the clean and sanitary condition of the hospital to provide a safe and hygienic environment for patients and staff. Cleaning shall be accomplished in accordance with the infection control rules and regulations herein and hospital policy; and

4. Verifying regular continuing education and competency for basic housekeeping principles.

(o) Laundry facilities located in the hospital shall:

1. Be equipped with an area for receiving, processing, storing and distributing clean linen;

2. Be located in an area that does not require transportation for storage of soiled or contaminated linen through food preparation, storage or dining areas;

3. Provide space for storage of clean linen within nursing units and for bulk storage within clean areas of the hospital. Linen may not be stored in cardboard containers or other containers which offer housing for bugs; and,

(Rule 1200-08-01-.06, continued)

4. Provide carts, bags or other acceptable containers appropriately marked to identify those used for soiled linen and those used for clean linen to prevent dual utilization of the equipment and cross contamination.

(p) The hospital shall appoint a laundry service supervisor who is qualified for the position by education, training and experience. The laundry service supervisor shall be responsible for:

1. Establishing a laundry service, either within the hospital or by contract, that provides the hospital with sufficient clean, sanitary linen at all times;

2. Knowing and enforcing infection control rules and regulations for the laundry service;

3. Assuring the collection, packaging, transportation and storage of soiled, contaminated, and clean linen is in accordance with all applicable infection control rules, regulations and procedures;

4. Assuring that a contract laundry service complies with all applicable infection control rules, regulations and procedures; and,

5. Conducting periodic inspections of any contract laundry facility.

(q) The physical environment of the facility shall be maintained in a safe, clean and sanitary manner.

1. Any condition on the hospital site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin shall be properly identified. Such substances shall not be stored with or near food or medications.

2. Cats, dogs or other animals shall not be allowed in any part of the hospital except for specially trained animals for the handicapped and except as addressed by facility policy for pet therapy programs. The facility shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the facility performed by medically trained personnel.

3. A bed complete with mattress and pillow shall be provided. In addition, patient units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.

4. Individual wash cloths, towels and bed linens must be provided for each patient. Linen shall not be interchanged from patient to patient until it has been properly laundered.

5. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.

6. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with patients shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between patients and as often as necessary to maintain them in a clean and sanitary condition. Single use, patient disposable items are acceptable but shall not be reused.

(Rule 1200-08-01-.06, continued)

(4) Nursing Services.

(a) The hospital must have an organized nursing service that provides twenty-four (24) hour nursing services furnished or supervised by a registered nurse, and have a licensed practical nurse or registered nurse on duty at all times.

(b) The hospital must have a well-organized service with a plan of administrative authority and delineation of responsibilities for patient care. The chief nursing officer must be a licensed registered nurse who is responsible for the operation of the service, including determining the types and numbers of nursing personnel and staff necessary to provide nursing care for all areas of the hospital.

(c) The nursing service must have adequate numbers of licensed registered nurses, licensed practical nurses, and other personnel to provide nursing care to all patients as needed. There must be supervisory and staff personnel for each department or nursing unit to ensure, when needed, the immediate availability of a registered nurse for bedside care of any patient.

(d) There must be a procedure to ensure that hospital nursing personnel for whom licensure is required have valid and current licenses.

(e) A registered nurse must assess, supervise and evaluate the nursing care for each patient.

(f) The hospital must ensure that an appropriate individualized plan of care is available for each patient.

(g) A registered nurse must assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the specialized qualifications and competence of the nursing staff available. All nursing personnel assigned to special care units shall have specialized training and a program in-service and continuing education commensurate with the duties and responsibilities of the individual. All training shall be documented for each individual so employed, along with documentation of annual competency skills.

(h) A registered nurse may make the actual determination and pronouncement of death under the following circumstances:

1. the deceased was a patient at a hospital as defined by T.C.A. § 68-11-201(27);

2. death was anticipated, and the attending physician has agreed in writing to sign the death certificate. Such agreement by the attending physician must be present with the deceased at the place of death;

3. the nurse is licensed by the state; and

4. the nurse is employed by the hospital providing services to the deceased.

(i) Non-employee licensed nurses who are working in the hospital must adhere to the policies and procedures of the hospital. The chief nursing officer must provide for the adequate supervision and evaluation of the clinical activities of non-employee nursing personnel which occur within the responsibility of the nursing service. Annual competency and skill documentation must be demonstrated on these individuals just as employees, if they perform clinical activities.

(Rule 1200-08-01-.06, continued)

(j) All drugs, devices and related materials must be administered by, or under the supervision of, nursing or other personnel in accordance with federal and state laws and regulations, including applicable licensing requirements, and in accordance with the approved medical staff policies and procedures.

(k) All orders for drugs, devices and related materials must be in writing and signed by the practitioner or practitioners responsible for the care of the patient. Electronic and computer-generated records and signature entries are acceptable. When telephone or oral orders must be used, they must be:

1. Accepted only by personnel that are authorized to do so by the medical staff policies and procedures, consistent with federal and state law; and

2. Signed or initialed by the prescribing practitioner according to hospital policy.

(l) Blood transfusions and intravenous medications must be administered in accordance with state law and approved medical staff policies and procedures.

(m) There must be a hospital procedure for reporting transfusion reactions, adverse drug reactions, and errors in administration of drugs.

(5) Medical Records.

(a) The hospital shall comply with the Tennessee Medical Records Act, T.C.A. § 68-11-301, et seq. A hospital shall transfer copies of patient medical records in a timely manner to requesting practitioners and facilities.

(b) The hospital must have a medical record service that has administrative responsibility for medical records. The service shall be supervised by a Registered Health Information Administrator (RHIA), a Registered Health Information Technician (RHIT), or a person qualified by work experience. A medical record must be maintained for every individual evaluated or treated in the hospital.

(c) The organization of the medical record service must be appropriate to the scope and complexity of the services performed. The hospital must employ adequate personnel to ensure prompt completion, filing and retrieval of records.

(d) The hospital must maintain a medical record for each inpatient and outpatient. Medical records must be accurate, promptly completed, properly filed and retained, and accessible. The hospital must use a system of author identification and record maintenance that ensures the integrity of the authentication and protects the security of all record entries.

(e) All medical records, either written, electronic, graphic or otherwise acceptable form, must be retained in their original or legally reproduced form for a minimum period of at least ten (10) years, or for the period of minority plus one year for newborns, after which such records may be destroyed. Records destruction shall be accomplished by burning, shredding or other effective method in keeping with the confidential nature of its contents. The destruction of records must be made in the ordinary course of business, must be documented and in accordance with the hospital's policies and procedures, and no record may be destroyed on an individual basis.

(f) When a hospital closes with no plans of reopening, an authorized representative of the hospital may request final storage or disposition of the hospital's medical records by the department. Upon transfer to the department, the hospital relinquishes all control over

(Rule 1200-08-01-.06, continued)

final storage of the records in the files of the Tennessee Department of Finance and Administration and the files shall become property of the State of Tennessee.

(g) The hospital must have a system of coding and indexing medical records. The system must allow for timely retrieval by diagnosis and procedure.

(h) The hospital must have a procedure for ensuring the confidentiality of patient records. Information from or copies of records may be released only to authorized individuals, and the hospital must ensure that unauthorized individuals cannot gain access to or alter patient records. Original medical records must be released by the hospital only in accordance with federal and state laws, court orders or subpoenas.

(i) The medical record must contain information to justify admission and continued hospitalization, support the diagnosis, and describe the patient's progress and response to medications and services.

(j) All entries must be legible, complete, dated and authenticated according to hospital policy.

(k) All records must document the following:

1. Evidence of a physical examination, including a health history, performed and/or updated no more than forty-five (45) days prior to admission or within forty-eight (48) hours following admission;

2. Admitting diagnosis;

3. Results of all consultative evaluations of the patient and appropriate findings by clinical and other staff involved in the care of the patient;

4. Documentation of complications, hospital acquired infections, and unfavorable reactions to drugs and anesthesia;

5. Properly executed informed consent forms for procedures and treatments specified by hospital policy, or by federal or state law if applicable, as requiring written patient consent;

6. All practitioners' orders, nursing notes, reports of treatment, medication records, radiology, and laboratory reports, and vital signs and other information necessary to monitor the patient's condition;

7. Discharge summary with outcome of hospitalization, disposition of case and plan for follow-up care; and

8. Final diagnosis with completion of medical records within thirty (30) days following discharge.

(l) Electronic and computer-generated records and signature entries are acceptable.

(6) Pharmaceutical Services.

(a) The hospital must have pharmaceutical services that meet the needs of the patients and are in accordance with the Tennessee Board of Pharmacy statutes and regulations. The medical staff is responsible for developing policies and procedures that minimize drug errors. This function may be delegated to the hospital's organized pharmaceutical service.

(Rule 1200-08-01-.06, continued)

(b) A full-time, part-time or consulting pharmacist must be responsible for developing, supervising and coordinating all the activities of the pharmacy services.

(c) Current and accurate records must be kept of receipt and disposition of all scheduled drugs.

(d) Adverse drug events, both adverse reactions and medication errors, shall be reported according to established guidelines to the hospital performance improvement/risk management program and as appropriate to physicians, the hospital governing body and regulatory agencies.

(e) Abuses and losses of controlled substances must be reported, in accordance with federal and state laws, to the individual responsible for the pharmaceutical service, and to the chief executive officer, as appropriate.

(f) Current reference materials relating to drug interactions and information of drug therapy, side effects, toxicology, dosage, indications for use, and routes of administration must be available to the professional staff in the pharmacy and in areas where medication is administered.

(g) Any unused portions of prescriptions shall be either turned over to the patient only on a written authorization including directions by the physician, or returned to the pharmacy for proper disposition by the pharmacist.

(h) Whenever patients bring drugs into an institution, such drugs shall not be administered unless they can be identified and ordered to be given by a physician.

(7) Radiologic Services.

(a) The hospital must maintain, or have available, diagnostic radiologic services according to the needs of the patients. If therapeutic services are also provided, they, as well as the diagnostic services, must meet professionally approved standards for safety and personnel qualifications.

(b) The radiologic services must be free from hazards for patients and personnel.

(c) Patients, employees and the general public shall be provided protection from radiation in accordance with "State Regulations for Protection Against Radiation". All radiation producing equipment shall be registered and all radioactive material shall be licensed by the Division of Radiological Health of the Tennessee Department of Environment and Conservation.

(d) Periodic inspections of equipment must be made and hazards identified must be promptly corrected.

(e) Radiologic services must be provided only on the order of practitioners with clinical privileges or of other practitioners authorized by the medical staff and the governing body to order the services.

(f) X-ray personnel shall be qualified by education, training and experience for the type of service rendered.

(g) All x-ray equipment must be registered with the Tennessee Department of Environment and Conservation, Division of Radiological Health.

(Rule 1200-08-01-.06, continued)

(h) X-rays shall be retained for four (4) years and may be retired thereafter provided that a signed interpretation by a radiologist is maintained in the patient's record under T.C.A. § 68-11-305.

(i) Patients must not be left unattended in pre and post radiology areas.

(8) Laboratory Services.

(a) The hospital must maintain, or have available, either directly or through a contractual agreement, adequate laboratory services to meet the needs of its patients. The hospital must ensure that all laboratory services provided to its patients are performed in a facility licensed in accordance with the Tennessee Medical Laboratory Act. All technical laboratory staff shall be licensed in accordance with the TMLA and shall be qualified by education, training and experience for the type of services rendered.

(b) Emergency laboratory services must be available 24 hours a day.

(c) A written description of services provided must be available to the medical staff.

(d) The laboratory must make provision for proper receipt and reporting of tissue specimens.

(e) The medical staff and a pathologist must determine which tissue specimens require a macroscopic (gross) examination and which require both macroscopic and microscopic examination.

(f) Laboratory services must be provided in keeping with services rendered by the hospital. This shall include suitable arrangements for blood and plasma at all times. Written policies and procedures shall be developed in concert with the Standards of American Association of Blood Banks. Documentation and record keeping shall be maintained for tracking and performance monitoring.

(9) Food and Dietetic Services.

(a) The hospital must have organized dietary services that are directed and staffed by adequate qualified personnel. A hospital may contract with an outside food management company if the company has a dietitian who serves the hospital on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this section and provides for constant liaison with the hospital medical staff for recommendations on dietetic policies affecting patient treatment. If an outside contract is utilized for management of its dietary services, the hospital shall designate a full-time employee to be responsible for the overall management of the services.

(b) The hospital must designate a person, either directly or by contractual agreement, to serve as the food and dietetic services director with responsibility for the daily management of the dietary services. The food and dietetic services director shall be:

1. A qualified dietitian; or,

2. A graduate of a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association; or,

3. An individual who has successfully completed in-person or online coursework that provided ninety (90) or more hours of classroom instruction in food service

(Rule 1200-08-01-.06, continued)

supervision. If the course has not been completed, this person shall be enrolled in a course and making satisfactory progress for completion within the time limit specified by the course requirement; or,

4. An individual who is a certified dietary manager (CDM), or certified food protection professional (CFPP); or,

5. A current or former member of the U.S. military who has graduated from an approved military dietary manager training program.

(c) There must be a qualified dietitian, full time, part-time, or on a consultant basis who is responsible for the development and implementation of a nutrition care process to meet the needs of patients for health maintenance, disease prevention and, when necessary, medical nutrition therapy to treat an illness, injury or condition. Medical nutrition therapy includes assessment of the nutritional status of the patient and treatment through diet therapy, counseling and/or use of specialized nutrition supplements.

(d) There must be sufficient administrative and technical personnel competent in their respective duties.

(e) Menus must meet the needs of the patients.

~~1. Therapeutic diets must be prescribed by the practitioner or practitioners responsible for the care of the patients.~~

1. Individual patient nutritional needs must be met in accordance with recognized dietary practices.

~~2. Nutritional needs must be met in accordance with recognized dietary practices and in accordance with orders of the practitioners or practitioners responsible for the care of the patients.~~

2. All patient diets, including therapeutic diets, must be ordered by a practitioner responsible for the care of the patient, or by a qualified dietitian to whom the physician who chairs the hospital's medical executive committee has referred this task. The medical staff and hospital's board of trustees shall decide the extent of ordering privileges that a qualified dietitian shall have and a mechanism to ensure that order writing by a qualified dietitian is coordinated with the responsible practitioner's care of the patient and complies with Tennessee law governing dietitians.

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3. A current therapeutic diet manual approved by the dietitian and medical staff must be readily available to all medical, nursing, and food service personnel.

(f) Education programs, including orientation, on-the-job training, inservice education, and continuing education programs shall be offered to dietetic services personnel on a regular basis. Programs shall include instruction in personal hygiene, proper inspection, handling, preparation and serving of food and equipment.

(g) A minimum of three (3) meals in each twenty-four (24) hour period shall be served. A supplemental night meal shall be served if more than fourteen (14) hours lapse between supper and breakfast. Additional nourishment shall be provided to patients with special dietary needs.

(h) All food shall be from sources approved or considered satisfactory by the department and shall be clean, wholesome, free from spoilage, free from adulteration and

(Rule 1200-08-01-.06, continued)

misbranding and safe for human consumption. No food which has been processed in a place other than a commercial food processing establishment shall be used.

(i) Food shall be protected from sources of contamination whether in storage or while being prepared, served and/or transported. Perishable foods shall be stored at such temperatures as to prevent spoilage. Potentially hazardous foods shall be maintained at safe temperatures as defined in the current "U.S. Public Health Service Food Service Sanitation Manual".

(j) Written policies and procedures shall be followed concerning the scope of food services in accordance with the current edition of the "U.S. Public Health Service Recommended Ordinance and Code Regulating Eating and Drinking Establishments" and the current "U.S. Public Health Service Sanitation Manual" should be used as a guide to food sanitation.

(10) Critical Access Hospital.

(a) Every patient shall be under the care of a physician or under the care of a mid-level practitioner supervised by a physician.

(b) Whenever a patient is admitted to the facility by a mid-level practitioner, the supervising physician shall be notified of that fact, by phone or otherwise, and within 24 hours the supervising physician shall examine the patient or before discharge if discharged within 24 hours, and a plan of care shall be placed in the patient's chart, unless the patient is transferred to a higher level of care within 24 hours.

(c) A physician, a mid-level practitioner or a registered nurse shall be on duty and physically available in the facility when there are inpatients.

(d) A physician on staff shall:

1. Provide medical direction to the facility's health care activities and consultation for non-physician health care providers.

2. In conjunction with the mid-level practitioner staff members, participate in developing, executing, and periodically reviewing the facility's written policies and the services provided to patients.

3. Review and sign the records of each patient admitted and treated by a practitioner no later than fifteen (15) days after the patient's discharge from the facility.

4. Provide health care services to the patients in the facility, whenever needed and requested.

5. Prepare guidelines for the medical management of health problems, including conditions requiring medical consultation and/or patient referral.

6. At intervals no more than two (2) weeks apart, be physically present in the facility for a sufficient time to provide medical direction, medical care services, and staff consultation as required.

7. When not physically present in the facility, either be available through direct telecommunication for consultation and assistance with medical emergencies and patient referral, or ensure that another physician is available for this purpose.

(Rule 1200-08-01-.06, continued)

8. The physical site visit for a given two week period is not required if, during that period, no inpatients have been treated in the facility.

(e) A mid-level practitioner on staff shall:

1. Participate in the development, execution, and periodic review of the guidelines and written policies governing treatment in the facility.

2. Participate with a physician in a review of each patient's health records.

3. Provide health care services to patients according to the facility's policies.

4. Arrange for or refer patients to needed services that are not provided at the facility.

5. Assure that adequate patient health records are maintained and transferred as necessary when a patient is referred.

(f) The Critical Access Hospital, at a minimum, shall provide basic laboratory services essential to the immediate diagnosis and treatment of patients, including:

1. Chemical examinations of urine stick or tablet methods, or both (including urine ketoses);

2. Microscopic examinations of urine sediment;

3. Hemoglobin or hematocrit;

4. Blood sugar;

5. Gram stain;

6. Examination of stool specimens for occult blood;

7. Pregnancy test;

8. Primary culturing for transmittal to a CLIA certified laboratory;

9. Sediment rate; and,

10. CBC.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-3-511, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed December 2, 2003; effective February 15, 2004. Amendment filed May 24, 2004; effective August 7, 2004. Amendment filed September 6, 2005; effective November 20, 2005. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed December 23, 2009; effective March 23, 2010. Amendment filed March 18, 2010; effective June 16, 2010. Amendment filed December 16, 2013; effective March 16, 2014. Amendments filed July 18, 2016; effective October 16, 2016.*

1200-08-01-.07 OPTIONAL HOSPITAL SERVICES.

(1) Surgical Services.

(Rule 1200-08-01-.07, continued)

(a) If the hospital provides surgical services, the services must be well organized and provided in accordance with acceptable standards of practice. If outpatient surgical services are offered, the services must be consistent in quality with inpatient care in accordance with the complexity of services offered.

(b) The organization of the surgical services must be appropriate to the scope of the services offered.

(c) The operating rooms must be supervised by an experienced registered nurse or a doctor of medicine or osteopathy.

(d) A hospital may use scrub nurses in its operating rooms. For the purposes of this rule, a "scrub nurse" is defined as a registered nurse or either a licensed practical nurse (LPN) or a surgical technologist (operating room technician) supervised by a registered nurse who works directly with a surgeon within the sterile field, passing instruments, sponges, and other items needed during the procedure and who scrubs his or her hands and arms with special disinfecting soap and wears surgical gowns, caps, eyewear, and gloves, when appropriate.

(e) Qualified registered nurses may perform circulating duties in the operating room. In accordance with applicable state laws and approved medical staff policies and procedures, LPNs and surgical technologists may assist in circulatory duties under the supervision of a qualified registered nurse who is immediately available to respond to emergencies.

(f) Surgical privileges must be delineated for all practitioners performing surgery in accordance with the competencies of each practitioner. The surgical service must maintain a roster of practitioners specifying the surgical privileges of each practitioner.

(g) Surgical services must be consistent with needs and resources. Policies covering surgical care must be designed to assure the achievement and maintenance of high standards of medical practice and patient care.

(h) Surgical technologists must:

1. Hold current national certification established by the Liaison Council on Certification for the Surgical Technologist (LCC-ST); or

2. Have completed a program for surgical technology accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP); or

3. Have completed an appropriate training program for surgical technologists in the armed forces or at a CAAHEP accredited hospital or CAAHEP accredited ambulatory surgical treatment center; or

4. Successfully complete the surgical technologists LCC-ST certifying exam; or

5. Provide sufficient evidence that, prior to May 21, 2007, the person was at any time employed as a surgical technologist for not less than eighteen (18) months in the three (3) years preceding May 21, 2007 in a hospital, medical office, surgery center, or an accredited school of surgical technology; or has begun the appropriate training to be a surgical technologist prior to May 21, 2007, provided that such training is completed within three (3) years of May 21, 2007.

(i) A hospital can petition the director of health care facilities of the department for a waiver from the provisions of 1200-08-01-.07(1)(h) if they are unable to employ a sufficient

(Rule 1200-08-01-.07, continued)

number of surgical technologists who meet the requirements. The facility shall demonstrate to the director that a diligent and thorough effort has been made to employ surgical technologist who meet the requirements. The director shall refuse to grant a waiver upon finding that a diligent and thorough effort has not been made. A waiver shall exempt a facility from meeting the requirements for not more than nine (9) months. Additional waivers may be granted, but all exemptions greater than twelve (12) months shall be approved by the Board for Licensing Health Care Facilities.

(j) Surgical technologists shall demonstrate continued competence in order to perform their professional duties in surgical technology. The employer shall maintain evidence of the continued competence of such individuals. Continued competence activities may include but are not limited to continuing education, in-service training, or certification renewal. Persons qualified to be employed as surgical technologists shall complete fifteen (15) hours of continuing education or contact hours annually. Current certification by the National Board of Surgical Technology and Surgical Assisting shall satisfy this requirement.

(k) There must be a complete history and physical work-up in the chart of every patient prior to surgery, except in emergencies. If the history has been dictated, but not yet recorded in the patient's chart, there must be a statement to that effect and an admission note in the chart by the practitioner who admitted the patient.

(l) Properly executed informed consent, advance directive, and organ donation forms, when applicable, must be in the patient's chart before surgery, except in emergencies.

(m) The following equipment must be available to the operating room suites:

1. Call-in system;

2. Cardiac monitor;

3. Resuscitator;

4. Defibrillator;

5. Aspirator; and

6. Tracheotomy set.

(n) There must be adequate provisions for immediate pre and post-operative care.

(o) The operating room register must be complete and up-to-date.

(p) An operative report describing techniques, findings, and tissues removed or altered must be written or dictated immediately following surgery and signed by the surgeon.

(2) Anesthesia Services.

(a) If the hospital furnishes anesthesia services, they must be provided in a well organized manner under the direction of a qualified doctor of medicine or osteopathy. The service is responsible for all anesthesia administered in the hospital.

(b) The organization of anesthesia services must be appropriate to the scope of the services offered. Anesthesia must be administered only by:

1. A qualified anesthesiologist;

(Rule 1200-08-01-.07, continued)

2. A doctor of medicine or osteopathy (other than an anesthesiologist);

3. A dentist, oral surgeon, or podiatrist who is qualified to administer anesthesia under State law;

4. A certified registered nurse anesthetist (CRNA); or

5. A graduate registered nurse anesthetist under the supervision of an anesthesiologist who is immediately available if needed.

(c) Anesthesia services must be consistent with needs and resources. Policies on anesthesia procedures must include the delineation of pre-anesthesia and post-anesthesia responsibilities. The policies must ensure that the following are provided for each patient:

1. A pre-anesthesia evaluation or evaluation update conducted within forty-eight (48) hours prior to surgery by an individual qualified to administer anesthesia;

2. An intraoperative anesthesia record;

3. For each inpatient, a written post-anesthesia follow-up report prepared within forty-eight (48) hours following surgery by an individual qualified to administer anesthesia or by the person who administered the anesthesia and submits the report by telephone; and

4. For each outpatient, a post-anesthesia evaluation of anesthesia recovery prepared in accordance with policies and procedures approved by the medical staff.

(3) Nuclear Medicine Services.

(a) If the hospital provides nuclear medicine services, those services must meet the needs of the patients in accordance with acceptable standards of practice.

(b) The organization of the nuclear medicine service must be appropriate to the scope and complexity of the services offered.

(c) There must be a director who is a doctor of medicine or osteopathy qualified in nuclear medicine.

(d) The qualifications, training, functions, and responsibilities of nuclear medicine personnel must be specified by the service director and approved by the medical staff.

(e) Radioactive materials must be prepared, labeled, used, transported, stored, and disposed of in accordance with acceptable standards of practice.

(f) In-house preparation of radiopharmaceuticals is by, or under, the direct supervision of an appropriately trained registered pharmacist or a doctor of medicine or osteopathy.

(g) If laboratory tests are performed in the nuclear medicine service, the service must meet the applicable requirements for laboratory services as specified in TCA § 68-29-101, et seq.

(Rule 1200-08-01-.07, continued)

(h) Equipment and supplies must be appropriate for the types of nuclear medicine services offered and must be maintained for safe and efficient performance. The equipment must be:

1. Maintained in safe operating condition; and,

2. Inspected, tested, and calibrated at least annually by qualified personnel.

(i) The hospital must maintain signed and dated reports of nuclear medicine interpretations, consultations, and procedures. Copies of nuclear medicine reports must be maintained for at least ten (10) years.

(j) The practitioner approved by the medical staff to interpret diagnostic procedures must sign and date the interpretation of these tests.

(k) The hospital must maintain records of the receipt and disposition of radiopharmaceuticals.

(l) Nuclear medicine services must be ordered only by a practitioner whose scope of federal or state licensure and whose defined staff privileges allow such referrals.

(m) Patients are not left unattended in pre and post procedure areas.

(4) Outpatient Services.

(a) If the hospital provides outpatient services, the services must meet the needs of the patients in accordance with acceptable standards of practice.

(b) Outpatient services must be appropriately organized and integrated with inpatient services.

(c) The hospital must have appropriate professional and non-professional personnel available to provide outpatient services.

(d) Patient's rights, including a phone number to call regarding questions or concerns, shall be made readily available to outpatients.

(e) Outpatient laboratory testing in Tennessee hospitals may be ordered by the following:

1. Any licensed Tennessee practitioner who is authorized to do so by T.C.A. § 68-29-121;

2. Any out of state practitioner who has a Tennessee telemedicine license issued pursuant to rule 0880-02-.16; or

3. Any duly licensed out of state health care professional as listed in T.C.A. § 68-29-121 who is authorized by his or her state board to order outpatient laboratory testing in hospitals for individuals with whom that practitioner has an existing face-to-face patient relationship as outlined in rule 0880-02-.14(7)(a)1., 2., and 3.

(f) Outpatient diagnostic testing in Tennessee hospitals may be ordered by the following:

1. Any Tennessee practitioner licensed under Title 63 who is authorized to do so by his or her practice act;

(Rule 1200-08-01-.07, continued)

2. Any out of state practitioner who has a Tennessee telemedicine license issued pursuant to rule 0880-02-.16; or

3. Any duly licensed out of state health care professional who is authorized by his or her state board to order outpatient diagnostic testing in hospitals for individuals with whom that practitioner has an existing face-to-face patient relationship as outlined in rule 0880-02-.14(7)(a)1., 2., and 3.

(5) Emergency Services.

(a) Hospitals that elect to provide surgical services, other than in a separately licensed Ambulatory Surgical Treatment Center, must maintain and operate an emergency room.

(b) If emergency services are provided, the hospital must meet the emergency needs of patients in accordance with acceptable standards of practice. Each hospital must have a policy which assures that all patients who present to the emergency department, are screened/triaged to determine if a medical emergency exists and stabilized when a medical emergency does exist. A hospital may deny access to patients when it is on diversionary status only because it does not have the staff or facilities in the emergency department to accept any additional emergency patients at that time. If an ambulance disregards the hospital's instructions and brings an individual on to the hospital grounds, the individual has arrived on hospital property and cannot be denied access to hospital services. Hospital property, for the purpose of this subparagraph, is considered to be:

1. The hospital's physical geographic boundaries; or

2. Ambulances owned and operated by the hospital, whenever in operation, whether or not on hospital grounds.

(c) A hospital may not delay provision of an appropriate medical screening examination in order to inquire about the individual's method of payment or insurance status.

(d) If emergency services are provided at the hospital:

1. The services must be organized under the direction of a qualified member of the medical staff;

2. The services must be integrated with other departments of the hospital; and

3. The policies and procedures governing medical care provided in the emergency service or department are established by and are a continuing responsibility of the medical staff. These policies and procedures must define how the hospital will assess, stabilize, treat and/or transfer patients.

(e) There must be adequate medical and nursing personnel qualified in emergency care to meet the written emergency procedures and needs anticipated by the facility.

(f) There shall be a sufficient number of emergency rooms and adequate equipment and supplies to accommodate the caseload of the emergency services.

(g) The entrance to the emergency department shall be clearly marked.

(h) Legend drugs in emergency rooms shall be stored in locked cabinets, except as otherwise provided for emergency drugs by the written policies and procedures of the

(Rule 1200-08-01-.07, continued)

hospital. Discharge medications may be dispensed to out-patients upon written physician orders provided that they have been packaged in containers by the pharmacist in amounts not to exceed twelve (12) hours dosage and labeled in accordance with Pharmacy Board rules.

(i) Emergency Room medical records shall include the following:

1. Identification data;

2. Information concerning the time of arrival, means and by whom transported;

3. Pertinent history of the injury or illness to include chief complaint and onset of injuries or illness;

4. Significant physical findings;

5. Description of laboratory, x-ray and EKG findings;

6. Treatment rendered;

7. Condition of the patient on discharge or transfer;

8. Diagnosis on discharge;

9. Instructions given to the patient or his family; and

10. A control register listing chronologically the patient visits to the emergency room. The record shall contain at least the patient's name, date and time of arrival and record number. The name of those dead on arrival shall be entered in the register.

(j) Emergency patients and their families are made aware of their rights, including a number to call regarding concerns or questions.

(6) Rehabilitation Services.

(a) If the hospital provides rehabilitation, physical therapy, occupational therapy, audiology, or speech pathology services, the services must be organized and staffed to ensure the health and safety of patients. These disciplines should document their contribution to the plan for patient care.

(b) The organization of the service must be appropriate to the scope of the services offered.

(c) The director of the service must have the necessary knowledge, experience, and capabilities to properly supervise and administer the services.

(d) Physical therapy, occupational therapy, speech therapy, or audiology services, if provided, must be provided by staff who meet the qualifications specified by hospital policy, consistent with state law.

~~(e) Services must be furnished in accordance with a written plan of treatment. Services must be given in accordance with orders of practitioners who are authorized by the medical staff to order the services and the orders must be incorporated in the patient's record.~~

(Rule 1200-08-01-.07, continued)

(e) Services must be furnished in accordance with a written plan of treatment in accordance with the practice acts of the practitioners who are authorized by medical staff to provide the services. The written plan of treatment must be incorporated in the patient's record.

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(7) Obstetrical Services.

(a) If a hospital provides obstetrical services it shall have space, facilities, equipment and qualified personnel to assure appropriate treatment of all maternity patients and newborns.

(b) The hospital must have written policies and procedures governing medical care provided in the obstetrical service which are established by and are a continuing responsibility of the medical staff.

(c) Provisions must be made for care of the patient during labor and delivery, either in the patient's room or in a designated room.

(d) Designated delivery rooms shall be segregated from patient areas and be located so as not to be used as a passageway between or subject to contamination from other parts of the hospital.

(e) A delivery record shall be kept that must indicate:

1. The name of the patient;

2. Her maiden name;

3. Date of delivery;

4. Sex of infant;

5. Name of physician;

6. Names of persons assisting;

7. What complications, if any, occurred;

8. Type of anesthesia used;

9. Name of person administering anesthesia; and

10. Other persons present.

(8) Pediatric Services.

(a) If the hospital provides pediatric services, it shall provide appropriate pediatric equipment and supplies.

(b) Pediatric services must be appropriate to the scope and complexity of the services offered and must meet the needs of the patients in accordance with acceptable standards of practice.

(Rule 1200-08-01-.07, continued)

(c) The hospital must have appropriate professional and non-professional personnel available to provide pediatric services.

(9) Respiratory Care Services.

(a) If the hospital provides respiratory care services, the hospital must meet the needs of the patients in accordance with acceptable standards of practice.

(b) The organization of the respiratory care services must be appropriate to the scope and complexity of the services offered.

(c) There must be a director of respiratory care services who is a doctor of medicine or osteopathy with the knowledge, experience, and capabilities to supervise and administer the service properly.

(d) There must be adequate numbers of certified respiratory therapists, certified respiratory therapy technicians, and other personnel who meet the qualifications specified by the medical staff, consistent with state law.

(e) Services must be delivered in accordance with medical staff directives.

(f) Personnel qualified to perform specific procedures and the amount of supervision required for personnel to carry out specific procedures must be designated in writing.

(g) If blood gases or other laboratory tests are performed in the respiratory care unit, the unit must meet the applicable requirements for clinical laboratory services specified in the Tennessee Medical Laboratory Act.

(10) Social Work Services.

(a) If the hospital provides social work services, the services must be available to the patient, the patient's family and other persons significant to the patient, in order to facilitate adjustment of these individuals to the impact of illness and to promote maximum benefits from the health care services provided.

(b) Social work services shall include psychosocial assessment, counseling, coordination of discharge planning, community liaison services, financial assistance and consultation.

(c) Social work services shall be provided by personnel who satisfy applicable accreditation standards and who are in compliance with Tennessee State Law governing social work practices. Social work personnel employed by the hospital prior to the effective date of these regulations shall be deemed to meet this requirement.

(d) Facilities for social work services shall be readily accessible and shall permit privacy for interviews and counseling.

(11) Psychiatric Services.

(a) If a hospital provides psychiatric services, a psychiatric unit devoted exclusively for the care and treatment of psychiatric patients and professional personnel qualified in the diagnosis and treatment of patients with psychiatric illnesses shall be provided. Adequate protection shall be provided for patients and the staff against any physical injury resulting from a patient becoming violent. A psychiatric unit shall meet the requirements as needed to care for patients admitted, either through direct care or by contractual arrangements.

(Rule 1200-08-01-.07, continued)

(b) A hospital licensed by the Department of Health as a satellite hospital whose primary purpose is the provision of mental health or mental retardation services, must verify to the Department that Standards of the Department of Mental Health and Mental Retardation are satisfied.

(12) Alcohol and Drug Services.

(a) If a hospital provides alcohol and drug services, the service shall be devoted exclusively to the care and treatment of alcohol and drug dependent patients and have on staff physicians and other professional personnel qualified in the diagnosis and treatment of alcoholism and drug addiction.

(b) Adequate protection shall be provided for the patients and staff against any physical injury resulting from a patient becoming disturbed or violent. Alcohol and drug services shall meet the requirements as needed to care for patients admitted, either through direct care or by contractual arrangements.

(13) Perinatal and/or Neonatal Care Services. Any hospital providing perinatal and/or neonatal care services shall comply with the Tennessee Perinatal Care System Guidelines for Regionalization, Hospital Care Levels, Staffing and Facilities developed by the Tennessee Department of Health's Perinatal Advisory Committee, June 1997 including amendments as necessary.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-209, 68-57-101, 68-57-102, 68-57-104, and 68-57-105.* ***Administrative History:*** *Original rule filed March 18, 2000; effective May 30, 2000. Amendment filed April 17, 2000; effective July 1, 2000. Amendment filed June 12, 2003; effective August 26, 2003. Amendment filed July 27, 2005; effective October 10, 2005. Amendment filed February 23, 2006; effective May 9, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-01-.08 BUILDING STANDARDS.

(1) A hospital shall construct, arrange, and maintain the condition of the physical plant and the overall hospital environment in such a manner that the safety and well-being of the patients are assured.

(2) After the applicant has submitted an application and licensure fees, the applicant must submit the building construction plans to the department. All facilities shall conform to the current edition of the following applicable codes as approved by the Board for Licensing Health Care Facilities: International Building Code (excluding Chapters 1 and 11) including referenced International Fuel Gas Code, International Mechanical Code, and International Plumbing Code; National Fire Protection Association (NFPA) NFPA 101 Life Safety Code excluding referenced NFPA 5000; Guidelines for Design and Construction of Health Care Facilities (FGI) including referenced Codes and Standards; U.S. Public Health Service Food Code; and Americans with Disabilities Act (ADA) Standards for Accessible Design. When referring to height, area or construction type, the International Building Code shall prevail. Where there are conflicts between requirements in local codes, the above listed codes, regulations and provisions of this chapter, the most stringent requirements shall apply.

(3) The codes in effect at the time of submittal of plans and specifications, as defined by these rules, shall be the codes to be used throughout the project.

(4) A licensed contractor shall perform all new construction and renovations to hospitals, other than minor alterations not affecting fire and life safety or functional issues, in accordance with

RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES
DIVISION OF HEALTH CARE FACILITIES

CHAPTER 1200-08-06
STANDARDS FOR NURSING HOMES

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1200-08-06-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Administrator. A person currently licensed as such by the Tennessee Board of Examiners for Nursing Home Administrators.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(6) Board. The Tennessee Board for Licensing Health Care Facilities.

(7) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.

(8) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

(9) Certified Nurse Aide or Certified Nursing Assistant. An individual who has successfully completed an approved nursing assistant training program and is registered with the department.

(Rule 1200-08-06-.01, continued)

(10) Clinical Fellow. A Speech Language Pathologist who is in the process of obtaining his or her paid professional experience, as defined by a Communications Disorders and Sciences Board-approved accreditation agency, before being qualified for licensure.

(11) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(12) Competent. A resident who has capacity.

(13) Department. The Tennessee Department of Health.

(14) Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of a designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(15) Dietitian. A person currently licensed as such by the Tennessee Board of Dietitian/Nutritionist Examiners. Persons exempt from licensure shall be registered with the American Dietetics Association pursuant to T.C.A. § 63-25-104.

(16) Director of Nursing (DON). A Registered Nurse employed full time in a nursing home who satisfies the responsibilities set forth in this chapter.

(17) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(18) Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(19) Emergency Responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(20) Guardian. A judicially appointed guardian or conservator having authority to make a health care decision for an individual.

(21) Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state or federal regulations.

(22) Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(23) Health Care Decision. Consent, refusal of consent or withdrawal of consent to health care.

(24) Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-06-.13 or T.C.A. § 33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(25) Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(Rule 1200-08-06-.01, continued)

(26) Health Care Provider. A person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(27) Hospital. Any institution, place, building or agency represented and held out to the general public as ready, willing and able to furnish care, accommodations, facilities and equipment for the use, in connection with the services of a physician or dentist, of one (1) or more nonrelated persons who may be suffering from deformity, injury or disease or from any other condition for which nursing, medical or surgical services would be appropriate for care, diagnosis or treatment.

(28) Hospitalization. The reception and care of any person for a continuous period longer than twenty-four (24) hours, for the purpose of giving advice, diagnosis, nursing service or treatment bearing on the physical health of such person, and maternity care involving labor and delivery for any period of time.

(29) Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(30) Individual instruction. An individual's direction concerning a health care decision for the individual.

(31) Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(32) Involuntary Transfer. The movement of a resident between nursing homes, without the consent of the resident, the resident's legal guardian, next of kin or representative.

(33) Licensed Practical Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(34) Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(35) Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(36) Medical Director. A licensed physician employed by the nursing home to be responsible for medical care in the facility.

(37) Medical Emergency. A medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in placing the resident's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part.

(38) Medical Equipment. Equipment used for the diagnosis, treatment and monitoring of patients, including, but not limited to, oxygen care equipment and oxygen delivery systems, enteral and parenteral feeding pumps, and intravenous pumps.

(39) Medical Record. Medical histories, records, reports, summaries, diagnoses, prognoses, records of treatment and medication ordered and given, entries, x-rays, radiology interpretations and other written, electronic, or graphic data prepared, kept, made or maintained in a facility that pertains to confinement or services rendered to residents.

(Rule 1200-08-06-.01, continued)

(40) Medically Inappropriate Treatment. Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident.

(41) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(42) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(43) NFPA. The National Fire Protection Association.

(44) Nurse Aide or Nursing Assistant Training Program. A specialized program approved by the Department to provide classroom instruction and supervised clinical experience for individuals who wish to be employed as Nurse Aides or Nursing Assistants.

(45) Nursing Personnel. Licensed nurses and certified nurse aides who provide nursing care.

(46) Occupational Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

~~(47) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(47)~~(48)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(48)~~(49)~~ Personally Informing. A communication by any effective means from the resident directly to a health care provider.

(49)~~(50)~~ Pharmacist. A person currently licensed as such by the Tennessee Board of Pharmacy.

(50)~~(51)~~ Physical Therapist. A person currently licensed as such by the Tennessee Board of Occupational and Physical Therapy Examiners.

(51)~~(52)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(52)~~(53)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(Rule 1200-08-06-.01, continued)

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(53)~~(54)~~ Physician. An individual authorized to practice medicine or osteopathy under Tennessee Code Annotated, Title 63, Chapters 6 or 9.

(54)~~(55)~~ Podiatrist. A person currently licensed as such by the Tennessee Board of Registration in Podiatry.

(55)~~(56)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2.

(56)~~(57)~~ Program Coordinator. A registered nurse who possesses a minimum of two years nursing experience with at least one year in long term care and is responsible for ensuring that the requirements of the Nurse Aide Training Program are met.

(57)~~(58)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency medical technicians, paramedics, or other emergency services personnel, providers, or entities acting within the usual course of their professions, and other emergency responders.

(58)~~(59)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not be limited to, availability by telephone.

(59)~~(60)~~ Registered Nurse. A person currently licensed as such by the Tennessee Board of Nursing.

(60)~~(61)~~ Resident/Patient. Includes but is not limited to any person who is suffering from an illness or injury and who is in need of nursing care.

(61)~~(62)~~ Secured Unit. A facility or distinct part of a facility where residents are intentionally denied egress by any means.

(62)~~(63)~~ Shall or Must. Compliance is mandatory.

(63)~~(64)~~ Social Worker. In a facility with more than 120 beds a qualified social worker is an individual with:

(a) A bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and,

(b) One year of supervised social work experience in a health care setting working directly with individuals.

(Rule 1200-08-06-.01, continued)

(64)~~(65)~~ Speech Language Pathologist. As defined in T.C.A. § 63-17-103, a person currently licensed as such by the Tennessee Board of Communications Disorders and Sciences.

(65)~~(66)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(66)~~(67)~~ Student. A person currently enrolled in a course of study that is approved by the appropriate licensing board.

(67)~~(68)~~ Supervising Health Care Provider. The designated physician or, if there is no designated physician or the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(68)~~(69)~~ Surrogate. An individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident.

(69)~~(70)~~ Survey. An on-site examination by the department to determine the quality of care and/or services provided.

(70)~~(71)~~ Transfer. The movement of a resident between nursing homes at the direction of a physician or other qualified medical personnel when a physician is not readily available. The term does not include movement of a resident who leaves the facility against medical advice. The term does not apply to the commitment and movement of mentally ill and mentally retarded persons, the discharge or release of a resident no longer in need of nursing home care, or a nursing home's refusal, after an appropriate medical screening, to render any medical care on the grounds that the person does not have a medical need for nursing home care.

(71)~~(72)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

(72)~~(73)~~ Treating Physician. The physician selected by or assigned to the resident and who has the primary responsibility for the treatment and care of the resident. Where more than one physician shares such responsibility, any such physician may be deemed to be the "treating physician."

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, 68-11-234, 68-11-1802, and 71-6-121.* ***Administrative History:*** *Original rule filed March 27, 1975; effective April 25, 1975. Repeal and new rule filed July 14, 1983; effective August 15, 1983. Repeal and new rule filed January 31, 2000; effective April 15, 2000. Amendment filed April 10, 2000; effective June 24, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed September 21, 2005; effective December 5, 2005. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015. Amendment filed September 15, 2015; effective December 14, 2015.*

1200-08-06-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any nursing home without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Satellite facilities shall be prohibited. Licenses are not transferable or

(Rule 1200-08-10-.03, continued)

(4) Either failure to submit a plan of correction in a timely manner or a finding by the department that the plan of correction is unacceptable shall subject the ambulatory surgical treatment center's license to possible disciplinary action.

(5) Any licensee or applicant for a license, aggrieved by a decision or action of the department or board, pursuant to this chapter, may request a hearing before the board. The proceedings and judicial review of the board's decision shall be in accordance with the Uniform Procedures Act, T.C.A. § 4-5-101 et seq.

(6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, 68-11-206, 68-11-208, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed March 1, 2007; effective May 15, 2007.*

1200-08-10-.04 ADMINISTRATION.

(1) The ASTC must have an effective governing body legally responsible for the conduct of the ASTC. If an ASTC does not have an organized governing body, the persons legally responsible for the conduct of the ASTC must carry out the functions specified in this chapter.

(2) The governing body shall appoint a chief executive officer or administrator who is responsible for managing the ASTC. The chief executive officer or administrator shall designate an individual to act for him or her in his or her absence, in order to provide the ASTC with administrative direction at all times.

(3) The governing body, whether it be that of the center alone or that of a parent organization, shall establish effective mechanisms to ensure the accountability of the center's medical staff and other professional personnel.

(4) The governing body shall assure that the ASTC has the financial resources to provide the services essential to the operation of the facility.

(5) Staffing shall be adequate to provide the services essential to the operation of the ASTC.

(6) The ambulatory surgical treatment center shall ensure a framework for addressing issues related to care at the end of life.

(7) The ambulatory surgical treatment center shall provide a process that assesses pain in all patients. There shall be an appropriate and effective pain management program.

(8) The ASTC shall perform only those surgical procedures which can be safely and effectively carried out on an outpatient basis.

(9) Each ASTC shall have at all times a designated Medical Director who shall be a licensed physician or dentist who shall be responsible for the direction and coordination of medical programs.

(10) Staff education programs and training sessions shall include life safety, medical equipment, utility systems, infection control and hazardous waste practices. At least two (2) on duty members of the facility shall be trained in emergency resuscitation.

(Rule 1200-08-10-.04, continued)

(11) When licensure is applicable for a particular job, a copy of the current license must be included as a part of the personnel file. Each personnel file shall contain accurate information as to the education, training, experience and personnel background of the employee. Adequate medical screenings to exclude communicable disease shall be required of each employee.

(12) Whenever the rules and regulations of this chapter require that a licensee develop a written policy, plan, procedure, technique, or system concerning a subject, the licensee shall develop the required policy, maintain it and adhere to its provisions. An ASTC which violates a required policy also violates the rule and regulation establishing the requirement.

(13) Policies and procedures shall be consistent with professionally recognized standards of practice.

(14) No ASTC shall retaliate against or, in any manner, discriminate against any person because of a complaint made in good faith and without malice to the board, the department, the Adult Protective Services, or the Comptroller of the State Treasury. An ASTC shall neither retaliate, nor discriminate, because of information lawfully provided to these authorities, because of a person's cooperation with them, or because a person is subpoenaed to testify at a hearing involving one of these authorities.

(15) When services such as dietary, laundry or therapy services are purchased from others, the governing body shall be responsible to assure the supplier(s) meet the same local and state standards the facility would have to meet if it were providing those services itself using its own staff.

(16) The governing body shall provide for the appointment, reappointment or dismissal of members of the medical, dental, and other health professions and provide for the granting of clinical privileges.

(17) The governing body shall ensure that there is a written facility agreement with one or more acute care general hospitals licensed by the state, which will admit any patient referral who requires continuing care.

(18) Each ASTC shall specify the classification of services to be provided in the facility and list authorized surgical procedures.

(19) Where the physician-owner-operator serves as the governing body, the articles of incorporation or other written organizational plan shall describe the manner in which the owner-operator executes the governing body responsibility.

(20) Infection Control.

(a) The ASTC must provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There must be an active performance improvement program for the prevention, control, and investigation of infections and communicable diseases.

(b) The physical environment of the ambulatory surgical treatment center shall be maintained in a safe, clean and sanitary manner.

1. Any condition on the ambulatory surgical treatment center site conducive to the harboring or breeding of insects, rodents or other vermin shall be prohibited. Chemical substances of a poisonous nature used to control or eliminate vermin

(Rule 1200-08-10-.04, continued)

shall be properly identified. Such substances shall not be stored with or near food or medications.

2. Cats, dogs or other animals shall not be allowed in any part of the ambulatory surgical treatment center except for specially trained animals for the handicapped and except as addressed by ambulatory surgical treatment center policy for pet therapy programs. The ambulatory surgical treatment center shall designate in its policies and procedures those areas where animals will be excluded. The areas designated shall be determined based upon an assessment of the ambulatory surgical treatment center performed by medically trained personnel.

~~3. A bed complete with mattress and pillow shall be provided. In addition, patient units shall be provided with at least one chair, a bedside table, an over bed tray and adequate storage space for toilet articles, clothing and personal belongings.~~

3. The layout of patient care areas of the ASTC, as well as the personal items offered to the patient, shall be outlined in the ASTC's policy and be based on the type of procedure performed on the patient.

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4. Individual wash cloths, towels and bed linens must be provided for each patient. Linen shall not be interchanged from patient to patient until it has been properly laundered.

5. Bath basin water service, emesis basin, bedpan and urinal shall be individually provided.

6. Water pitchers, glasses, thermometers, emesis basins, douche apparatus, enema apparatus, urinals, mouthwash cups, bedpans and similar items of equipment coming into intimate contact with patients shall be disinfected or sterilized after each use unless individual equipment for each is provided and then sterilized or disinfected between patients and as often as necessary to maintain them in a clean and sanitary condition. Single use, patient disposable items are acceptable but shall not be reused.

(c) The chief executive officer or administrator shall assure that an infection control committee including members of the medical staff, nursing staff and administrative staff develops guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the committee shall include the establishment of:

1. Written infection control policies;

2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility;

3. Written procedures governing the use of aseptic techniques and procedures in all areas of the facility, including adoption of a standardized central venous catheter insertion process which shall contain these key components:

(i) Hand hygiene (as defined in 1200-08-10-.04(20)(g));

(Rule 1200-08-10-.04, continued)

(ii) Maximal barrier precautions to include the use of sterile gowns, gloves, mask and hat, and large drape on patient;

(iii) Chlorhexidine skin antisepsis;

(iv) Optimal site selection;

(v) Daily review of line necessity; and

(vi) Development and utilization of a procedure checklist;

4. Written procedures concerning food handling, laundry practices, disposal of environmental and patient wastes, traffic control and visiting rules in high risk areas, sources of air pollution, and routine culturing of autoclaves and sterilizers;

5. A log of incidents related to infectious and communicable diseases;

6. A method of control used in relation to the sterilization of supplies and water, and a written policy addressing reprocessing of sterile supplies;

7. Formal provisions to educate and orient all appropriate personnel in the practice of aseptic techniques such as handwashing and scrubbing practices, proper grooming, masking and dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of patient care equipment and supplies; and,

8. Continuing education provided for all facility personnel on the cause, effect, transmission, prevention, and elimination of infections, as evidenced by front line employees verbalizing understanding of basic techniques.

(d) The chief executive officer, the medical staff and the chief nursing officer must ensure that the facility-wide performance improvement program and training programs address problems identified by the infection control committee and must be responsible for the implementation of successful corrective action plans in affected problem areas.

(e) The facility shall develop policies and procedures for testing a patient's blood for the presence of the hepatitis B virus and the HIV (AIDS) virus in the event that an employee of the facility, a student studying at the facility, or other health care provider rendering services at the facility is exposed to a patient's blood or other body fluid. The testing shall be performed at no charge to the patient, and the test results shall be confidential.

(f) The facility shall have an annual influenza vaccination program which shall include at least:

1. The offer of influenza vaccination to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility;

2. A signed declination statement on record from all who refuse the influenza vaccination for other than medical contraindications;

3. Education of all direct care personnel about the following:

(i) Flu vaccination,

(ii) Non-vaccine control measures, and

(iii) The diagnosis, transmission, and potential impact of influenza;

4. An annual evaluation of the influenza vaccination program and reasons for non-participation; and

5. The requirements to complete vaccinations or declination statements are suspended by the Medical Director in the event of a vaccine shortage.

(g) The facility and its employees shall adopt and utilize standard precautions (per CDC) for preventing transmission of infections, HIV, and communicable diseases, including adherence to a hand hygiene program which shall include:

1. Use of alcohol-based hand rubs or use of non-antimicrobial or antimicrobial soap and water before and after each patient contact if hands are not visibly soiled;

2. Use of gloves during each patient contact with blood or where other potentially infectious materials, mucous membranes, and non-intact skin could occur and gloves changed before and after each patient contact;

3. Use of either a non-antimicrobial soap and water or an antimicrobial soap and water for visibly soiled hands; and

4. Health care worker education programs which may include:

(i) Types of patient care activities that can result in hand contamination;

(ii) Advantages and disadvantages of various methods used to clean hands;

(iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from patients; and

(iv) Morbidity, mortality, and costs associated with health care associated infections.

(h) All ASTC's shall adopt appropriate policies regarding the testing of patients and staff for human immunodeficiency virus (HIV) and any other identified causative agent of acquired immune deficiency syndrome.

(21) Performance Improvement. The ASTC shall have a planned, systematic, organization-wide approach to process design and redesign, performance measurement, assessment and improvement which is approved by the designated medical staff committee of the facility, the owner and/or the governing body. This plan shall address and/or include, but is not limited to:

(a) Infection control, including post-operative surveillance;

(b) Complications arising after the patient was admitted;

(c) Documentation of periodic review of the data collected and follow-up actions;

(d) A system which identifies appropriate plans of action to correct identified quality deficiencies;

(Rule 1200-08-10-.04, continued)

(e) Documentation that the above policies are being followed and that appropriate action is taken whenever indicated.

(f) The facility shall develop and implement a system for measuring improvements in adherence to the hand hygiene program, central venous catheter insertion process, and influenza vaccination program.

(22) The ASTC shall ensure a framework for addressing issues related to care at the end of life.

(23) The ASTC shall provide a process that assesses pain in all patients. There shall be an appropriate and effective pain management program.

(24) All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, et seq. shall post the following in the main public entrance:

(a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;

(b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and

(c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

(25) "No smoking" signs or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted at every entrance.

(26) The facility shall develop a concise statement of its charity care policies and shall post such statement in a place accessible to the public.

(27) Informed Consent

(a) Any ambulatory surgical treatment center in which abortions, other than abortions necessary to prevent the death of the pregnant female, are performed shall conspicuously post a sign in a location defined below so as to be clearly visible to patients, which reads:

Notice: It is against the law for anyone, regardless of the person's relationship to you, to coerce you into having or to force you to have an abortion. By law, we cannot perform an abortion on you unless we have your freely given and voluntary consent. It is against the law to perform an abortion on you against your will. You have the right to contact any local or state law enforcement agency to receive protection from any actual or threatened criminal offense to coerce an abortion.

(b) The sign shall be printed in languages appropriate for the majority of clients of the facility with lettering that is legible and that is Arial font, at least 40-point bold-faced type.

(Rule 1200-08-10-.04, continued)

(c) A facility in which abortions are performed that is an ambulatory surgical treatment center shall post the required sign in each patient waiting room and patient consultation room used by patients on whom abortions are performed.

(d) An ambulatory surgical treatment center shall be assessed a civil penalty by the board for licensing health care facilities of two thousand five hundred dollars ($2,500.00) for each day of violation in which:

1. The sign required above was not posted during business hours when patients or prospective patients are present; and

2. An abortion other than an abortion necessary to prevent the death of the pregnant female was performed in the ambulatory surgical treatment center.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-15-202, 39-17-1803, 39-17-1805, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-216, 68-11-268 and 71-6-121.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed September10, 1991; effective October 25, 1991. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 18, 2002; effective September 1, 2002. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed September 9, 2005; effective November 23, 2005. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed July 18, 2007; effective October 1, 2007. Amendment filed October 11, 2007; effective December 25, 2007. Amendment filed February 22, 2010; effective May 23, 2010. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-10-.05 ADMISSIONS, DISCHARGES, AND TRANSFERS.

(1) Every person admitted for care or treatment to any ASTC shall be under the supervision of a physician licensed to practice in Tennessee. The name, address and telephone number of the physician attending the patient shall be recorded in the patient's medical record.

(2) The above does not preclude the admission of a patient to an ASTC by a dentist or podiatrist licensed to practice in Tennessee with the concurrence of a physician member of the medical staff.

(3) This does not preclude qualified oral and maxillo-facial surgeons from admitting patients and completing the admission history and physical examination and assessing the medical risk of the procedure on their patients. A physician member of the medical staff is responsible for the management of medical problems.

(4) The facility shall ensure that no person on the grounds of race, color, national origin, or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the facility. The facility shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

(5) For purposes of this chapter, the requirements for signature or countersignature by a physician, dentist, podiatrist or other person responsible for signing, countersigning or authenticating an entry may be satisfied by the electronic entry by such person of a unique code assigned exclusively to him or her, or by entry of other unique electronic or mechanical symbols, provided that such person has adopted same as his or her signature in accordance with established ASTC protocol or rules.

(6) Each ASTC must have a written transfer agreement with a local hospital.

(Rule 1200-08-10-.10, continued)

(10) Human anatomical remains which are transferred to a mortician for cremation or burial shall be exempt from the requirements of this subparagraph. Any other human limbs and recognizable organs must be incinerated or discharged (following grinding) to the sewer.

(11) All garbage, trash and other non-infectious wastes shall be stored and disposed of in a manner that must not permit the transmission of disease, create a nuisance, provide a breeding place for insects and rodents, or constitute a safety hazard. All containers for waste shall be water tight, be constructed of easily cleanable material and be kept on elevated platforms.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed July 3, 1984; effective August 1, 1984. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed June 16, 2003; effective August 30, 2003. Amendment filed September 9, 2005; effective November 23, 2005.*

1200-08-10-.11 RECORDS AND REPORTS.

(1) The Joint Annual Report of Ambulatory Surgical Treatment Centers shall be filed with the department. The forms are furnished and mailed to each ASTC by the department each year and the forms must be completed and returned to the department as required.

(2) The facility shall report information contained in the medical records of patients who have cancer or pre-cancerous or tumorous diseases as provided by existing regulations. These reports shall be sent to the Cancer Reporting System of the department on a quarterly schedule no later than six (6) months after the date of the diagnosis or treatment.

~~(3) The ASTC shall report to the department each case of communicable disease detected in the center. Repeated failure to report communicable diseases shall be cause for revocation of an ASTC's license.~~

(3) The ASTC shall report to the department each patient case of communicable disease detected in the center. Repeated failure to report communicable diseases shall be cause for revocation of an ASTC's license. The ASTC shall monitor outbreaks of communicable diseases in the nearby geographical area of the facility and inform the ASTC staff of these outbreaks in order for the employees to contact their personal physician for consultation regarding their vaccination status.

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(4) The ASTC shall report all incidents of abuse, neglect, and misappropriation to the Department of Health in accordance with T.C.A. § 68-11-211.

(5) The ASTC shall report the following incidents to the Department of Health in accordance with T.C.A. § 68-11-211.

(a) Strike by staff at the facility;

(b) External disasters impacting the facility;

(c) Disruption of any service vital to the continued safe operation of the ASTC or to the health and safety of its patients and personnel; and

(d) Fires at the ASTC that disrupt the provision of patient care services or cause harm to the patients or staff, or that are reported by the facility to any entity, including but not limited to a fire department charged with preventing fires.

(Rule 1200-08-10-.11, continued)

(6) The ASTC shall retain legible copies of the following records and reports which shall be retained in the facility, shall be maintained in a single file, and shall be made available for inspection during normal business hours to any patient who requests to view them for thirty-six (36) months following their issuance:

(a) Local fire safety inspections;

(b) Local building code inspections, if any;

(c) Fire marshal reports;

(d) Department licensure and fire safety inspections and surveys;

(e) Department quality assurance surveys, including follow-up visits, and certification inspections, if any;

(f) Federal Health Care Financing Administration surveys and inspections, if any;

(g) Orders of the Commissioner or Board, if any;

(h) Comptroller of the Treasury's audit reports and finding, if any; and,

(i) Maintenance records of all safety equipment.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-1-1004, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, and 68-11-216.* ***Administrative History:*** *Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed September 10, 1991; effective October 25, 1991. Repeal and new rule filed June 30, 1992; effective August 14, 1992. Repeal and new rule filed March 21, 2000; effective June 4, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendments filed January 3, 2012; effective April 2, 2012.*

1200-08-10-.12 PATIENT RIGHTS.

(1) Each patient has at least the following rights:

(a) To privacy in treatment and personal care;

(b) To be free from mental and physical abuse. Should this right be violated, the facility must notify the department within five (5) business days and the Tennessee Department of Human Services, Adult Protective Services immediately as required by T.C.A. § 71-6-101 et seq;

(c) To refuse treatment. The patient must be informed of the consequences of that decision, the refusal and its reason must be reported to the physician and documented in the medical record;

(d) To refuse experimental treatment and drugs. The patient's or health care decision maker's written consent for participation in research must be obtained and retained in his or her medical record;

(e) To have their records kept confidential and private. Written consent by the patient must be obtained prior to release of information except to persons authorized by law. If the patient lacks capacity, written consent is required from the patient's health care

RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-11
STANDARDS FOR HOMES FOR THE AGED

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1200-08-11-.01 DEFINITIONS.

(1) Abuse. The willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) Activities of Daily Living (ADL's). Those personal functional activities which indicate an individual's independence in eating, dressing, personal hygiene, bathing, toileting, and moving from one place to another.

(3) Adult. An individual who has capacity and is at least 18 years of age.

(4) Advance Directive. An individual instruction or a written statement relating to the subsequent provision of health care for the individual, including, but not limited to, a living will or a durable power of attorney for health care.

(5) Aged. A person who is fifty-five (55) years of age or older.

(6) Agent. An individual designated in an advance directive for health care to make a health care decision for the individual granting the power.

(7) Ambulatory resident. A resident who is physically and mentally capable under emergency conditions of finding a way to safety without physical assistance from another person. An ambulatory resident may use a cane, wheelchair or other supportive device and may require verbal prompting.

(8) Board. The Tennessee Board for Licensing Health Care Facilities.

(9) Capacity. An individual's ability to understand the significant benefits, risks, and alternatives to proposed health care and to make and communicate a health care decision. These regulations do not affect the right of a resident to make health care decisions while having the capacity to do so. A resident shall be presumed to have capacity to make a health care decision, to give or revoke an advance directive, and to designate or disqualify a surrogate. Any person who challenges the capacity of a resident shall have the burden of proving lack of capacity.

(10) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary function in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual

(Rule 1200-08-11-.01, continued)

or mechanical ventilators or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

(11) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.

(12) Department. The Tennessee Department of Health.

(13) Designated Physician. A physician designated by an individual or the individual's agent, guardian, or surrogate, to have primary responsibility for the individual's health care or, in the absence of designation or if the designated physician is not reasonably available, a physician who undertakes such responsibility.

(14) Do-Not-Resuscitate Order (DNR). A written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(15) Emancipated Minor. Any minor who is or has been married or has by court order or otherwise been freed from the care, custody and control of the minor's parents.

(16) Emergency. Any situation or condition which presents an imminent danger of death or serious physical or mental harm to residents.

(16) Emergency responder. A paid or volunteer firefighter, law enforcement officer, or other public safety official or volunteer acting within the scope of his or her proper function under law or rendering emergency care at the scene of an emergency.

(18) Evacuation Capability. The ability to either evacuate the building or move to a point of safety.

(19) Guardian. A judicially appointed guardian of conservator having authority to make a health care decision

(20) Hazardous Waste. Materials whose handling, use, storage, and disposal are governed by local, state, or federal regulations.

(21) Health Care. Any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5)

(22) Health care decision. Consent, refusal or consent or withdrawal of consent to health care.

(23) Health Care Decision-maker. In the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with healthcare decision-making authority, the resident's surrogate as determined pursuant to Rule 1200-08-11-.12 or T.C.A. § 33-3-220, the designated physician pursuant to these Rules or in the case of a minor child, the person having custody or legal guardianship.

(24) Health Care Institution. A health care institution as defined in T.C.A. § 68-11-1602.

(25) Health Care Provider A person who si licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession.

(Rule 1200-08-11-.01, continued)

(26) Holding Out to the Public. Advertising or soliciting the public through the use of personal, telephone, mail or other forms of communication to provide information about services provided by the facility.

(27) Home for the Aged. A home represented and held out to the general public as a home which accepts primarily aged persons for relatively permanent, domiciliary care with primarily being defined as 51% or more of the population of the home for the aged. It provides room, board and personal services to four (4) or more nonrelated persons. The term home includes any building or part thereof which provides services as defined in these rules.

(28) Home for the Aged Resident. A person who is ambulatory and who requires permanent, domiciliary care but who will be transferred to a licensed hospital, licensed nursing home or licensed assisted care living facility when health care services are needed which must be provided in such other facilities.

(29) Incompetent. A resident who has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity.

(28) Individual instruction. An individual's direction concerning a health care decision for the individual.

(30) Infectious Waste. Solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure to the waste by a susceptible host could result in an infectious disease.

(31) Licensee. The person or entity to whom the license is issued. The licensee is held responsible for compliance with all rules and regulations.

(32) Life Threatening Or Serious Injury. Injury requiring the patient to undergo significant additional diagnostic or treatment measures.

(33) Medically Inappropriate Treatment Resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments to achieve the expressed goals of the informed resident. In the case of the incompetent resident, the resident's representative expresses the goals of the resident

(34) N.F.P.A. The National Fire Protection Association.

(35) Misappropriation of Patient/Resident Property. The deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(36) Neglect. The failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

~~(37) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.~~

(Rule 1200-08-11-.01, continued)

(37)~~(38)~~ Person. An individual, corporation, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(38)~~(39)~~ Personal Services. Those services that are rendered to residents who need supervision or assistance in activities of daily living. Personal services must include protective care of the resident, responsibility for the safety of the resident when in the facility, daily awareness of the resident's whereabouts and the ability and readiness to intervene if crises arise. Personal services do not include nursing or medical care.

(39)~~(40)~~ Personally Informing. A communication by any effective means from the resident directly to a health care provider.

(40)~~(41)~~ Physician Assistant. A person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(41)~~(42)~~ Physician Orders for Scope of Treatment or POST. Written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(42)~~(43)~~ Power of Attorney for Health Care. The designation of an agent to make health care decisions for the individual granting the power under T.C.A. Title 34, Chapter 6, Part 2

(43)~~(44)~~ Qualified Emergency Medical Service Personnel. Includes, but shall not be limited to, emergency services personnel providers, or entities acting within the usual course of their professions, and other emergency responders.

(44)~~(45)~~ Reasonably Available. Readily able to be contacted without undue effort and willing and able to act in a timely manner considering the urgency of the resident's health care needs. Such availability shall include, but not limited to, availability by telephone.

(45)~~(46)~~ Responsible Attendant. The person designated by the licensee who remains awake to provide personal services to the residents. In the absence of the licensee, the responsible attendant is responsible for ensuring the home complies with all rules and regulations.

(46)~~(47)~~ Secured Unit. A facility or distinct part of a facility where the residents are intentionally denied egress by any means.

(47)~~(48)~~ Shall or Must. Compliance is mandatory.

(Rule 1200-08-11-.01, continued)

(48)~~(49)~~ State. A state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(49)~~(50)~~ Supervising Heath Care Provider. The designated physician or, if there is no designated physician ot the designated physician is not reasonably available, the health care provider who has undertaken primary responsibility for an individual's health care.

(50)~~(51)~~ Surrogate. An individual, other that a resident's agent or guardian, authorized to make a health care decision for the resident.

(51)~~(52)~~ Treating Health Care Provider. A health care provider who at the time is directly or indirectly involved in providing health care to the resident.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-216, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed June 21, 1979; effective August 6, 1979. Amendment filed August 16, 1988; effective September 30, 1988. Amendment filed January 30, 1992; effective March 15, 1992. Amendment filed December 7, 1993; effective February 20, 1994. Repeal and new rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003.Amendment filed September 8, 2006; effective November 22, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-11-.02 LICENSING PROCEDURES.

(1) No person, partnership, association, corporation, or state, county or local government unit, or any division, department, board or agency thereof, shall establish, conduct, operate, or maintain in the State of Tennessee any home for the aged without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire and become invalid annually on the anniversary date of their original issuance. The license shall be conspicuously posted in the home for the aged.

(2) In order to make application for a license:

(a) The applicant shall submit an application on a form prepared by the department.

(b) Each applicant for a license shall pay an annual license fee based on the number of beds as follows:

1.	Less than 6 beds	$ 300.00
2.	6 to 24 beds, inclusive	$ 800.00
3.	25 to 49 beds, inclusive	$ 1,000.00
4.	50 to 74 beds, inclusive	$ 1,200.00
5.	75 to 99 beds, inclusive	$ 1,400.00
6.	100 to 124 beds, inclusive	$ 1,600.00
7.	125 to 149 beds, inclusive	$ 1,800.00
8.	150 to 174 beds, inclusive	$ 2,000.00

RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
BOARD FOR LICENSING HEALTH CARE FACILITIES

CHAPTER 1200-08-25
STANDARDS FOR ASSISTED-CARE LIVING FACILITIES

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1200-08-25-.01 PURPOSE.

(1) The purpose of assisted-care living services is to:

(a) Promote the availability of appropriate residential facilities for the elderly and adults with disabilities in the least restrictive and most homelike environment;

(b) Provide assisted-care living services to residents in facilities by meeting each individual's medical and other needs safely and effectively; and

(c) Enhance the individual's ability to age in place while promoting personal individuality, respect, independence, and privacy.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 39-11-106, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213, 68-11-224, and 68-11-1802.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 25, 1998; effective February 8, 1999. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed April 28, 2003; effective July 12, 2003. Amendments filed January 24, 2006; effective April 9, 2006. Amendment filed February 7, 2007; effective April 23, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.*

1200-08-25-.02 DEFINITIONS.

(1) "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish.

(2) "Activities of Daily Living (ADL's)" means those activities which indicate an individual's independence in eating, dressing, personal hygiene, bathing, toileting, ambulating, and medication management.

(3) "Administering Medication" means the direct application of a single dose of medication to the body of a resident by injection, inhalation, ingestion, topical application or by any other means and the placement of a single dose of medication into a container.

(Rule 1200-08-25-.02, continued)

(4) "Administrator" means a natural person designated by the licensee to have the authority and responsibility to manage the ACLF and who is appropriately certified as an assisted-care living facility administrator or is currently licensed in Tennessee as a nursing home administrator as required by T.C.A. §§ 63-16-101, et seq.

(5) "Adult" means a person 18 years of age or older.

(6) "Ambulatory" means the resident's ability to bear weight, pivot and safely walk with the use of a cane, walker, or other mechanical supportive device with or without the minimal assistance of another person. The resident must be physically and mentally capable of self-preservation by evacuating in response to an emergency. A resident who requires a wheelchair must be capable of transferring to and propelling the wheelchair independently.

(7) "Assisted-care living facility (ACLF)" means a building, establishment, complex or distinct part thereof that accepts primarily aged persons for domiciliary care and services.

(8) "Assistance with Self-Administration of Medication" means assistance in reading labels, opening medication containers or packaging, reminding residents of their medication, or observing the resident while taking medication in accordance with the plan of care.

(9) "Assisted-care living facility resident" or "resident" means primarily an aged person who requires domiciliary care, and who upon admission to the facility, if not ambulatory, is capable of self-transfer from the bed to a wheelchair or similar device and is capable of propelling such wheelchair or similar device independently. Such a resident may require one or more of the following services: room and board, assistance with non-medical activities of daily living, administration of typically self-administered medications, and medical services subject to the limitations of these rules.

(10) "Assessment" means a procedure for determining the nature and extent of the problem(s) and needs of a resident or potential resident to ascertain if the ACLF can adequately address those problems, meet those needs, and secure information for the use in the development of the individual care plan.

(11) "Cardiopulmonary resuscitation (CPR)" means the administering of any means or device to restore or support cardiopulmonary functions in a resident, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilators or respirators, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a resident where cardiac or respiratory arrest has occurred or is believed to be imminent.

(12) "Continuous nursing care" means round-the-clock observation, assessment, monitoring, supervision, or provision of nursing services that can only be performed by a licensed nurse.

(13) "Distinct part" means a unit or part thereof that is organized and operated to give a distinct type of care within the larger organization which renders other types or levels of care. "Distinct" denotes both organizational and physical separateness. A distinct part of an ACLF must be physically identifiable and be operated distinguishably from the rest of the institution. It must consist of all the beds within that unit such as a separate building, floor, wing or ward. Several rooms at one end of a hall or one side of a corridor is acceptable as a distinct part of an ACLF.

(14) "Do-Not-Resuscitate Order (DNR)" means a written order, other than a POST, not to resuscitate a patient in cardiac or respiratory arrest in accordance with accepted medical practices.

(Rule 1200-08-25-.02, continued)

(15) "Emergency" means any situation or condition which presents an imminent danger of death or serious physical or mental harm to residents.

(16) "Health care" means any care, treatment, service or procedure to maintain, diagnose, treat, or otherwise affect an individual's physical or mental condition, and includes medical care as defined in T.C.A. § 32-11-103(5).

(17) "Health care decision" means an individual's consent, refusal of consent or withdrawal of consent to health care.

(18) "Health care decision-maker" means that in the case of a resident who lacks capacity, the resident's health care decision-maker is one of the following: the resident's health care agent as specified in an advance directive, the resident's court-appointed guardian or conservator with health care decision-making authority, the resident's surrogate as determined pursuant T.C.A. § 68-11-1806, or the individual's designated physician pursuant to T.C.A. § 68-11-1802(a)(4).

(19) "Infectious waste" means solid or liquid wastes which contain pathogens with sufficient virulence and quantity such that exposure could result in an infectious disease.

~~(20) "Licensed health care professional" means any health care professional currently licensed by the State of Tennessee to practice within the scope of a regulated profession, such as a nurse practitioner, registered nurse, licensed practical nurse, (nurses may be licensed or hold multistate licensure pursuant to Tennessee Code Annotated §§ 63-7-101 et seq.), dietitian, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, clinical social worker, speech-language pathologist, and emergency service personnel.~~

(20) "Licensed health care professional" means:

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(a) Any health care professional currently licensed by the State of Tennessee to practice within the scope of a regulated profession, such as a nurse practitioner, dietitian, dentist, occupational therapist, pharmacist, physical therapist, physician, physician assistant, psychologist, social worker, speech-language pathologist, and emergency service personnel; or

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(b) A medication aide (as defined in Tennessee Code Annotated § 63-7-127).

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(21) "Licensee" means the person, association, partnership, corporation, company or public agency to which the license is issued.

(22) "Life threatening or serious injury" means an injury requiring the resident to undergo significant diagnostic or treatment measures.

(23) "Medical record" means documentation of medical histories, nursing and treatment records, care needs summaries, physician orders, and records of treatment and medication ordered and given which must be maintained by the ACLF, regardless of whether such services are rendered by ACLF staff or by arrangement with an outside source.

(24) "Medically inappropriate treatment" means resuscitation efforts that cannot be expected either to restore cardiac or respiratory function to the resident or other medical or surgical treatments that cannot be expected to achieve the expressed goals of the informed resident.

(25) "Medication Aide" means an individual who administers medications, as set forth in

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(Rule 1200-08-25-.02, continued)

Tennessee Code Annotated § 63-7-127, under the general supervision of a licensed nurse pursuant to this section.

(26)~~(25)~~ "Misappropriation of patient/resident property" means the deliberate misplacement, exploitation or wrongful, temporary or permanent use of an individual's belongings or money without the individual's consent.

(27)~~(26)~~ "Neglect" means the failure to provide goods and services necessary to avoid physical harm, mental anguish or mental illness; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of the living will, shall not be deemed "neglect" for purposes of these rules.

(28)~~(27)~~ "NFPA" means the National Fire Protection Association.

(29)~~(28)~~ "Person" means an individual, association, estate, trust, corporation, partnership, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(30)~~(29)~~ "Personal services" means those services rendered to residents who need supervision or assistance in activities of daily living. Personal services do not include nursing or medical care.

(31)~~(30)~~ "Physician Assistant" means a person who has graduated from a physician assistant educational program accredited by the Accreditation Review Commission on Education for the Physician Assistant, has passed the Physician Assistant National Certifying Examination, and is currently licensed in Tennessee as a physician assistant under title 63, chapter 19.

(32)~~(31)~~ "Physician Orders for Scope of Treatment" or "POST" means written orders that:

(a) Are on a form approved by the Board for Licensing Health Care Facilities;

(b) Apply regardless of the treatment setting and that are signed as required herein by the patient's physician, physician assistant, nurse practitioner, or clinical nurse specialist; and

(c)

1. Specify whether, in the event the patient suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should or should not be attempted;

2. Specify other medical interventions that are to be provided or withheld; or

3. Specify both 1 and 2.

(33)~~(32)~~ "Power of Attorney for Health Care" means the legal designation of an agent to make health care decisions for the individual granting such power under T.C.A. Title 34, Chapter 6, Part 2.

(34)~~(33)~~ "Primarily aged" means that a minimum of fifty-one percent (51%) of the population of the facility is at least sixty- two (62) years of age.

(Rule 1200-08-25-.02, continued)

(35)~~(34)~~ "Resident sleeping unit" means a single unit providing sleeping facilities for one or more persons. Resident sleeping units can also include permanent provisions for living, eating and sanitation.

(36)~~(35)~~ "Responsible attendant" means the individual person designated by the licensee to provide personal services to the residents.

~~(36) "Secured unit" means a distinct part of an ACLF where the residents are intentionally denied egress by any means.~~

(37) "Secured unit" means a distinct part of an ACLF where the residents are intentionally denied egress except as is necessary to comply with life safety requirements.

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(38)~~(37)~~ "Self-Administration of Medication" means the ability to administer medicine to oneself without assistance other than receiving help with reading labels or with physically opening the container or packaging, being reminded of one's medication, or being observed while taking medication in accordance with the plan of care.

(39)~~(38)~~ "Supervising health care provider" means the health care provider who has undertaken primary responsibility for an individual's health care.

(40)~~(39)~~ "Surrogate" means an individual, other than a resident's agent or guardian, authorized to make a health care decision for the resident pursuant to T.C.A. § 68-11-1806.

(41)~~(40)~~ "Treating health care provider" means a health care provider directly or indirectly involved in providing health care to a resident at the time such care is needed by the resident.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-210, and 68-11-211.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 19, 2003; effective February 2, 2004. Amendment filed January 19, 2007; effective April 4, 2007. Amendment filed February 23, 2007; effective May 9, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed January 3, 2012; effective April 2, 2012. Amendment filed March 27 2015; effective June 25, 2015.*

1200-08-25-.03 LICENSING REQUIREMENTS.

(1) An applicant for an ACLF license shall submit the following to the office of the Board for Licensing Health Care Facilities:

(a) A completed application on a form approved by the Board;

(b) Nonrefundable application fee;

(c) Demonstration of the ability to meet the financial obligations of the ACLF with a financial statement prepared by a certified public accountant;

(d) A copy of a local business license (if one is required by the locality);

(e) A copy of any and all documents demonstrating the legal status of the business organization that owns the ACLF. If the applicant is a corporation or a limited liability company the applicant must submit a certificate of good standing; and

(Rule 1200-08-25-.03, continued)

(f) Any other documents or information requested by the Board.

(2) Before a license is granted, the applicant shall submit to an inspection conducted by Department of Health inspectors to ensure compliance with all applicable laws and rules.

(3) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an applicant has been denied a license or has had a license disciplined or has attempted to avoid the survey and review process.

(4) ACLF licenses shall expire and become invalid annually on the anniversary date of their original issuance.

(a) In order to successfully renew a license, Department inspectors will periodically inspect each ACLF to determine its compliance with these rules and regulations. If the inspectors find deficiencies, the licensee shall submit an acceptable corrective action plan and shall remedy the deficiencies.

(b) If a licensee fails to renew its license prior to the date of its expiration but submits the renewal form and fee within sixty (60) days thereafter, the licensee may renew late by paying, in addition to the renewal fee, a late penalty of one hundred dollars ($100) per month for each month or fraction of a month that renewal is late; provided that the late penalty shall not exceed twice the renewal fee.

(c) In the event that a licensee fails to renew its license within the sixty (60) day grace period following the license expiration date, then the licensee shall reapply for a license by submitting the following to the Board office:

1. A completed application for licensure; and

2. The license fee provided in rule 1200-08-25-.04(1).

(d) Upon reapplication, the licensee shall submit to an inspection of the ACLF by Department of Health inspectors.

(5) The Board shall issue a license only for the licensee and the location designated on the license application. If an ACLF moves to a new location, it shall obtain a new license and submit to an inspection of the new building before admitting residents.

(6) A separate license shall be required for each ACLF when more than one facility is operated under the same management or ownership.

(7) Any admission in excess of the licensed bed capacity is prohibited.

(8) Change of Ownership.

(a) A change of ownership occurs whenever the ultimate legal authority for the responsibility of the ACLF's operation is transferred, including a change in the legal structure by which the ACLF is owned and operated, and/or whenever ownership of the preceding or succeeding entity changes.

(b) A licensee shall notify the Board's administrative office of a proposed change of ownership within at least thirty (30) days prior to its occurrence by submitting the following to the Board office:

1. A completed change of ownership application on a form approved by the Board;

(Rule 1200-08-25-.03, continued)

2. Nonrefundable application fee;

3. Demonstration of ability to meet the financial obligations of the ACLF with a financial statement prepared by a certified public accountant;

4. A copy of a local business license (if one is required by the locality);

5. A copy of any and all documents demonstrating the formation of the business organization that owns the ACLF;

6. The bill of sale and/or closing documents indicating the transfer of operations of the business entity; and

7. Any other documents or information requested by the Board.

(c) Transactions constituting a change of ownership include, but are not limited to, the following:

1. Transfer of the ACLF's legal title;

2. Lease of the ACLF's operations;

3. Dissolution of any partnership that owns, or owns a controlling interest in, the ACLF;

4. The removal, addition or substitution of a partner;

5. Removal of the general partner or general partners, if the ACLF is owned by a limited partnership;

6. Merger of an ACLF owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;

7. The consolidation of a corporate ACLF owner with one or more corporations; or

8. Transfers between levels of government.

(d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:

1. Changes in the membership of a corporate board of directors or board of trustees;

2. Merger of two (2) or more corporations where one of the originally-licensed corporations survives;

3. Changes in the membership of a non-profit corporation;

4. Transfers between departments of the same level of government;

5. Corporate stock transfers or sales, even when a controlling interest.

6. Sale/lease-back agreements if the lease involves the ACLF's entire real and personal property and if the identity of the lessee, who shall continue the operation, retains the same legal form as the former owner; or

(Rule 1200-08-25-.03, continued)

7. Management agreements if the owner continues to retain ultimate authority for the operation of the ACLF; however, if the ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

(9) Certification of Administrator

(a) Each ACLF must have an administrator who shall be certified by the Board, unless the administrator is currently licensed in Tennessee as a nursing home administrator as required by T.C.A. § 63-16-101, *et seq.*

(b) An applicant for certification as an ACLF administrator shall submit the following to the Board office:

1. A completed application on a form approved by the Board;

2. Nonrefundable application fee;

~~3. Proof that the applicant is at least eighteen (18) years of age;~~

3. Proof that the applicant is at least twenty-one (21) years of age;

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4. Proof that the applicant is a high school graduate or the holder of a general equivalency diploma;

5. Results of a criminal background check; and

6. Proof that the applicant has not been convicted of a criminal offense involving the abuse or intentional neglect of an elderly or vulnerable individual.

(c) Renewal of ACLF administrator certification.

1. Certification shall be renewed biennially on June 30.

2. The initial biennial re-certification expiration date of ACLF administrator candidates who receive their first certification between the dates of January 1 and June 30 of any year will be extended to two (2) years plus the additional months remaining in the fiscal year.

3. In order to renew certification, the ACLF administrator shall submit the following to the Board office: renewal application; fee established by rule 1200-08-25-.04; and proof of having obtained at least twenty-four (24) classroom hours of continuing education during the previous two (2) years.

4. An ACLF administrator shall complete twenty-four (24) classroom hours of continuing education approved by the Board prior to attendance, including, but not limited to the following topics:

(i) State rules and regulations for ACLFs;

(ii) Health care management;

(iii) Nutrition and food service;

(iv) Financial management; and

(Rule 1200-08-25-.03, continued)

(v) Healthy lifestyles.

5. All educational courses sponsored by the National Association of Boards of Examiners for Nursing Home Administrators (NAB) and continuing education courses sponsored by State and/or national associations that focus on geriatric care are board approved.

6. An ACLF administrator who allows an administrator certification to lapse and reapplies for new certification must submit written proof of attendance of at least twenty-four (24) classroom hours of continuing education courses, as described in Part 4 above, within six (6) months after submitting a new application.

(10) The licensee shall immediately notify the Board's administrative office in the event of an absence or change of administrator due to serious illness, incapacity, death or resignation of its named administrator.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-208, 68-11-209, 68-11-213, 68-11-216, and Chapter 846 of the Public Acts of 2008, § 1.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed March 1, 2007; effective May 15, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed December 16, 2013; effective March 16, 2014.*

1200-08-25-.04 FEES.

(1) Each ACLF, except those operated by the United States of America or the State of Tennessee, making application for licensure under this chapter shall pay annually to the Board's administrative office, a fee based on the number of ACLF beds, as follows:

(a)	Less than 25 beds	$ 800.00
(b)	25 to 49 beds, inclusive	$ 1,000.00
(c)	50 to 74 beds, inclusive	$ 1,200.00
(d)	75 to 99 beds, inclusive	$ 1,400.00
(e)	100 to 124 beds, inclusive	$ 1,600.00
(f)	125 to 149 beds, inclusive	$ 1,800.00
(g)	150 to 174 beds, inclusive	$ 2,000.00
(h)	175 to 199 beds, inclusive	$ 2,200.00

For ACLFs of two hundred (200) beds or more, the fee shall be two thousand four hundred dollars ($2,400.00) plus two hundred dollars ($200.00) for each twenty-five (25) beds or fraction thereof in excess of one hundred ninety-nine (199) beds. The fee shall be submitted with the application or renewal and is not refundable.

(2) Each ACLF administrator shall submit to the Board's administrative office an application fee of one hundred eighty dollars ($180.00). The fee shall be submitted with the initial application or renewal application and is not refundable.

(Rule 1200-08-25-.06, continued)

(i) Types of resident care activities that can result in hand contamination;

(ii) Advantages and disadvantages of various methods used to clean hands;

(iii) Potential risks of health care workers' colonization or infection caused by organisms acquired from residents; and

(iv) Morbidity, mortality, and costs associated with health care associated infections.

(d) An ACLF shall develop and implement a system for measuring improvements in adherence to the hand hygiene program and influenza vaccination program.

(6) An ACLF shall ensure that no person will be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the provision of any care or service of the ACLF on the grounds of race, color, national origin, or handicap. An ACLF shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

Authority: *T.C.A. §§ 39-17-1804, 39-17-1805, 68-3-511, 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-254, 68-11-268, and 71-6-121.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed January 7, 2000; effective March 22, 2000. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed March 27, 2015; effective June 25, 2015. Amendments filed July 18, 2016; effective October 16, 2016.*

1200-08-25-.07 SERVICES PROVIDED.

(1) An ACLF may provide medical services as follows:

(a) Administer medications to residents that are typically self-administered as subject to limitations described within these rules and regulations.

(b) All other medical services prescribed by the physician that could be provided to a private citizen in the citizen's home, including, but not limited to:

1. Part-time or intermittent nursing care;

2. Various therapies;

3. Podiatry care;

4. Medical social services;

5. Medical supplies;

6. Durable medical equipment; and

7. Hospice services.

(c) Intravenous medications may only be administered to:

1. Existing residents who receive them on an intermittent basis; and

(Rule 1200-08-25-.07, continued)

2. Residents receiving hospice care.

(2) Medical services in an ACLF shall be provided by:

(a) Appropriately licensed or qualified staff of an ACLF;

(b) Appropriately licensed or qualified contractors of an ACLF;

(c) A licensed home care organization;

(d) Another appropriately licensed entity; or

(e) Appropriately licensed staff of a nursing home.

(3) Oversight of medical services in an ACLF shall be consistent with oversight provided in private residential settings as defined through rules and regulations promulgated by the applicable licensing boards and shall ensure quality of care to residents.

(4) Medicare reimbursable services shall be provided to an ACLF resident by a certified Medicare provider.

(5) Resident medication. An ACLF shall:

(a) Ensure that medication shall be self-administered in accordance with the resident's plan of care;

~~(b) Ensure that all drugs and biologicals shall be administered by a licensed professional operating within the scope of the professional license and according to the resident's plan of care; and~~

~~(c) Store all medications so that no resident can obtain another resident's medication.~~

(b) Ensure that all drugs and biologicals shall be administered by a licensed or certified health care professional operating within the scope of the professional license or certification and according to the resident's plan of care.

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(c) Ensure that during the course of administering medication, a medication aide shall not be assigned any other non-medication administration duties. However, a medication aide shall not be precluded from responding, as appropriate, to an emergency;

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(d) Store all medications via a locked or closed container and/or room which includes, but is not limited to, some type of box, piece of furniture, an individual resident room, and/or a designated room within the facility which maintains resident medication out of the sight of other residents; and

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(e) Ensure that facility staff shall not repackage medication and shall not administer medication from repackaging.

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(6) An ACLF shall dispose of medications as follows:

(a) Upon discharge of a resident, unused prescription medication shall be released to the resident, the resident's family member, or the resident's legal representative, unless specifically prohibited by the attending physician.

(Rule 1200-08-25-.07, continued)

(b) Upon death of a resident, unused prescription medication must be destroyed in the manner outlined, and by the individuals designated, in the facility's medication disposal policy, unless otherwise requested by the resident's family member or the resident's legal representative and accompanied by a written order by a physician. The ACLF's medication disposal policy shall be written in accordance with current FDA or current DEA medication disposal guidelines.

(c) The ACLF shall properly dispose of prescription medication administered by the facility in accordance with the facility's medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines.

(d) The ACLF may dispose of prescription medication that is self-administered by the resident according to the facility's medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines, or the facility may provide information to the resident's family member or the resident's legal representative regarding the proper method to dispose of the medication.

(e) If the resident is a hospice patient, hospice shall be responsible for disposing of the prescription medication upon the death of the resident.

~~(f) The ACLF's medication disposal policy shall be performed by one (1) licensed health care professional and either the facility's administrator, a second licensed health care professional, or a medication aide certified.~~

(f) The ACLF's medication disposal policy shall be performed by a licensed or certified health care professional and either the facility's administrator, or a second licensed or certified health care professional.

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(g) The ACLF's medication disposal policy shall also address the disposal of scheduled drugs, non-scheduled drugs, and devices that are misbranded, expired, deteriorated, not kept under proper conditions, and kept in containers with illegible or missing labels.

(7) An ACLF shall provide personal services as follows:

(a) Each ACLF shall provide each resident with at least the following personal services:

1. Protective care;

2. Safety when in the ACLF;

3. Daily awareness of the individual's whereabouts;

4. The ability and readiness to intervene if crises arise;

5. Room and board; and

6. Non-medical living assistance with activities of daily living.

(b) Laundry services. An ACLF shall:

1. Provide arrangements for laundry of ACLF linens and residents' clothing;

2. Provide appropriate separate storage areas for soiled linens and residents' clothing; and

(Rule 1200-08-25-.07, continued)

3. Maintain clean linens in sufficient quantity to provide for the needs of the residents. Linens shall be changed whenever necessary.

(c) Dietary services.

1. An ACLF shall have organized dietary services that are directed and staffed by adequate qualified personnel. An ACLF may contract with an outside food management company if the company has a dietitian who serves the ACLF on a full-time, part-time, or consultant basis, and if the company maintains at least the minimum standards specified in this section while providing for constant liaison with the ACLF for recommendations on dietetic policies affecting resident treatment.

2. An ACLF shall have an employee who:

(i) Serves as director of the food and dietetic service;

(ii) Is responsible for the daily management of the dietary services and staff training; and

(iii) Is qualified by experience or training.

3. An ACLF shall ensure that menus meet the needs of the residents as follows:

(i) The practitioner or practitioners, as qualified within the scope of practice, responsible for the care of the residents shall prescribe therapeutic diets as necessary.

(ii) An ACLF shall meet nutritional needs, in accordance with recognized dietary practices and in accordance with orders of the practitioner or practitioners responsible for the care of the residents.

(iii) An ACLF shall have a current therapeutic diet manual approved by the dietitian readily available to all ACLF personnel.

(iv) Menus shall be planned one week in advance.

4. An ACLF shall:

(i) Provide at least three (3) meals constituting an acceptable and/or prescribed diet per day. There shall be no more than fourteen (14) hours between the evening and morning meals. All food served to the residents shall be of good quality and variety, sufficient quantity, attractive and at safe temperatures. Prepared foods shall be kept hot (140°F. or above) or cold (41°F. or less) as appropriate. The food must be adapted to the habits, preferences and physical abilities of the residents. Additional nourishment and/or snacks shall be provided to residents with special dietary needs or upon request.

(ii) Provide sufficient food provision capabilities and dining space.

(iii) Maintain and properly store a forty-eight (48) hour food supply at all times.

(iv) Provide appropriate, properly-repaired equipment and utensils for cooking and serving food in sufficient quantity to serve all residents.

(Rule 1200-08-25-.07, continued)

5. An ACLF shall maintain a clean and sanitary kitchen.

6. Employees shall wash and sanitize equipment, utensils and dishes after each use.

(d) An ACLF shall provide a suitable and comfortable furnished area for activities and family visits. Furnishings shall include a calendar and a functioning television set, radio, and clock.

(e) An ACLF shall provide current newspapers, magazines or other reading materials.

(f) An ACLF shall have a telephone accessible to all residents to make and receive personal telephone calls twenty-four (24) hours per day.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-261.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed November 25, 1999; effective February 8, 1999. Amendment filed August 26, 2002; effective November 9, 2002. Amendment filed February 18, 2003; effective May 4, 2003. Repeal and new rule filed January 24, 2006; effective April 9, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-25-.08 ADMISSIONS, DISCHARGES, AND TRANSFERS.

(1) An ACLF shall not admit or permit the continued stay of any ACLF resident who has any of the following conditions:

(a) Requires treatment for stage III or stage IV decubitus ulcers or with exfoliative dermatitis;

(b) Requires continuous nursing care;

(c) Has an active, infectious and reportable disease in a communicable state that requires contact isolation;

(d) Exhibits verbal or physical aggressive behavior which poses an imminent physical threat to self or others, based on behavior, not diagnosis;

(e) Requires physical or chemical restraints, not including psychotropic medications for a manageable mental disorder or condition; or

(f) Has needs that cannot be safely and effectively met in the ACLF.

(2) An ACLF resident shall be discharged and transferred to another appropriate setting such as home, a hospital, or a nursing home when the resident, the resident's legal representative, ACLF administrator, or the resident's treating physician determine that the ACLF cannot safely and effectively meet the resident's needs, including medical services.

(a) The Board may require that an ACLF resident be discharged or transferred to another level of care if it determines that the resident's needs, including medical services, cannot be safely and effectively met in the ACLF.

(3) Except for the limitations set forth in (4)(a) and (4)(b) of this rule, an ACLF may admit and permit the continued stay of an individual meeting the level of care requirement for nursing facility services, if:

(Rule 1200-08-25-.08, continued)

(a) The resident's treating physician certifies in writing that the resident's needs, including medical services, can be safely and effectively met by care provided in the ACLF; and

(b) The ACLF can provide assurances that the resident can be timely evacuated in case of fire or emergency.

(4) An ACLF shall not admit, but may permit the continued stay of residents who require:

(a) The following treatments on an intermittent basis of up to three (3) twenty-one (21) day periods. The resident's treating physician must certify that treatment can be safely and effectively provided by the ACLF for the last two (2) twenty-one (21) day periods.

1. Nasopharyngeal or tracheotomy aspiration;

2. Nasogastric feedings;

3. Gastrostomy feedings; or

4. Intravenous therapy or intravenous feedings.

(b) The treatments described in parts (1)-(4) above can be provided on an on-going basis if:

1. The resident is receiving hospice services;

2. The resident does not qualify for nursing facility level care and the board grants a waiver; or

3. The resident is able to care for the specified conditions without assistance of facility personnel or other appropriately licensed entity. Such a resident may be admitted or permitted to continue as a resident of the ACLF.

(5) An ACLF resident qualifying for hospice care shall be able to receive hospice care services and continue as a resident if the resident's treating physician certifies that such care can be appropriately provided in the ACLF.

(a) In the event that the resident is able to receive hospice services in an ACLF, the resident's hospice provider and the ACLF shall be jointly responsible for a plan of care that is prepared pursuant to current hospice guidelines promulgated by the Centers for Medicaid and Medicare and ensures both the safety and well-being of the resident's living environment and provision of the resident's health care needs.

(b) The hospice provider shall be available to assess, plan, monitor, direct and evaluate the resident's palliative care with the resident's treating physician and in cooperation with the ACLF.

(6) An ACLF shall:

(a) Be able to identify at the time of admission and during continued stay those residents whose needs for services are consistent with these rules and regulations, and those residents who should be transferred to a higher level of care;

(b) Have a written admission agreement that includes a procedure for handling the transfer or discharge of residents and that does not violate the residents' rights under the law or these rules;

(Rule 1200-08-25-.08, continued)

(c) Have an accurate written statement regarding fees and services which will be provided residents upon admission;

(d) Give a thirty (30) day notice to all residents before making any changes in fee schedules;

(e) Ensure that residents see a physician for acute illness or injury and are transferred in accordance with any physician's orders;

(f) Provide to each resident at the time of admission a copy of the resident's rights for the resident's review and signature;

(g) Have written policies and procedures to assist residents in the proper development, filing, modification and rescission of an advance directive, a living will, a do-not-resuscitate order, and the appointment of a durable power of attorney for health care;

(h) Prior to the admission of a resident or prior to the execution of a contract for the care of a resident (whichever occurs first), each ACLF shall disclose in writing to the resident or to the resident's legal representative, whether the ACLF has liability insurance and the identity of the primary insurance carrier. If the ACLF is self-insured, its statement shall reflect that fact and indicate the corporate entity responsible for payment of any claims;

(i) Document evidence of annual vaccination against influenza for each resident, in accordance with the recommendation of the Advisory Committee on Immunization Practices of the Centers for Disease Control most recent to the time of vaccine, unless such vaccination is medically contraindicated or the resident has refused the vaccine. Influenza vaccination for all residents accepting the vaccine shall be completed by November 30 of each year or within ten (10) days of the vaccine becoming available. Residents admitted after this date during the flu season and up to February 1, shall as medically appropriate, receive influenza vaccination prior to or on admission unless refused by the resident; and

(j) Document evidence of vaccination against pneumococcal disease for all residents who are sixty-five (65) years of age or older, in accordance with the recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control at the time of vaccination, unless such vaccination is medically contraindicated or the resident has refused offer of the vaccine. The facility shall provide or arrange the pneumococcal vaccination of residents who have not received this immunization prior to or on admission unless the resident refuses offer of the vaccine.

(k) Prior to the admission of a resident or prior to the execution of a contract for the care of a resident (whichever occurs first), each ACLF shall disclose in writing to the resident or to the resident's legal representative a copy of the medication disposal policy, which shall be written in accordance with current FDA or current DEA medication disposal guidelines.

(7) An ACLF shall have documented plans and procedures to show evacuation of all residents.

(8) An ACLF may not retain a resident who cannot evacuate within thirteen (13) minutes unless the ACLF complies with Chapter 19 of the 2006 edition of the NFPA Life Safety Code, and the Institutional Unrestrained Occupancy of the 2006 edition of the International Building Code.

(Rule 1200-08-25-.08, continued)

(9) An ACLF utilizing secured units shall provide survey staff with twelve (12) months of the following performance information specific to the secured unit and its residents at its annual survey:

~~(a) Documentation that an interdisciplinary team consisting of at least a physician, a social worker, a registered nurse, and a family member (or patient care advocate) has evaluated each secured resident prior to admittance to the unit;~~

(a) Documentation that an interdisciplinary team consisting of at least a physician, a registered nurse, and a family member (or patient care advocate) has evaluated each secured resident prior to admittance to the unit;

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(b) Ongoing and up-to-date documentation that each resident's interdisciplinary team has performed a quarterly review as to the appropriateness of placement in the secured unit;

(c) A current listing of the number of deaths and hospitalizations, with diagnoses, that have occurred on the unit;

(d) A current listing of all unusual incidents and/or complications on the unit;

(e) An up-to-date staffing pattern and staff ratios for the unit that is recorded on a daily basis. The staffing pattern must ensure that there is a minimum of one (1) attendant, awake, on duty, and physically located on the unit twenty-four (24) hours per day, seven (7) days per week, at all times;

(f) A formulated calendar of daily group activities scheduled, including a resident attendance record for the previous three (3) months;

(g) An up-to-date listing of any incidences of decubitus and/or nosocomial infections, including resident identifiers; and

(h) Documentation showing that 100% of the staff working on the unit receives annual in-service training which shall include, but not be limited to, the following subject areas:

1. Basic facts about the causes, progression and management of Alzheimer's disease and related disorders;

2. Dealing with dysfunctional behavior and catastrophic reactions in the residents;

3. Identifying and alleviating safety risks to the resident;

4. Providing assistance in the activities of daily living for the resident; and

5. Communicating with families and other persons interested in the resident.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-201(5), 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-211, 68-11-263, and 68-11-266.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed January 7, 2000; effective March 22, 2000. Amendment filed February 18, 2003; effective May 4, 2003. Repeal and new rule filed January 24, 2006; effective April 9, 2006. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendment filed March 27, 2015; effective June 25, 2015.*

1200-08-25-.09 BUILDING STANDARDS.

(Rule 1200-08-25-.09, continued)

(b) Generators (if applicable).

(26) Each ACLF shall ensure that an emergency keyed lock box is installed next to each bank of functioning elevators located on the main level. Such lock boxes shall be permanently mounted seventy-two inches (72") from the floor to the center of the box, be operable by a universal key no matter where such box is located, and shall contain only fire service keys and drop keys to the appropriate elevators.

Authority: *T.C.A. §§ 4-5-202, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-261.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009. Amendments filed December 20, 2011; effective March 19, 2012. Amendment filed January 21, 2016; effective April 20, 2016.*

1200-08-25-.10 LIFE SAFETY.

(1) The department will consider any ACLF that complies with the required applicable building and fire safety regulations at the time the Board adopts new codes or regulations, so long as such compliance is maintained (either with or without waivers of specific provisions), to be in compliance with the requirements of the new codes or regulations.

(2) An ACLF shall ensure fire protection for residents by doing at least the following:

(a) Eliminate fire hazards;

(b) Install necessary fire fighting equipment;

(c) Adopt a written fire control plan;

(d) Ensure that each resident sleeping unit shall have a door that opens directly to the outside or to a corridor which leads directly to an exit door and that is always capable of being unlocked by the resident;

(e) Ensure that louvers shall not be present in doors to residents' sleeping units;

(f) Keep corridors and exit doors clear of equipment, furniture and other obstacles at all times. Passage to exit doors leading to a safe area shall be clear at all times;

(g) Prohibit use of combustible finishes and furnishings;

(h) Prohibit open flame and portable space heaters;

~~(i) Prohibit cooking appliances other than microwave ovens in resident sleeping units;~~

(i) Ensure that upon entering the ACLF, the resident or his or her responsible party is asked if they wish to have a cooking appliance that is appropriate for their level of cognition. If the facility chooses to provide a requested cooking appliance, it shall be used in accordance with the facility's policies. If the resident or his or her responsible party wishes to provide their own cooking appliance, it shall meet the facility's policies and safety standards. The cooking appliances shall be designed so that they can be disconnected and removed for resident safety or if the resident chooses not to have cooking capability within his or her apartment. The cooking appliances shall have an automatic timer.

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(Rule 1200-08-25-.10, continued)

(j) Ensure that all heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120°F;

(k) Allow use of fireplaces and/or fireplace inserts only if the ACLF ensures that they have guards or screens which are secured in place;

(l) Inspect and clean fireplaces and chimneys annually and maintain documentation that such inspection has occurred;

(m) Ensure that there are electrically-operated smoke detectors with battery back-up power operating at all times in, at least, resident sleeping units, day rooms, corridors, laundry room, and any other hazardous areas; and

~~(n) Provide and mount fire extinguishers, complying with NFPA 10, so they are accessible to all residents in the kitchen, laundries and at all exits. Extinguishers in the kitchen and laundries shall be a minimum of 2-A: 10-BC and an extinguisher with a rating of 20-A shall be adjacent to every hazardous area. The minimum travel distance shall not exceed fifty (50) feet between the extinguishers.~~

(n) Provide and mount fire extinguishers and maintain travel distance between fire extinguishers, complying with NFPA 10, so they are accessible to all residents in the kitchen, laundries and at all exits.

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(3) An ACLF shall conduct fire drills in accordance with the following:

(a) Fire drills shall be held for each ACLF work shift in each separate ACLF building at least quarterly;

(b) There shall be one (1) fire drill per quarter during sleeping hours;

(c) An ACLF shall prepare a written report documenting the evaluation of each drill that includes the action that is recommended or taken to correct any deficiencies found; and,

(d) An ACLF shall maintain records that document and evaluate these drills for at least three (3) years.

(4) An ACLF shall take the following action should a fire occur:

(a) An ACLF shall report all fires which result in a response by the local fire department to the department within seven (7) days of its occurrence.

(b) An ACLF's report to the department shall contain the following:

1. Sufficient information to ascertain the nature and location of the fire;

2. Sufficient information to ascertain the probable cause of the fire; and

3. A list and description of any injuries to any person or persons as a result of the fire.

4. An ACLF may omit the name(s) of resident(s) and parties involved in initial reports. Should the department later find the identities of such persons to be necessary to an investigation, the ACLF shall provide such information.

(Rule 1200-08-25-.10, continued)

(5) An ACLF shall take the following precautions regarding electrical equipment to ensure the safety of residents:

(a) Provide lighted corridors at all times, to a minimum of one foot candle;

(b) Provide general and night lighting for each resident and equip night lighting with emergency power;

(c) Maintain all electrical equipment in good repair and safe operating condition;

(d) Ensure that electrical cords shall not run under rugs or carpets;

(e) Ensure that electrical systems shall not be overloaded;

(f) Ensure that power strips are equipped with circuit breakers; and

(g) Prohibit use of extension cords.

(6) If an ACLF allows residents to smoke, it shall ensure the following:

(a) Permit smoking and smoking materials only in designated areas under supervision;

(b) Provide ashtrays wherever smoking is permitted;

(c) Smoking in bed is prohibited;

(d) Written policies and procedures for smoking within the ACLF shall designate a room or rooms to be used exclusively for residents who smoke. The designated smoking room or rooms shall not be the dining room, the activity room, or an individual resident sleeping unit, and;

(e) Post no smoking signs in areas where oxygen is used or stored.

(7) An ACLF shall not allow trash and other combustible waste to accumulate within and around the ACLF. It shall store trash in appropriate containers with tight-fitting lids. An ACLF shall furnish resident sleeping units with an UL approved trash container.

(8) An ACLF shall ensure that:

(a) The ACLF maintains all safety equipment in good repair and in a safe operating condition;

(b) The ACLF stores janitorial supplies away from the kitchen, food storage area, dining area or other resident accessible areas;

(c) The ACLF stores flammable liquids in approved containers and away from the facility living areas; and

(d) The ACLF cleans floor and dryer vents as frequently as needed to prevent accumulation of lint, soil and dirt.

(9) An ACLF shall post emergency telephone numbers near a telephone accessible to the residents.

(10) An ACLF shall maintain its physical environment in a safe, clean and sanitary manner by doing at least the following:

(Rule 1200-08-25-.10, continued)

(a) Prohibit any condition on the ACLF site conducive to the harboring or breeding of insects, rodents or other vermin;

(b) Properly identify chemical substances of a poisonous nature used to control or eliminate vermin and store such substances away from food or medications;

(c) Ensure that the building shall not become overcrowded with a combination of the ACLF's residents and other occupants;

(d) Ensure that each resident sleeping unit shall contain a chair, bed, mattress, springs, linens, chest of drawers and wardrobe or closet space, either provided by the ACLF or by the resident if the resident prefers. All furniture provided by the resident must meet NFPA standards;

(e) Maintain all residents' clothing in good repair and ensure that it is suitable for the use of elderly persons;

(f) Maintain the building and its heating, cooling, plumbing and electrical systems in good repair and in clean condition at all times; and

(g) Maintain temperatures in resident sleeping units and common areas at not less than 65°F.and no more than 85°F.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, and 68-11-213.* ***Administrative History:*** *Original rule filed February 9, 1998; effective April 25, 1998. Amendment filed April 11, 2003; effective June 25, 2003. Public necessity rule filed May 13, 2009; effective through October 25, 2009. Emergency rule filed October 22, 2009; effective through April 20, 2010. Amendment filed September 24, 2009; effective December 23, 2009.*

1200-08-25-.11 INFECTIOUS AND HAZARDOUS WASTE.

(1) An ACLF must develop, maintain and implement written policies and procedures for the definition and handling of its infectious waste. These policies and procedures must comply with the standards of this rule.

(2) The following waste shall be considered to be infectious waste:

(a) Waste contaminated by residents who are isolated due to communicable disease, as provided in the U.S. Centers for Disease Control "Guidelines for Isolation Precautions in Hospitals";

(b) Cultures and stocks of infectious agents including specimen cultures collected from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures;

(c) Waste human blood and blood products such as serum, plasma, and other blood components;

(d) Pathological waste, such as tissues, organs, body parts, and body fluids that are removed during surgery and autopsy;

1200-08-34-.05 ADMISSIONS, DISCHARGES, AND TRANSFERS.

(1) Consumers shall be accepted to receive professional support services on the basis of a reasonable expectation that the consumer's nursing and therapy needs can be met adequately by the agency.

(2) Professional support services shall be provided as prescribed by the attending physician. The plan for providing professional support services and the expected outcomes shall be incorporated into the consumer's plan of care or individual support plan.

(3) The agency staff shall determine if the consumer's needs can be met by the agency's services and capabilities.

(4) Every person admitted for professional support services by any agency covered by these rules shall be provided services as prescribed by the consumer's physician, as defined in this chapter, who holds a license in good standing. The name of the consumer's attending physician shall be recorded in the consumer's medical record.

(5) The agency staff shall obtain the consumer's or his/her designee's written consent for professional support services.

(6) The signed consent form shall be included with the consumer's individual clinical record.

(7) A diagnosis must be entered in the admission records of the agency for every person admitted for care or treatment.

(8) No medication or treatment shall be provided to any consumer of an agency except on the order of a physician lawfully authorized to give such an order.

(9) A medical record shall be developed and maintained for each consumer admitted.

~~(10) The agency's discharge planning process, including discharge policies and procedures, must be in writing and follow the guidelines established in the written agreement between the agency and the Division of Mental Retardation Services (DMRS). If the agency determines that they are no longer willing or able to provide services, they must comply with the following:~~

(10) The agency's discharge planning process, including discharge policies and procedures, must be in writing and follow the guidelines established in the written agreement between the agency and the Department of Intellectual and Developmental Disabilities (DIDD). If the agency determines that they are no longer willing or able to provide services, they must comply with the following:

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~~(a) Prior to discontinuation of authorized services, the agency shall obtain approval from the DMRS;~~

(a) Prior to discontinuation of authorized services, the agency shall obtain approval from the DIDD;

~~(b) The agency shall notify the consumer, their conservator or guardian, the support coordinator, and DMRS no less than sixty (60) days prior to the planned discharge;~~

(b) The agency shall notify the consumer, their conservator or guardian, the support coordinator, and DIDD no less than sixty (60) days prior to the planned discharge;

(Rule 1200-08-34-.05, continued)

(c) If the consumer or his/her representative request an appeal in accordance with T.C.A. § 33-2-601, et seq., the discharge will not occur prior to the final agency decision and resolution of the administrative appeal unless ordered by a court and approved by the state;

(d) The agency shall continue to provide services until the consumer is provided with other services that are of acceptable and appropriate quality in order to maintain continuity of care; and

(e) If the consumer or his/her representative request to be discharged from the agency, the agency will follow the steps as outlined above and provide transfer documentation to new provider, if requested, in order to maintain continuity of care and facilitate transfer.

(11) The agency shall ensure that no person on the grounds of race, color, national origin or handicap, will be excluded from participation in, be denied benefits of, or otherwise subjected to discrimination in the provision of any care or service of the agency. The agency shall protect the civil rights of residents under the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, and 68-11-209.* ***Administrative History:*** *Original rule filed January 24, 2003; effective April 9, 2003.*

1200-08-34-.06 BASIC AGENCY FUNCTIONS.

(1) All personnel providing professional support services shall assure that their efforts effectively complement other services provided to the consumer, are functionally integrated into the individual daily routine and support the outcome outlined in the individual support plan. A written report of progress shall be provided to the consumer's support coordinator/case manager monthly. A written summary report for each consumer shall be sent to the attending physician at least annually.

(2) Plan of Care.

(a) The written plan of care, developed in consultation with the agency staff, shall cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of services, prognosis, rehabilitation potential, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, instructions for timely discharge or referral, and any other appropriate items. If a physician refers a consumer under a plan of care which cannot be completed until after an evaluation visit, the physician shall be consulted to approve additions or modifications to the original plan. Orders for professional support services shall include the specific treatment or modalities to be used and their amount, frequency and duration. The therapist and other agency personnel shall participate in developing the plan of care.

(b) The plan(s) of care for acute or episodic illness shall be reviewed by the attending physician and agency personnel involved in the consumer's care as often as the severity of the consumer's condition requires, but at least annually. Plans of care resulting from Comprehensive Nursing Assessment will be reviewed in accordance with the physical status review schedule. Evidence of review by the physician must include the physician's signature and date of the review on the plan of care. A facsimile of the physician's signature is acceptable. Professional staff shall promptly alert the physician to any changes that suggest a need to alter the plan of care.

* 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)
Carissa S. Lynch, Pharm.D.				X	
Renee Saunders, M.D.	X				
Thomas Gee	X				
John A. Marshall	X				
Jennifer Gordon-Maloney, DDS	X				
Kenneth R. Robertson, M.D.	X				
Sherry Robbins, M.D.	X				
Annette Marlar	X				
Robert C. Breeden	X				
Roger L. Mynatt	X				
Janet Williford	X				
David Rhodes				X	
Joshua A. Crisp	X				
Gina Throneberry	X				
Paul Boyd	X				
Bobby Wood	X				
Jim Shulman	X				
Vacant					
Vacant					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board for Licensing Health Care Facilities (board/commission/ other authority) on 02/08/2017 (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: *09/09/16 (mm/dd/yy)*

Rulemaking Hearing(s) Conducted on: (add more dates). *02/08/17 (mm/dd/yy)*

Date: 6/11/18

Signature: Kyonzté Hughes-Toombs

Name of Officer: Kyonzté Hughes-Toombs

Title of Officer: Deputy General Counsel
Department of Health

Subscribed and sworn to before me on: 6-11-18

Notary Public Signature: Suzanne Mechkowski

My commission expires on: My Commission Expires January 26, 2021

SUZANNE MECHKOWSKI STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY

Agency/Board/Commission: Board for Licensing Health Care Facilities

Rule Chapter Number(s): 1200-08-01; 1200-08-06; 1200-08-10; 1200-08-11; 1200-08-25; 1200-08-34

Agency/Board/Commission: Board for Licensing Health Care Facilities

Rule Chapter Number(s): 1200-08-01; 1200-08-06; 1200-08-10; 1200-08-11; 1200-08-25; 1200-08-34

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

7/2/2018
Date

Department of State Use Only

Filed with the Department of State on: 7/10/18

Effective on: 10/8/18

Tre Hargett
Secretary of State

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