

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Agriculture

DIVISION: Regulatory Services

SUBJECT: Identification of Horses for Change of Ownership

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 44-2-102

EFFECTIVE DATES: December 29, 2011 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: The proposed rule will allow horse sellers at Tennessee livestock markets to use cheaper and more varied means of identifying their horses for the purpose of demonstrating a negative test for Equine Infectious Anemia.

## Regulatory Flexibility Addendum

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

- (1) 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:

Horse sellers would directly benefit from the proposed rule, as it will allow them to use cheaper and more varied means of identifying their horses.

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

This is impossible to calculate, as TDA doesn't know how many horse sellers there are in Tennessee or how many horse sellers are "small businesses" under T.C.A. § 4-5-102.

- (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:

There are no reporting, recordkeeping and other administrative costs required for compliance with the proposed rules.

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

Sellers of horses at livestock markets will have cheaper and more varied means of identifying their horses.

- (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:

There are no less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule. The proposed rule would not impose any burdens that aren't already imposed under the existing rules.

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

Federal rules and the rules of every state typically require that horses bear official identification and proof of a negative result on an official EIA test before being moved or commingled with other horses. The forms of official identification allowed vary by state.

- (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.

If small businesses were exempted from the proposed rule, they would not be able to use the cheaper and more varied forms of identification made available by 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://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The proposed rules would have no impact on local governments.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 07-08-11  
Rule ID(s): 4965  
File Date: 07/12/2011  
Effective Date: 12/29/2011

## Proposed Rule(s) Filing Form

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

<b>Agency/Board/Commission:</b>	Department of Agriculture
<b>Division:</b>	Division of Regulatory Services
<b>Contact Person:</b>	Keith Hodges
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**Revision Type (check all that apply):**

- Amendments  
 New  
 Repeal

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

Chapter Number	Chapter Title
0080-02-10	Regulations Concerning Horses and Other Equidae
Rule Number	Rule Title
0080-02-10-.01	Equine Infectious Anemia – Requirements for Change of Ownership

Chapter 0080-02-10  
Regulations Concerning Horses and Other Equidae

Amendments

Subparagraph (a) of paragraph (2) of Rule 0080-02-10-.01 Equine Infectious Anemia Test Requirements for Tennessee Horses is amended by deleting the subparagraph in its entirety and substituting instead the following language, so that as amended, the new subparagraph shall read:

- (a) Have proof that each individual animal tested negative on an official test for Equine Infectious Anemia conducted within twelve (12) months prior to sale. Such horses or other Equidae shall be identified by a legible, unique tattoo or brand; a microchip; a valid equine passport; an EIA paper with digital photos of the animal (including the animal's entire left and right sides and front view) as part of the document; a mane tag provided by the Tennessee Department of Agriculture; a valid, official certificate of veterinary inspection; or other approved identification listed on the department's website. Tennessee licensed livestock markets hosting all-registered Equine sales may use breed registry papers as long as the breed registry papers

**RULES  
OF  
THE TENNESSEE DEPARTMENT OF AGRICULTURE  
DIVISION OF REGULATORY SERVICES**

**CHAPTER 0080-02-10  
REGULATIONS CONCERNING HORSES AND OTHER EQUIDAE**

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0080-02-10-.01	Equine Infectious Anemia Test Requirements for Tennessee Horses	0080-02-10-.04	Other Required Testing
0080-02-10-.02	Testing of Stabled Horses	0080-02-10-.05	Reserved
0080-02-10-.03	Testing of Other Assembled Horses	0080-02-10-.06	Laboratories Conducting Tests for Equine Infectious Anemia

**0080-02-10-.01 EQUINE INFECTIOUS ANEMIA — REQUIREMENTS FOR CHANGE OF OWNERSHIP.**

- (1) Non-Livestock Market Sales — Persons assembling for sale, offering for sale, or selling horses or other Equidae at sales other than livestock markets, whether for one's own account or for the account of another person, shall have proof that each individual animal tested negative on an official test for Equine Infectious Anemia conducted within twelve (12) months prior to sale.
- (2) Livestock Markets — Persons assembling for sale, offering for sale, or selling horses or other Equidae at livestock markets, whether for one's own account or for the account of another person, shall:
  - (a) Have proof that each individual animal tested negative on an official test for Equine Infectious Anemia conducted within twelve (12) months prior to sale. Such horses or other Equidae shall be identified by a legible, unique tattoo or brand; a microchip; a valid equine passport; an EIA paper with digital photos of the animal (including the animal's entire left and right sides and front view) as part of the document; a mane tag provided by the Tennessee Department of Agriculture; a valid, official certificate of veterinary inspection; or other approved identification listed on the department's website. Tennessee licensed livestock markets hosting all-registered Equine sales may use breed registry papers as long as the breed registry papers match the official EIA negative test chart; or
  - (b) Have blood collected on-site for EIA testing by a Tennessee-licensed and USDA-accredited veterinarian prior to the sale.
- (3) Foals less than six (6) months of age in the company of their EIA-negative dams are not subject to the rules above.

**Authority:** T.C.A. §§4-3-203 and 44-2-102. **Administrative History:** Original rule filed May 15, 1977; effective June 14, 1977. Repeal by Public Chapter 261; effective July 1, 1983. New rule filed December 15, 1989; effective January 29, 1990. Amendment filed February 28, 2002; effective June 28, 2002. Amendment filed April 23, 2010; effective September 28, 2010.

**0080-02-10-.02 TESTING OF STABLED HORSES.**

- (1) All horses or other Equidae, except foals less than six (6) months of age in the company of their EIA-negative dam, which have been assembled by more than one owner at boarding, breeding or training stables or pastures, shall be accompanied by proof that each individual animal has tested negative on an official test for Equine Infectious Anemia

that was conducted within the preceding twelve (12) months.

- (2) The owner or manager of said premises shall be responsible for maintaining proof that each individual animal on the premises has tested negative on an official test for Equine Infectious Anemia that was conducted within the preceding twelve (12) months, and shall make these records available for inspection by all officers or inspectors charged with the enforcement of this section.
- (3) EIA-positive horses or horses that have not been tested for EIA within the preceding twelve (12) months may be stabled at an approved quarantined premises, provided the state veterinarian has issued a written permit for this purpose and the conditions of the quarantine are met and maintained.

**Authority:** T.C.A. §§4-3-203 and 44-2-102. **Administrative History:** Original rule filed May 15, 1977; effective June 14, 1977. Repeal by Public Chapter 261; effective July 1, 1983. New rule filed December 15, 1989; effective January 29, 1990. Amendment filed April 23, 2010; effective September 28, 2010.

#### **0080-02-10-.03 TESTING OF OTHER ASSEMBLED HORSES.**

- (1) All horses or other Equidae, except foals less than six (6) months of age in the company of their EIA-negative dam, which participate in any horse show, competition or other assembly, except approved livestock market sales where such Equidae are offered for sale, shall be accompanied by evidence that each individual animal has tested negative on an official test for Equine Infectious Anemia that was conducted within the preceding twelve (12) months.
- (2) The manager of each assembly or event or his agent shall be responsible for ensuring that each animal he enters, issues a permit for, or has control of, is accompanied by proof that each individual animal has tested negative on an official test for Equine Infectious Anemia that was conducted within the preceding twelve (12) months, and shall not allow animals without such proof to participate in the event, or to congregate with other Equidae. The owner of each animal or his agent shall also be responsible for meeting these requirements.

**Authority:** T.C.A. §§4-3-203 and 44-2-102. **Administrative History:** Original rule filed May 15, 1977; effective June 14, 1977. Repeal by Public Chapter 261; effective July 1, 1983. New rule filed December 15, 1989; effective January 29, 1990. Amendment filed April 23, 2010; effective September 28, 2010.

#### **0080-02-10-.04 OTHER REQUIRED TESTING.**

- (1) When a horse or other member of the Equidae family tests positive on an official confirmatory test for Equine Infectious Anemia, the following Equidae shall be tested for Equine Infectious Anemia within thirty (30) days of the time the infected animal was diagnosed as being EIA-positive:
  - (a) Equidae located on the premises where the positive animal is stabled or pastured.
  - (b) Equidae located adjacent to the infected premises or within two hundred (200) yards.
  - (c) Equidae exposed to the infected animal within the previous six (6) months in the manner described in (a) and (b) above.
  - (d) Equidae exposed to the infected animal within any time period in the manner described in (a) and (b) above, as ordered by the state veterinarian.

- (2) The owner, or his agent, of any animal that has tested positive on an official test, or that has been exposed to a positive animal, shall present such animal to the state veterinarian or his representative and render such assistance as may be required to enable the state veterinarian or his representative to identify such animal(s) or conduct any required tests.

**Authority:** T.C.A. §§4-3-203 and 44-2-102. **Administrative History:** Original rule filed May 15, 1977; effective June 14, 1977. Repeal by Public Chapter 261; effective July 1, 1983. New rule filed December 15, 1989; effective January 29, 1990. Amendment filed April 23, 2010; effective September 28, 2010.

**0080-02-10-.05 RESERVED.**

**0080-02-10-.06 LABORATORIES CONDUCTING TESTS FOR EQUINE INFECTIOUS ANEMIA.**

- (1) Laboratories conducting tests for Equine Infectious Anemia in Tennessee must be certified as required by the provisions of 9 C.F.R. 75.4 and approved by the Commissioner of the Department of Agriculture or his designated representative.

**Authority:** T.C.A. §§4-3-203 and 44-2-102. **Administrative History:** Original rule filed February 28, 2002; effective June 28, 2002. Amendment filed April 23, 2010; effective September 28, 2010.

match the official EIA negative test chart; or

Authority: T.C.A. §§ 4-3-203 and 44-2-102.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

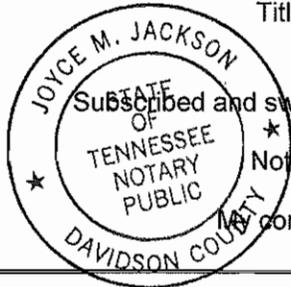
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Department of Agriculture on 06/27/2011, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: June 27, 2011

Signature: Julius T. Johnson

Name of Officer: Julius T. Johnson

Title of Officer: Commissioner



Subscribed and sworn to before me on: June 27, 2011

Notary Public Signature: Joyce M. Jackson

My commission expires on: 09/08/2013

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.

RE Cooper, Jr.

Robert E. Cooper, Jr.  
Attorney General and Reporter

6-29-11

Date

**Department of State Use Only**

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Filed with the Department of State on: 7/12/11

Effective on: 7/29/11

Tre Hargett

Tre Hargett  
Secretary of State

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Eligibility for HOPE Scholarships by Non-Public High School Students

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-1-201

EFFECTIVE DATES: December 29, 2011 through June 30, 2012

FISCAL IMPACT: Minimal

### STAFF RULE ABSTRACT:

The Hope Scholarship statute, Tennessee Code Annotated § 49-4-902 subsection 10, specifies eligible non-public high schools as Category I, II, and III schools only.

Two years after that statute was passed, the State Board of Education created Category VII non public schools, which are "special purpose schools which address a student's education while receiving Pre-K program services or short term medical or transient care."

Category VII schools are specifically required to meet all of the requirements of Category I schools. The rule amendments provide for a few distinctions between regular Category I schools and special purpose Category I schools, to ensure they will have at least one special education teacher available as necessary, and to exempt them, as applicable, from school improvement planning. (They may not have enough students for sufficiently lengthy periods.)

Amending the rules to combine the two types of schools will allow students finishing high school at one of these schools to be eligible for the lottery scholarship. Since the schools are currently required to meet all of the same requirements for Category I status, it would be unfair to have the students not be eligible even though the school meets the same requirements.

**Regulatory Flexibility Addendum**

Pursuant to § T.C.A. 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a) all agencies shall conduct a review of whether a proposed rule or rule affects small businesses

(If applicable, insert Regulatory Flexibility Addendum here)

### **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 will have no impact on local governments.

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**For Department of State Use Only**

Sequence Number: 07-14-11  
 Rule ID(s): 4968  
 File Date: 07/29/2011  
 Effective Date: 12/29/2011

## Proposed Rule(s) Filing Form

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

**Agency/Board/Commission:** State Board of Education  
**Division:**  
**Contact Person:** Dannelle Walker  
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**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0520-07-02	Non-Public School Approval Process
Rule Number	Rule Title
0520-07-02-.01	Categories
0520-07-02-.02	Category I: State Department of Education Approval
0520-07-02-.08	Category VII: Special Purpose Schools

Chapter Number	Chapter Title

Rule Number	Rule Title

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-7-2  
NON-PUBLIC SCHOOL APPROVAL PROCESS**

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0520-7-2-.01	Categories	0520-7-2-.05	Category IV: Exempted Schools
0520-7-2-.02	Category I: State Department of Education Approval	0520-7-2-.06	Category V: Acknowledged for Operation
0520-7-2-.03	Category II: Agency Approval	0520-7-2-.07	Category VI: International Schools Affiliated with a Tennessee Public University
0520-7-2-.04	Category III: Southern Association of Colleges and Schools	0520-7-2-.08	Category VII: Special Purpose Schools

**0520-7-2-.01 CATEGORIES.**

- (1) There shall be six categories of non-public schools in Tennessee.
- (a) Category I schools are those approved individually by the State Department of Education. Special purpose classes which address a student's education while receiving Pre-K program services or short term medical or transient care may also be approved as Category I schools.
- (b) Category II schools are those which belong to an agency whose accreditation process is approved by the State Board of Education.
- (c) Category III schools are those which are regionally accredited.
- (d) Category IV schools are those schools which are "church related" and exempt from regulations according to T.C.A. § 49-50-801.
- (e) Category V schools include all other schools, except home schools, as defined in T.C.A. § 49-6-3050.
- (f) Category VI schools are international schools affiliated with a Tennessee public university acting as an agency whose accreditation process is approved by the State Board of Education.

~~There shall be five categories of non-public schools in Tennessee:~~

- ~~(a) Category I schools are those approved individually by the State Department of Education.~~
- ~~(b) Category II schools are those which belong to an agency whose accreditation process is approved by the State Board of Education.~~
- ~~(c) Category III schools are those which are regionally accredited.~~
- ~~(d) Category IV schools are those schools which are "church related" and exempt from regulations according to T.C.A. § 49-50-801.~~
- ~~(e) Category V schools include all other schools, except home schools, as defined in T.C.A. § 49-6-3050.~~
- ~~(f) Category VI schools are international schools affiliated with a Tennessee public university acting as an agency whose accreditation process is approved by the State Board of Education.~~

~~(g) Category VII schools are special purpose schools which address a student's education while receiving Pre-K program services or short-term medical or transient care.~~

**Authority:** T.C.A. §§ 49-1-201 and 49-1-302; T.C.A. §§ 49-1-302 and 49-6-3007. **Administrative History:** (For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed December 19, 2002; to be effective April 30, 2003; however, on April 29, 2003, the State Board of Education stayed amendment to 0520-7-2-.01(1)(f) until June 28, 2003. Amendment to become effective June 28, 2003.

#### **0520-7-2-.02 CATEGORY I: STATE DEPARTMENT OF EDUCATION APPROVAL.**

- (1) A school may seek state approval by direct application to the State Department of Education. The criteria and procedures used in the evaluation of such schools are the same as for the public schools, and include the following:
  - (a) Each school shall comply with the requirements of T.C.A. § 49-6-3007 regarding the reporting of the names, ages, and addresses of all pupils in attendance to the superintendent of the public school system in which the student resides.
  - (b) Each school shall comply with all rules, regulations and codes of the city, county, and state regarding planning, construction, maintenance and operation of the school.
  - (c) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal.
- (2) Classes which address a student's education while receiving Pre-K program services or short term medical or transient care may be approved as Category I schools. These schools serving a special purpose will not be required to submit a school improvement plan. The criteria and procedures used in the evaluation of such classes are the same as for the public schools and other schools recognized as Category I schools including, but not limited to:
  - (a) Teaching experience shall count towards years of experience on the Personnel Information Reporting System.
  - (b) Teachers shall be evaluated by Tennessee Department of Education personnel or others trained in the use of the Frameworks for Evaluation (pursuant to 0520-01-03-.04) so that licensure advancement can occur.
  - (c) All teachers must be licensed. At least one teacher licensed in special education must be made available to provide services for eligible students.
  - (d) Schools shall report attendance to the school where the student is officially enrolled where applicable.
  - (e) When applicable, schools shall order and administer State proficiency and end-of-course assessments to current students to help them stay on track for graduation.
  - (f) Special Purpose Category I schools shall be deemed appropriate training schools for those seeking specialized student teaching placements. Teacher candidates must satisfy the induction requirements in Rule 0520-02-03-.11.
- (3) Organizations seeking approval for Pre-K classes as Category I schools shall, in addition to meeting the requirements of this rule, satisfy Pre-K program requirements outlined in Rule 0520-01-03-.05 and the State Board of Education Early Childhood Education Policy. Approval is granted for individual Pre-K classes, not for the organizations operating the classes.

- ~~(1) A school may seek state approval by direct application to the State Department of Education. The criteria and procedure used in the evaluation of such schools are the same as for the public schools.~~
- ~~(2) Each school shall comply with the requirements of F.C.A. §49-6-3007 regarding the reporting of the names, ages, and addresses of all pupils in attendance to the superintendent of the public school system in which the student resides.~~

**Authority:** *F.C.A. §§ 49-1-201, 49-1-302, 49-6-101, 49-6-3001 and 49-50-801, F.C.A. §§ 49-1-302.* **Administrative History:** *(For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992.*

### 0520-7-2-.03 CATEGORY II: AGENCY APPROVAL.

- (1) The State Board of Education may approve the school approval procedures of non-public school accrediting agencies.
- (2) Schools holding full accreditation status with an approved agency are approved by the State Department of Education.
- (3) Home schools which may affiliate with an approved agency are not approvable under this category.
- (4) Procedures for Application as an Approved Non-Public School Accrediting Agency.
  - (a) An agency seeking approval shall apply to the State Department of Education and shall supply relevant information needed by the department.
  - (b) The State Department of Education shall review the application of the agency with respect to the criteria for approval and recommend to the State Board of Education that the application be approved or denied. The applicant agency may address the State Board of Education at the time its application is being considered.
- (5) Period of Approval.
  - (a) The period of approval for a recognized agency shall be five years.
  - (b) An agency which fails to meet the minimum standards for agency approval will have its approval revoked.
- (6) Criteria for Approval of a Non-Public School Accrediting Agency.
  - (a) Scope of Operation of Agency. The agency shall:
    - 1. Have a clearly written statement of its objectives;
    - 2. Delineate the process by which it approves schools; and
    - 3. Have at least five member schools, each with at least ten full-time students.
  - (b) Organization of Agency. The agency shall:
    - 1. Specify qualifications for professional personnel for the agency;
    - 2. Employ at least one full time director or superintendent; and
    - 3. Be permitted to regulate schools which are not fully approved.

(Rule 0520-7-2-.03, continued)

(c) Agency Responsibilities. The agency shall:

1. Maintain written descriptions of the requirements for school accreditation, and of the levels or types of membership granted;
2. Re-evaluate approved schools annually;
3. Give advance publication of proposed changes in approval standards to schools. These changes must be approved in advance by the State Department of Education;
4. Advise schools or directly provide them with technical assistance to address deficiencies;
5. Publish approval policies and lists of approved schools;
6. Require schools to report on deficiencies which could affect approval status;
7. Have procedures for revocation of approval;
8. Provide a list of all courses taught and the grade levels at which they are taught at each school;
9. Publish and follow minimum standards using the following criteria (or, the agency may use the standards as set forth in the Rules, Regulations and Minimum Standards for the Governance of Public Schools in the State of Tennessee):

(i) Curriculum and Graduation.

- (I) The program shall include (but not be limited to) the areas of reading, composition, speech, mathematics, social studies, science, art, music, health and physical education.
- (II) Each school shall use print and nonprint materials, including textbooks, which are adequate to meet the needs of the instructional program. See Chapter 0520-1-3.
- (III) Each student shall meet the same minimum requirements for graduation as students in public schools. The specific requirements are listed in Chapter 0520-1-3.

(ii) Inservice. Each school shall have a minimum of five days for inservice education per school year.

(iii) Teacher Licensure and Evaluation.

- (I) Each agency shall submit its procedures for licensing teachers. If the agency does not use the Tennessee State Department of Education licensure system, it must use a comparable system based upon educational training.
- (II) Each teacher or principal shall hold a valid teacher license or permit as defined by the agency covering the work assignment.
- (III) Each agency shall develop procedures for evaluation of all professional school personnel.

(iv) Facilities.

(Rule 0520-7-2-.03, continued)

- (I) Each school shall comply with rules, regulations, and codes of the city, county, and state regarding planning of new buildings, alterations, and safety.
  - (II) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
  - (III) Each school shall have classrooms, laboratories, and libraries which are sufficient in number, adequate in space, and so constructed and arranged as to be conducive to carrying on the assigned activities. Playgrounds and physical education facilities shall be well maintained, free from hazards, and large enough to permit an adequate program of physical education.
- (v) Administrative Rules.
- (I) Each school shall maintain an operating schedule that includes the minimum number of instructional days and hours required of public schools. See Chapter 0520-1-3.
  - (II) Each school which provides services to students certified as eligible students with disabilities shall meet all standards of the State Board of Education rule 0520-1-3-.09.
  - (III) A child entering first grade shall be no less than six years of age on or before September 30. Any child five years of age on or before September 30 may be enrolled in kindergarten.
  - (IV) Each school shall develop and implement a written policy on promotion and retention. The written policy shall be communicated to students and parents.
  - (V) The maximum enrollments for an individual class shall be specified, shall not be subject to waiver, and shall not exceed the following:
    - Kindergarten through grade 3:25 students
    - Grade 4:28 students
    - Grades 5 through 6:30 students
    - Grades 7 through 12:35 students
    - Vocational education, grades 7 through 12:28 students; the average daily membership for any full-time vocational teacher shall not exceed 23 students.
  - (VI) Each school shall maintain complete and accurate permanent records. A cumulative record for each student for all work through high school is required.
  - (VII) Each school shall evaluate records and report the needs and progress of its pupils.
  - (VIII) Each school shall provide a sufficient number of appropriately qualified administrators, librarians and guidance counselors for the student body served.

(Rule 0520-7-2-.03, continued)

- (IX) Each principal or headmaster shall comply with the requirement of T.C.A. §49-6-5001 that each child enrolled in school be vaccinated against disease.
- (X) Each principal or headmaster shall comply with the requirements of T.C.A. §49-6-3007 regarding reporting the names, ages, and addresses of all pupils in attendance to the superintendent of the public school system in which the student resides.
- (vi) Testing Program. At least once every school year, each school shall give a nationally standardized achievement test covering the areas of reading, language arts, spelling, math, science, and social science to each pupil in grades 2 through 8 and grade 10; the results must be communicated to teachers and parents and kept on file at the school for one calendar year.

**Authority:** T.C.A. §§49-1-302. **Administrative History:** (For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed August 31, 2001; effective December 28, 2001. Amdended \_\_\_\_\_; effective \_\_\_\_\_.

#### **0520-7-2-.04 CATEGORY III: SOUTHERN ASSOCIATION OF COLLEGES AND SCHOOLS.**

Schools in this category are accredited by one (1) of the five (5) regional accrediting associations (e.g., the Southern Association of Colleges and Schools (SACS)) according to the procedures and criteria established by the association.

**Authority:** T.C.A. §§49-1-302. **Administrative History:** (For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992. Amdended \_\_\_\_\_; effective \_\_\_\_\_.

#### **0520-7-2-.05 CATEGORY IV: EXEMPTED SCHOOLS.**

- (1) Schools in this category are exempt from regulation regarding faculty, textbooks, and curriculum. T.C.A. §49-50-801 defines a church related school as "a school operated by denominational, parochial or other bona fide church organizations, which are required to meet the standards of accreditation or membership of the Tennessee Association of Christian Schools, the Tennessee Association of Independent Schools, the Southern Association of Colleges and Schools, the Tennessee Association of Non-Public Academic Schools, or a school affiliated with Accelerated Christian Education, Inc." Exempt schools are not state approved unless they voluntarily request to be associated with a non-public school accrediting agency, seek full state approval, or approval from the Southern Association of Colleges and Schools (SACS).
- (2) Each school shall:
  - (a) Comply with all rules and regulations and codes of the city, county, and state regarding planning of new buildings, alterations, and safety.
  - (b) Comply with all rules and regulations of the Tennessee Department of Health and Environment regarding construction, maintenance, and operation of the school plant.
  - (c) serve all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
  - (d) Comply with the requirements of T.C.A. §49-6-5001 that each child enrolled in school be vaccinated against disease.

(Rule 0520-7-2-.06, continued)

- (e) Comply with the requirement of T.C.A. §49-6-3007 that the names, ages, and addresses of all pupils in attendance be reported to the superintendent of the public school system in which the student resides.

*Authority:* T.C.A. §§49-1-302 and 49-50-801. *Administrative History:* (For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520-7-2-.06 CATEGORY V: ACKNOWLEDGED FOR OPERATION.**

- (1) Schools in this category are those which are not category I, II, III or IV schools. Schools in this category shall not include home schools.
- (2) Each school seeking acknowledgement for operation shall furnish to the State Department of Education the following information by November 1st of each year:
  - (a) Name, mailing address and telephone number of the school;
  - (b) Name and academic credentials of the principal or headmaster of the school;
  - (c) Number of students in each grade level as of October 1 of current school year;
  - (d) Name and academic credentials of each teacher and the subjects taught by that teacher;
  - (e) Certification that the school year provides an operating schedule that includes the minimum number of instructional days and hours as required of public schools. See Chapter 0520-1-3.
- (3) Each school shall keep on file the curriculum offered and shall make copies available for inspection by the State Department of Education and the public upon request.
- (4) Each school shall have facilities and fixed equipment which conform to the safety and health requirements of city, county, or state agencies.
- (5) Each school shall comply with all rules and regulations and codes of the city, county, and state regarding planning of new buildings, alterations and safety.
- (6) Each school shall comply with all rules and regulations of the Tennessee Department of Health regarding construction, maintenance and operation of the school plant.
- (7) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal's Office.
- (8) Each school shall comply with the requirement of T.C.A. §49-6-5001 that each child in the school be vaccinated against disease.
- (9) Each school shall comply with the requirement of T.C.A. §49-6-3007 that the names, ages, and addresses of all pupils in attendance be reported to the public school system in which the student resides.
- (10) Each teacher shall possess at least baccalaureate degree, of which no more than twenty-five percent of course hours shall have been taken through home study or correspondence.
- (11) Each school shall administer a nationally standardized achievement test covering the basic academic areas at grades 2 through 8 and grade 10. Results of the test shall be used to improve the instruction of the students.

(Rule 0520-7-2-.06, continued)

**Authority:** T.C.A. §§49-1-302. **Administrative History:** (For history prior to June 1987, see pages ii-iii). New rule filed April 24, 1987; effective June 8, 1987. Repealed and new rule filed March 16, 1992; effective June 29, 1992.

**0520-7-2-.07 CATEGORY VI: INTERNATIONAL SCHOOLS AFFILIATED WITH A TENNESSEE PUBLIC UNIVERSITY.**

- (1) The State Board of Education may approve a Tennessee public university to act as a school approval agency for non-public international secondary schools. Such schools must be affiliated with the university and may serve grades 9-12 or any combination thereof. Such universities must have teacher preparation programs approved by the State Board of Education.
- (2) The State Department of Education shall consider schools approved by a university acting as a school approval agency as having approved status.
- (3) International home schools which may affiliate with a Tennessee public university are not approvable under this category.
- (4) Procedures for Application of a Tennessee Public University as an Approved Non-Public School Accrediting Agency.
  - (a) The Tennessee public university seeking approval as an agency shall apply to the State Department of Education and shall supply relevant information needed by the department.
  - (b) The State Department of Education shall review the application of the university with respect to the criteria for approval and recommend to the State Board of Education that the application be approved or denied. The applicant university may address the State Board of Education at the time its application is being considered.
- (5) Period of Approval.
  - (a) The period of approval for a recognized Tennessee public university acting as an agency shall be five years.
  - (b) A university which fails to meet the minimum standards for approval will have its approved status revoked.
- (6) Criteria for Approval of a University Acting as an Agency for the Approval of Non-Public International Schools.
  - (a) Scope of Operation of University Acting as an Agency. The agency shall:
    1. Have a clearly written statement of its objectives;
    2. Delineate the process by which it approves schools; and
    3. Accredite only schools with at least 200 full-time students.
  - (b) Organization of University Acting as an Agency. The agency shall:
    1. Specify qualifications for professional personnel for the agency; and
    2. Employ at least one full time director or headmaster.

(Rule 0520-7-2-.07, continued)

- (c) Responsibility of the University Acting as an Agency. The agency shall:
1. Maintain written descriptions of the requirements for school approval;
  2. Re-evaluate approved schools annually;
  3. Give advance publication of proposed changes in approval standards to schools. These changes must be approved in advance by the State Department of Education;
  4. Advise schools or directly provide them with technical assistance to address deficiencies;
  5. Publish approval policies and lists of approved schools;
  6. Require schools to report on deficiencies that could affect approval status;
  7. Have procedures for revocation of approval;
  8. Provide a list of all courses taught and the grade levels at which they are taught at each school;
  9. Publish and follow minimum standards using the following criteria (or the university acting as an agency may use the standards set forth in the Rules, Regulations and Minimum Standards for the Governance of Public Schools in the State of Tennessee):
    - (i) Curriculum and Graduation.
      - (I) The program shall include (but not be limited to) the areas of English, mathematics, social studies, science, the arts, foreign language (which may be the language of the host country), and wellness, consistent with Tennessee curriculum standards.
      - (II) Each school shall use print and non-print materials, including textbooks, which are adequate to meet the needs of the instructional program. See Chapter 0520-1-3.
      - (III) Each student shall meet the same minimum requirements for graduation as students in Tennessee public schools, with exceptions to be approved by the Department of Education. The specific requirements are listed in Chapter 0520-1-3.
    - (ii) Inservice. Each school shall have a minimum of five days for inservice education per school year.
    - (iii) Teacher Licensure and Evaluation.
      - (I) Each university shall submit its procedures for licensing teachers. If the teachers are licensed by the State of Tennessee, they must meet the requirements of the state. If the teachers are licensed by the host country, they shall meet the requirements of the appropriate jurisdiction of the host country; if such teachers are employed to teach in a Tennessee school as exchange teachers, they shall be recommended for this purpose by the university acting as an agency.

(Rule 0520-7-2-.07, continued)

- (II) Each teacher shall hold a valid license as defined by the State of Tennessee or shall meet the requirements of the appropriate jurisdiction of the host country.
- (III) Each university acting as an agency shall develop procedures for evaluation of all teaching personnel from the State of Tennessee.
- (iv) Facilities.
  - (I) Each school shall comply with rules, regulations, and codes of the appropriate jurisdiction regarding planning of new buildings, alterations, and safety.
  - (II) Each school shall observe all fire safety regulations and procedures promulgated by the appropriate agency having such jurisdiction.
  - (III) Each school shall have classrooms, laboratories, and libraries which are sufficient in number, adequate in space, and so constructed and arranged as to be conducive to carrying on the assigned activities. Physical education facilities shall be well maintained, free from hazards, and large enough to permit an adequate wellness program.
- (v) Administrative Rules.
  - (I) Each school shall maintain an operating schedule that includes the minimum number of instructional days and hours required of Tennessee public schools. See Chapter 0520-1-3.
  - (II) Each school which provides services to students eligible for special education shall meet all standards of the State Board of Education rule 0520-1-9.
  - (III) Each school shall develop and implement a written policy regarding maintenance of students in good academic standing. The written policy shall be communicated to students and parents.
  - (IV) The maximum enrollments for an individual class shall be specified and shall not exceed requirements for Tennessee public schools.
  - (V) Each school shall maintain complete and accurate permanent records. A cumulative record for each student for all work in secondary school is required.
  - (VI) Each school shall evaluate records and report the needs and progress of its students.
  - (VII) Each school shall provide a sufficient number of appropriately qualified administrators, librarians and guidance counselors for the student body served.
  - (IX) Each principal or headmaster shall comply with the requirement of the local jurisdiction that each student enrolled in school be vaccinated against disease.

(Rule 0520-7-2-.07, continued)

- (vi) Testing Program. Each school shall administer the high school examinations required by the State of Tennessee; the results must be communicated to teachers and parents and kept on file at the school for one calendar year. If passing scores are required by the State of Tennessee, then students must meet the minimum scores required in order to receive a Tennessee high school diploma. In order to receive a diploma, graduates must have achieved English language proficiency according to standards specified by the university.

**Authority:** T.C.A. §§49-1-302 and 49-6-3001. **Administrative History:** Original rule filed December 19, 2002; to be effective April 30, 2003; however, on April 29, 2003, the State Board of Education stayed rule 0520-7-2-.07 until June 28, 2003. Original rule to become effective June 28, 2003.

~~0520-7-2-.08~~ ~~CATEGORY VII: SPECIAL PURPOSE SCHOOLS.~~

~~(1) A school may seek state approval by direct application to the State Department of Education. The criteria and procedures used in the evaluation of such schools are the same as for the public schools and schools recognized as Category I schools including, but not limited to:~~

- ~~(a) Teaching experience shall count towards years of experience on the Personnel Information Reporting System.~~
- ~~(b) Teachers shall be evaluated by Tennessee Department of Education personnel or others trained in the use of the Frameworks for Evaluation (pursuant to 0520-1-3-.04) so that licensure advancement can occur.~~
- ~~(c) Schools may report attendance to the school where the student is officially enrolled where applicable.~~
- ~~(d) Schools may order and administer Gateway tests to current students to help them stay on track for graduation.~~
- ~~(e) Special Purpose Category VII schools shall be deemed appropriate training schools for those seeking specialized student teaching placements. Teacher candidates must satisfy the induction requirements in Rule 0520-2-3-.11.~~

~~(2) Organizations seeking approval for Pre-K programs as Category VII schools shall, in addition to meeting the requirements of this rule, satisfy Pre-K program requirements outlined in Rule 0520-1-3-.05 and the State Board of Education Early Childhood Education Policy.~~

~~(3) Each school shall comply with the requirements of T.C.A. § 49-6-3007 regarding the reporting of the names, ages, and addresses of all pupils in attendance to the superintendent of the public school system in which the student resides.~~

~~(4) Each school shall comply with all rules, regulations and codes of the city, county, and state regarding planning, construction, maintenance and operation of the school.~~

~~(5) Each school shall observe all fire safety regulations and procedures promulgated by the Tennessee Fire Marshal.~~

~~**Authority:** T.C.A. §§ 49-1-302, 49-6-101, 49-6-3001. **Administrative History:** New rule filed \_\_\_\_\_; effective \_\_\_\_\_.~~

\* 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)
Ayers				X	
Barker				X	
Justice	X				
Pearre	X				
Ray				X	
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Woods	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 04/15/2011, and is in compliance with the provisions of TCA 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 sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 6-14-11

Signature: Gary Nixon

Name of Officer: \_\_\_\_\_

Title of Officer: \_\_\_\_\_



Subscribed and sworn to before me on: 6/14/11

Notary Public Signature: Phyllis E. Childress

My commission expires on: \_\_\_\_\_

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.

Robert E. Cooper, Jr.  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter

7-22-11  
 Date

Department of State Use Only

Filed with the Department of State on: 7/29/11

Effective on: 12/29/11

*Tre Hargett*  
Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Wildlife Resources Agency

DIVISION: Information and Education

SUBJECT: State-Operated Hunter Education Centers and Public Firing Ranges

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 70-2-224

EFFECTIVE DATES: October 9, 2011 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The rule amendment in 1660-01-27-.01(g) simply changes the language from "facility manager," a term not used within the agency, to the term "range manager," a term used universally within the Tennessee Wildlife Resources Agency (TWRA).

The rule amendment in 1660-01-27-.01-(h) simply changes the language from "facility manager or the duty range master," terminology not used within the agency to the term "range manager," a term used universally within the TWRA.

The rule amendment in 1660-01-27-.03 General Rules serves to combine related items and to include the ten commandments of firearms safety that have been and are currently taught to an average of 16,000 to 18,000 students per year across the state of Tennessee.

Furthermore in 1660-01-27.03(11) the introduction of creating and utilizing a Standing Operating Procedure (SOP) enables each range to address unique conditions of each individual range facility.

The rule amendments in 1660-01-27-.06(e) and in 1660-01-27-.07(e) simply state the fee charged by the club and/or concessionaire for clay target shooting, a sport not offered at every range operated by the TWRA.

**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.

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RULE: 1660-1-27

New	_____
Amendment	<u>  X  </u>
Repeal	_____

- 
- There were no public comments to the above-described rule.
- Attached hereto are the responses to public comments.

### **Regulatory Flexibility Addendum**

Pursuant to Public Chapter 464 of the 105<sup>th</sup> General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

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

The commission does not anticipate any significant impact to small businesses in Tennessee. The rule simply clarifies language and terminology to coincide with hunter education and established agency positions. The rule also recognizes the implementation of a Standing Operating Procedure which will provide the necessary flexibility needed due to the uniqueness of each individual firing range across the state of Tennessee.

(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 commission anticipates no change or addition to record keeping associated with this rule.

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

The commission anticipates no probable effect to small businesses.

(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;

The commission is unaware of alternatives to the proposed rule and does not believe the rule as proposed would be burdensome to small businesses.

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

The commission is not aware of any 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.

The commission anticipates no probable effect to small businesses and exemptions to this rule would likely not be beneficial.

## Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule to 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 does not believe there will be any financial impact on local governments by any changes in this rule.

Please describe the increase in expenditures or decrease in revenues:

The commission believes there will not be any change in either expenditures or revenues resulting from this rule change.

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

**For Department of State Use Only**

Sequence Number: 07-06-11  
 Rule ID(s): 4963  
 File Date: 07/11/2011  
 Effective Date: 10/09/2011

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

**Agency/Board/Commission:** Tennessee Wildlife Resources Agency  
**Division:** Information and Education  
**Contact Person:** Lisa Crawford  
**Address:** PO Box 40747, Nashville, TN  
**Zip:** 37204  
**Phone:** 615-781-6606  
**Email:** [Lisa.Crawford@tn.gov](mailto:Lisa.Crawford@tn.gov)

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1660-01-27	Rules and Regulations for State Operated Hunter Education Centers and Public Firing Ranges
Rule Number	Rule Title
1660-01-27-.01(g)	Public Usage
1660-01-27-.01(h)	Public Usage
1660-01-27-.02	Use Permits - Fees
1660-01-27-.03	General Rules

Rulemaking Hearing Rules  
 of the  
 Tennessee Wildlife Resources Agency

Chapter 1660-01-27  
 Rules and Regulations for State Operated Hunter Education Centers and Public Firing Ranges  
 Amendment

Rule 1660-01-27-.01(g) Public Usage, is amended by changing the language in section (g) from "facility manager" to "range manager" so that, as amended, the rule shall read:

- (g) Other uses of the Hunter Education Facilities are subject to approval of the range manager.

Authority: T. C. A. §70-1-206 and §70-2-224.

Amendment

Rule 1660-01-27-.01(h) Public Usage, is amended by changing the language in section (h) from "facility manager or the duty range master" to "range manager" so that, as amended, the rule shall read:

- (h) All incidents resulting in the injury to persons or damage to property must be reported by the person or persons involved as soon as possible to the ~~facility manager or the duty range master~~ range manager. This report does not relieve persons from the responsibility of making any other accident report that may be required under state law.

Authority: T. C. A. §70-1-206 and §70-2-224.

Chapter 1660-01-27

Rules and Regulations for State Operated Hunter Education Centers and Public Firing Ranges

Amendment

Rule 1660-01-27-.02 Use Permits - Fees, is amended by adding two new subsections (3) and (4) to read as follows:

- (1) Before any person may shoot at a Hunter Education Center, such person must possess a valid entrance ticket. This ticket must be available for inspection while using the range.
- (2) Entrance ticket fees will be established for each individual center and shall include up to 2 paper targets. Additional paper targets will be provided for a fee.
- (3) Persons utilizing classrooms or similar facilities at hunter education centers will be subject to the same fees as shooters unless waived or otherwise specified in this chapter for a particular range.
- (4) The Executive Director of the Tennessee Wildlife Resources Agency may allow exceptions to and/or waive use permits and fees for hunter education centers and agency ranges.

**Authority:** T.C.A. §§70-1-206 and 70-2-224. **Administrative History:** Original rule filed May 31, 2000; effective August 14, 2000.

Chapter 1660-01-27

Rules and Regulations for State Operated Hunter Education Centers and Public Firing Ranges

Amendments

Rule 1660-01-27-.03 General Rules, is amended by deleting the rule in its entirety and by replacing it with the following so that, as amended, the rule shall read

~~Violation of the following rules may result in a citation and/or expulsion from the range:~~

- ~~(1) Participants may not possess any alcoholic beverage, narcotic drug, barbiturate, marijuana or other behavior-modifying substance while on the area. No individual may be under the influence of these substances at any time while within the facilities.~~
- ~~(2) Participants may not carry loaded firearms while within the facilities. Firearms may only be loaded while at shooting stations.~~
- ~~(3) Safety zones are defined as an area of protection which may have restricted activities around buildings, firing and archery ranges, roads and other designated areas.~~
- ~~(4) Target practice is prohibited except at the ranges provided.~~
- ~~(5) Driving into woods, fields or glades is prohibited.~~

- ~~(6) Acts of disorderly or unsafe conduct, including acts which interfere with the orderly processes conducted at the Hunter Education Center are prohibited.~~
- ~~(7) Domesticated animals are prohibited.~~
- ~~(8) Youth under 16 years of age must be supervised by an adult at all times.~~
- ~~(9) Only approved paper targets may be used.~~
- ~~(10) Paper targets must be placed on frames provided by the Agency.~~
- ~~(11) Ranges are open only during posted days and hours.~~
- ~~(12) All paper targets, expended rounds and litter must be removed from the range.~~
- ~~(13) Eye and hearing protection must be worn while on or in the firing range area.~~
- ~~(14) Range officers will have control of range safety, activities and persons using the range.~~
- ~~(15) Range flags or other signaling devices will be displayed while the range is active.~~
- ~~(16) The Hunter Education Centers may be used for training or other activities as scheduled during off or non-peak days and hours. The individual fee rate will apply for all participants in training events or other activities.~~
- ~~(17) Unauthorized trespass in the range area is prohibited.~~
- ~~(18) All participants must check in through the range office.~~
- ~~(19) Special activities must be scheduled and approved by the range master.~~
- ~~(20) Hunter education classes are to be scheduled a minimum of two weeks in advance.~~
- ~~(21) Hunter education class participants and instructors will not be charged a use fee for the required live fire exercise.~~
- ~~(22) Full metal-jacketed ammunition is prohibited.~~

Violation of the following rules may result in a citation and/or expulsion from the range:

- (1) **WATCH THAT MUZZLE.** Keep the muzzle of any firearm pointed in a safe direction at all times. Additional site specific rules may be posted to further clarify muzzle safe zones other than down range such as designated loading areas for muzzle loaders.
- (2) **TREAT EVERY FIREARM AS IF IT WERE LOADED AT ALL TIMES.** It might be even if you think it isn't.
- (3) **BE SURE OF THE TARGET AND WHAT IS IN FRONT OF IT AND BEYOND IT.** Make sure you have an adequate backstop-don't shoot at a flat hard surface or water. Safety zones are defined as an area of protection which may have restricted activities around buildings, firing and archery ranges, roads and other designated areas. All target practice is prohibited except at the designated ranges provided. All unauthorized trespass in the range area is prohibited. Driving into the woods, fields or glades is prohibited.
- (4) **KEEP YOUR FINGER OFF THE TRIGGER AND OUTSIDE THE TRIGGER GUARD UNTIL READY TO SHOOT.** This is the best way to prevent an accidental discharge.
- (5) **CHECK YOUR BARREL AND AMMUNITION.** Make sure the barrel and action are clear of obstructions and carry only the proper ammunition for your firearm. Furthermore, armor piercing ammunition, tracers or any other type of explosive or incendiary ammunition is prohibited.

- (6) UNLOAD FIREARMS WHEN NOT IN USE. Leave actions open; carry firearms in cases and unloaded to and from the shooting area. Participants may not carry loaded firearms while within the facilities. Firearms may only be loaded while at the designated shooting stations.
- (7) POINT A FIREARM ONLY AT SOMETHING YOU INTEND TO SHOOT. Avoid all horseplay with a gun. Acts of disorderly or unsafe conduct, including acts which interfere with the orderly processes conducted at the Hunter Education Center are prohibited.
- (8) DON'T RUN, JUMP OR CLIMB WITH A LOADED FIREARM. Always pull a firearm toward you by the butt, not the muzzle.
- (9) STORE FIREARMS AND AMMUNITION SEPARATELY AND SAFELY. Store each in secured locations beyond the reach of children and careless adults.
- (10) AVOID ALCOHOLIC BEVERAGES BEFORE OR DURING SHOOTING. Participants may not possess any alcoholic beverage, narcotic drug, barbiturate, marijuana or other behavior modifying substance while on the area. No individual may be under the influence of these substances including legal prescription medications at any time while within the facilities.
- (11) Because all firing ranges are unique and site specific, each individual range will operate on a Standing Operating Procedure (SOP) which will be posted onsite and online. This SOP will outline numerous aspects of range operation and other site specific items.
- (12) Eye and hearing protection must be worn while on or in the firing range area.
- (13) All participants must check in through the range office.
- (14) Youths under 16 years of age must be accompanied and supervised by an adult at least 21 years of age at all times.
- (15) Only approved paper targets may be used. Paper targets must be placed on frames provided by the Agency. All paper targets, expended rounds and litter must be removed from the range and placed in the appropriate trash and/or recycle receptacles provided.
- (16) Range Safety Officers, where provided, will have control of range safety, activities and persons using the range.
- (17) Range flags or other signaling devices will be displayed while the range is active.
- (18) Domesticated animals are prohibited unless service related.
- (19) Ranges are open only during posted days and hours. The Hunter Education Centers may be used for training or other activities as scheduled during off or non-peak days and hours. The standard individual fee rate will apply for all participants in training events or other activities except for those set out in the SOP. Special activities must be scheduled and approved by the range manager.
- (20) Hunter Education classes are to be scheduled a minimum of two weeks in advance and hunter education class participants and instructors will not be charged a use fee for the classroom or the required live fire exercise.

Authority: T. C. A. §70-1-206 and §70-2-224.

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown				
Mike Chase				

The roll-call vote by the Tennessee Wildlife Resources Commission on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent
William L. Brown	✓			
<del>Mike Chase</del>				
<del>Johnny Coleman</del>				
Jeffrey H. Griggs	✓			
<del>Mike Hayes</del>				
Julius Johnson				✓
Robert Martineau				✓
Jeff McMillin	✓			
Mitchell S. Parks				✓
Julie Schuster	✓			
Todd A. Shelton				✓
Eric Wright	✓			
Danya Welch	✓			

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 05/20/2011 (mm/dd/yyyy), and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 03/30/2011

Rulemaking Hearing(s) Conducted on: (add more dates). 05/20/2011

Date: 5-23-11

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director



Subscribed and sworn to before me on: 5-23-11

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

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.

Robert E. Cooper, Jr.  
 Attorney General and Reporter  
7-1-11  
 Date

Department of State Use Only

Filed with the Department of State on: \_\_\_\_\_

7/11/11

Effective on: \_\_\_\_\_

10/9/11

*Tre Hargett by John H. Hargett, PA*

Tre Hargett  
Secretary of State

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SECRETARY OF STATE  
REGISTRATIONS

## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Underground Storage Tanks

SUBJECT: Dispensers and Systems Containing Petroleum Substances with Greater than 10% Ethanol

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-215-101 *et seq.*

EFFECTIVE DATES: October 9, 2011 through June 30, 2012

FISCAL IMPACT: Minimal

### STAFF RULE ABSTRACT:

Proposed Rule 1200-01 -15-.01 amends the definition of "motor fuel" to clarify that biodiesel and ultra low sulphur diesel are included in the definition.

Rule 1200-01-15-.02 makes it clear that motor fuel dispensers for petroleum substances with greater than 10% ethanol are to be listed by Underwriters Laboratories for dispensing high alcohol content and are to have been manufactured after June 24, 2010.

Part (1)(a)3 of Rule 1200-01 -15-.03 is being added to make it clear that compatibility documentation is required for new systems being installed that contain petroleum substances with greater than 10% ethanol.

Paragraph (2) of Rule 120001-15-.03 and Rule 1200-01-15-.07 are amended to allow "other responsible parties" to close USTs, as are owners and/or operators.

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: A commenter felt the definition of motor fuel should be a standalone rule.

Response: The Board maintains that the definition of motor fuel falls under the Housekeeping rules as it simply clarifies the definition to include new fuel types that are regulated and therefore does not need to be a standalone rule.

Comment: A commenter felt that the requirement for motor fuel dispensers to be UL listed and the requirement that owners of UST systems, containing greater than 10% alcohol, submit documentation of compatibility should both be part of the other proposed rule package.

Response: The motor fuel dispenser requirement is an E85 issue that was addressed by an EPA requirement regarding the new UL Listing and that is the reason it was added to these housekeeping rules.

The compatibility documentation is also an E85 issue. The proposed rules only require verification of compatibility on new installations, as the Division has previously required it as a matter of interpretation of existing rules. The proposed rule does not limit the tank owner from using fuels with greater than 10% ethanol; it simply asks for verification that the components of the new system are compatible. It is the express intent of Tennessee Petroleum Underground Storage Tank Act, at T.C.A. § 68-215-102, to provide for the safe storage of petroleum products. This proposed rule simply verifies that the product stored is compatible with the system components.

Comment: A commenter felt that the UST program does not regulate dispensers and that dispenser requirement should be left out of the Rule change.

Response: The motor fuel dispenser requirement is an E85 issue with regard to the new UL Listing and that is the reason it was added to the housekeeping rules. Also, the existing rules regulate the use of ancillary equipment and the dispenser is part of this ancillary equipment. If the rules did not regulate ancillary equipment, then releases from the dispenser would not be covered by the fund.

### Regulatory Flexibility Addendum

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

(If applicable, insert Regulatory Flexibility Addendum here)

- (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 businesses owning underground storage tanks are affected by the amendment, however the Board does not expect there to be any cost to small businesses or any real benefit. These are basic housekeeping rules, to clarify the existing rules.

- (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 Board does not anticipate any administrative costs from these basic housekeeping rules, to clarify the existing rules.

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

The Board does not anticipate any impact on small businesses or consumers. These are basic housekeeping rules.

- (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 burden or cost on the tank owner, so there is no need for an alternative. These are basic housekeeping rules, to clarify the existing rules.

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

These rule changes are a clarification of the existing rules to bring them more in line with the federal rules.

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

Exempting small businesses from all or any part of these clarifying changes to the existing rules would prevent them from having the benefit of the clarifications.

### **Impact on Local Governments**

Pursuant to T.C.A. 4-5-220 and 4-5-228 “any rule to 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)

(Insert statement here)

The Department anticipates that these amended rules will not have a financial impact on local governments.

**Department of State  
Division of Publications**

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**For Department of State Use Only**

Sequence Number: 07-07-11  
Rule ID(s): 1964  
File Date: 07/11/2011  
Effective Date: 10/09/2011

## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Environment and Conservation
<b>Division:</b>	Underground Storage Tanks
<b>Contact Person:</b>	Rhonda Key
<b>Address:</b>	4 <sup>th</sup> Floor, L & C Tower 401 Church Street Nashville, Tennessee
<b>Zip:</b>	37243-1541
<b>Phone:</b>	615-532-0989
<b>Email:</b>	<a href="mailto:Rhonda.Key@tn.gov">Rhonda.Key@tn.gov</a>

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
1200-01-15	Underground Storage Tank Program
Rule Number	Rule Title
1200-01-15-.01	Program Scope, Definitions and Proprietary Information
1200-01-15-.02	UST Systems: Installation and Operation
1200-01-15-.03	Notification, Reporting, and Record Keeping
1200-01-15-.07	Out-Of-Service UST Systems and Closure

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://tn.gov/sos/rules/1360/1360.htm>)

Chapter 1200-01-15  
Underground Storage Tank Program

Amendments

Paragraph (4) Definitions of Rule 1200-01-15-.01 Program Scope, Definitions and Proprietary Information is amended by inserting the phrase "biodiesel, ultra low sulphur diesel," between "No. 1 or No. 2 diesel fuel," and "or any grade of gasohol" so that, as amended the definition for Motor Fuel shall read as follows:

"Motor Fuel" means petroleum or a petroleum-based substance that is 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.

Paragraph (1) of Rule 1200-01-15-.02 UST Systems: Installation and Operation is amended by deleting it in its entirety and replacing it with a new paragraph (1) to read as follows:

(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 in the following manner:
  - 1. Submit a pre-installation notification form in accordance with rule 1200-01-15-.03(1)(a)1 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 rule 1200-01-15-.10(3).
- (b) All tanks and piping shall be installed in accordance with the manufacturer's installation instructions.
- (c) All tanks, pressurized piping and/or suction piping that ~~does~~ do not meet the requirements of rule 1200-01-15-.04(2)(b)2(i) through (iii), 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) Motor fuel dispensers used for dispensing petroleum substances blended with more than 10% alcohol products by volume must have a listing by Underwriters Laboratories (UL) for dispensing high alcohol content fuels, and must have been manufactured after June 24, 2010.
- (d)(e) 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 in accordance with part 1 of subparagraph (a) 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. Begin release detection in accordance with rule 1200-01-15-.04 immediately if the tank or tank compartment contains more than two and one-half (2.5) centimeters (one (1) inch) of product.
  5. Immediately protect against corrosion in accordance with paragraph (4) of this rule.
  6. A line tightness test in accordance with rule 1200-01-15-.04(4)(b) and a tank tightness test in accordance with rule 1200-01-15-.04(3)(c) 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 rule 1200-01-15-.03(2)(d) at the time of ownership transfer.
- (e)(f) Installation shall be certified in accordance with rule 1200-01-15-.03(1)(d)1 within fifteen (15) days following completion of the installation.

Subparagraph (a) of paragraph (1) of Rule 1200-01-15-.03 Notification, Reporting, and Record Keeping is amended by adding new part 3 to read as follows:

3. All owners of UST systems installed to contain a petroleum substance blended with more than 10% alcohol products by volume must submit documentation demonstrating that the UST system is compatible with the product stored, at least fifteen (15) days prior to commencement of installation. Documentation must be submitted in a format established by the Division.

Paragraph (2) of Rule 1200-01-15-.03 Notification, Reporting, and Record Keeping is amended by deleting it in its entirety and replacing it with the following new paragraph (2):

- (2) Reporting and record keeping. Owners, ~~and/or~~ operators, and/or other responsible parties of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the Division, as well as requests for document submission, testing, and monitoring by the owner, ~~and/or~~ operator, and/or other responsible party in accordance with the Tennessee Petroleum Underground Storage Tank Act T.C.A. §68-215-101 et seq.
  - (a) Reporting. Owners, ~~and/or~~ operators, and/or other responsible parties shall submit the following information to the division:
    1. Notification for all UST systems (rule 1200-01-15-.03(1), which includes certification of installation for new UST systems (rule 1200-01-15-.03(1)(d) and (e));

2. Reports of all releases including suspected releases (rule 1200-01-15-.05(1)), spills and overfills (rule 1200-01-15-.05(4)), and confirmed releases (rule 1200-01-15-.06);
  3. Corrective actions planned or taken including, but not limited to, initial response measures (rule 1200-01-15-.06(3)), hazard management measures (rule 1200-01-15-.06(4)), initial site characterization and exposure assessment (rule 1200-01-15-.06(5)), corrective action plan (rule 1200-01-15-.06(10)), and as otherwise directed by the division;
  4. A notification before permanent closure or change-in-service (rule 1200-01-15-.07(3) and (4)); and
  5. Tank closure activities including site assessment results (rule 1200-01-15-.07(5)).
- (b) Record keeping. Owners, ~~and/or operators~~, and/or other responsible parties shall maintain the following information:
1. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (rule 1200-01-15-.02(4)(a)5; rule 1200-01-15-.02(4)(b)3);
  2. Documentation of operation of corrosion protection equipment (rule 1200-01-15-.02(4)(c));
  3. Documentation of UST system repairs (rule 1200-01-15-.02(7)(f));
  4. Recent compliance with release detection requirements (rule 1200-01-15-.04(5)); and
  5. Results of the site investigation conducted at permanent closure (rule 1200-01-15-.07(5)).
- (c) Availability and maintenance of records.
1. Owners, ~~and/or 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; or
    - (ii) At a readily available alternative site and be provided for inspection to the division upon request; or
    - (iii) In the case of permanent closure records required under rule 1200-01-15-.07(7), owners, ~~and/or operators~~, and/or other responsible parties are also provided with the additional alternative of mailing closure records to the 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 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 1200-01-15-.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.

Rule 1200-01-15-.07 Out-Of-Service UST Systems and Closure is amended by deleting it in its entirety and replacing with the following Rule 1200-01-15-.07:

1200-01-15-.07 Out-Of-Service UST Systems and Closure

(1) Temporary closure.

(a) When an UST system is temporarily closed, owners, operators, and/or other responsible parties shall continue operation and maintenance of corrosion protection in accordance with rule 1200-01-15-.02(4), and any release detection in accordance with rule 1200-01-15-.04. Rule 1200-01-15-.05 and rule 1200-01-15-.06 shall be complied with if a release is suspected or confirmed. However, release detection is 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.

(b) When an UST system is temporarily closed for three (3) months or more, owners, ~~and/or~~ 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, owners, ~~and/or~~ operators, and/or other responsible parties of an UST system which does not meet the requirements in rule 1200-01-15-.02(3) and (4) 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. ~~The Owners, and/or 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, ~~and/or operator,~~ and/or other responsible party.

(a) At least thirty (30) days before beginning tank compartment closure, owners, ~~and/or~~ 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. The application shall be completed according to the instructions provided by the 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, ~~and/or~~ 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 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, ~~and/or~~ operator, and/or other responsible party shall submit a new Application for Closure of Tank Compartment(s) to the 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 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, ~~and/or~~ 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, ~~and/or~~ 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. The application shall be completed according to the instructions provided by the division.
  2. The tank owner, ~~and/or 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 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, ~~and/or operator~~, and/or other responsible party 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, and/or 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 of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners, and/or operators, and/or other responsible parties shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with paragraph (5) of this rule.
- (d) Should an owner, ~~and/or operator~~, and/or other responsible party elect to excavate and remove a tank from the site, such excavation and removal shall be done in accordance with Appendix 1200-01-15-.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 1200-01-15-.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 1200-01-15-.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 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, ~~and/or~~ operator, and/or other responsible party 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, 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.
  - (a) Before permanent closure of a tank or a tank compartment or a change-in service is completed, owners, ~~and/or 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, ~~and/or 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, and other factors appropriate for identifying the presence of a release.
    - 2. At least one day before samples are taken, the owner, ~~and/or operator~~, and/or other responsible party shall notify the 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 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 shall be submitted in a format established by the division. The Permanent Closure Report for Underground Storage Tank Systems shall be completed in accordance with the instructions provided by the 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) 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;
  - 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.
- (f) If contaminated soils, contaminated ground water, or free product as a liquid or vapor is discovered under subparagraph (a) of this paragraph, or by any other manner, owners, and/or operators, and/or other responsible parties shall begin release response and corrective action in accordance with rule 1200-01-15-.06.
- (6) Applicability to previously closed UST systems. When directed by the division, the owner, and/or operator, and/or other responsible party 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, pose a current or potential threat to human health and the environment.
- (7) Closure records. Owners, and/or operators, and/or other responsible parties shall maintain records in accordance with rule 1200-01-15-.03(2) 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, and/or operators, and/or other responsible parties who took the UST system out of service;
  - (b) By the current owners, and/or operators, and/or other responsible parties of the UST system site; or
  - (c) By mailing these records to the division if they cannot be maintained at the closed facility.

APPENDIX 1200-01-15-.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 (3), "Testing".
  - (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<sub>2</sub>) or nitrogen (N<sub>2</sub>). 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<sub>2</sub> or N<sub>2</sub>, 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<sub>2</sub> fire extinguishers into tanks containing a flammable vapor-air mixture. CO<sub>2</sub> extinguishers shall not be used for inerting flammable atmospheres.
- (d) If the method described in (c) 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 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<sub>2</sub> 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.

\* 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)
Mayor Allen Barker				✓	
Jonathan M. Edwards	✓				
Sharon O. Jacobs	✓				
Bhag Kanwar	✓				
John Owsley	✓				
DeAnne Redman	✓				
Larry R. Reynolds	✓				
Jon Roach				✓	
Vacant				✓	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Petroleum Underground Storage Tank Board on 04/27/2011, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 11/23/10  
 Rulemaking Hearing(s) Conducted on: (add more dates). 01/20/11

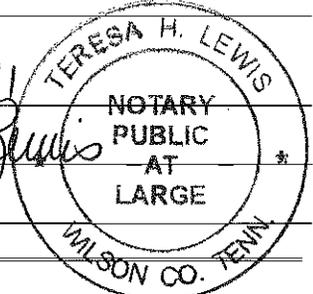
Date: April 27, 2011

Signature: *Jonathan M. Edwards*

Name of Officer: Jonathan M. Edwards

Title of Officer: Chairman

Subscribed and sworn to before me on: April 27, 2011  
 Notary Public Signature: *Teresa H. Lewis*  
 My commission expires on: Nov. 28, 2011



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.

*Robert E. Cooper, Jr.*  
 Robert E. Cooper, Jr.  
 Attorney General and Reporter  
7-7-11

Date

Department of State Use Only

Filed with the Department of State on: 7/11/11

Effective on: 10/9/11

*Tre Hargett by T. Hargett, POA*  
Tre Hargett  
Secretary of State

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## G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board for Licensing Contractors

DIVISION:

SUBJECT: LMC-Licensed Masonry Contractor Classification; Bidding Procedures; Limited Licensed Plumber Inspections

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 62-6-108 and 62-6-406

EFFECTIVE DATES: October 23, 2011 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

Rule 0680-01-.09 **Change in Mode of Operation** has been amended to allow for a 90-day period for licensees to submit an application for a new license when a change in mode of operation occurs.

Rule 0680-01-.16 and Appendix A of Rule 0680-01-.12 (**Classification System**) are amended by adding a new classification to the rules. The new classification shall be listed as LMC-Licensed Masonry Contractor, and new licensees will be required to take an additional examination. The rule is also amended by adding a notation to Building Category No.9 Masonry found in Appendix A of Rule 0680-01-.12. The notation clarifies that this category refers to masonry projects valued at under one hundred thousand dollars (\$100,000.00), included materials and labor.

Rule 0680-01-.19 **Civil Penalties** is amended by deleting the reference to Tennessee Code Annotated § 62-6-118(e) and substituting instead the reference to Tennessee Code Annotated § 62-6-120(d).

Rule 0680-01-.24 **Bidding Procedures**, as amended, requires masonry contractors to furnish evidence of a license with appropriate classification and monetary limit when bidding to a prime contractor when the total cost of the masonry portion of the contract exceeds one hundred thousand dollars (\$100,000.00), materials and labor. The amendment also requires the masonry contractor to be included on the outside of the bid envelope or in the submission of the electronic bid when the total cost of the masonry portion of the contract exceeds one hundred thousand dollars (\$100,000), materials and labor.

Rule 0680-01-.25 **Contracting in Correct Name** is amended to require a licensee to submit an application for a license name change within ninety (90) days from the date that the licensee changes the company name. The licensee may not bid or enter into contracts in the new name until the application has been approved and a revised license is issued. The licensee may continue to work on already existing contracts entered into prior to the name change, provided that the application is made within the ninety (90) day period.

Rule 0680-04-.01 **Definitions** is amended to include the definition of "limited licensed plumber" and "limited licensed plumbing work."

New Rule 0680-04-.07 **Limited Licensed Plumber Inspections** was created to implement the requirements of Tennessee Code Annotated § 62-6-406.

## Public Comment

### 0680-01-.09 Change in Mode of Operation

Roger Tudor of AGC of East Tennessee emailed the Executive Director of the Tennessee Board for Licensing Contractors with the following comment. Mr. Tudor stated that the name change provision appears confusing to me. Why allow ninety (90) days to submit a name change application, but refuse to allow the contractor to bid until a revised name certificate is issued? This causes a hardship. The rule should allow a contractor to bid on, and work on, projects under the new name as long as the application is submitted within ninety (90) days of the name change.

In response to this comment, the Board voted not to make any changes to the rule including the prohibition against a licensee bidding or working on projects in a new company name until the new name is approved by the Board.

### Rule 0680-01-.24 Bidding Procedures

Roger Tudor of AGC of East Tennessee emailed the Executive Director of the Tennessee Board for Licensing Contractors with the following comment. If someone reads the rule literally it would imply that no one would need to be listed on the outside of the envelope if the masonry is not over one hundred thousand dollars (\$100,000.00). You have to read it a couple of times to get it to sink in but one could reach that conclusion. Knowing full well that is not the intent of the law. May want to take a look at that.

In response to this comment, the Board voted to make changes to Rule 0680-01-.24 as published in the Notice of Rulemaking. These changes are not substantive and only re-word the draft of the rule in order to clarify the rule's requirements for licensees.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. § 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

**Regulatory Flexibility Analysis - Methods of Reducing Impact of Rules on Small Businesses:**

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:

There will be no overlap, duplication, or conflict with other federal, state or local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rules:

The rules are clear in purpose and intended execution. The rules are not open to different interpretations.

3. Flexible compliance and/or reporting requirements for small businesses:

Regarding the amendments to rules 0680-01-.09 Change in Mode of Operation and 0680-01-.25 Contracting in Correct Name, it is imperative to the health, safety and welfare of the citizens of Tennessee that licensees conduct business in the same name as they are licensed. It is also necessary that the licensee make revisions to their license as the need arises due to changes to the licensee's business operation. The ninety (90) day deadline for license revision upon name changes or changes in mode of operation applies to both sole proprietorships and corporate entities and does not appear to create a heavy burden for small businesses to comply with.

Regarding the amendment to rule 0680-01-.24 Bidding Procedures, it is imperative to the health, safety and welfare of the citizens of Tennessee, that small businesses are held to the same standards as larger businesses regarding compliance with proper bidding procedures.

Regarding the amendment to rule 0680-04-.04 and new rule 0680-04-.07, it is imperative to the health, safety and welfare of the citizens of Tennessee, that limited licensed plumbers be regulated appropriately. The regulations shall apply to all persons who are licensed as limited licensed plumbers.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:

Regarding the amendment to 0680-01-.16 Appendix A of Rule 0680-01-.12 (Classifications System), the requirement for licensure as a masonry contractor performing over one hundred thousand dollars (\$100,000.00), materials and labor, does not take effect until January 1, 2011. This is reasonable notification to current licensees and non-licensees that a new license should be acquired for such work.

5. Consolidation or simplification of compliance or reporting requirements:

The Department is working to clarify the rules which should reduce conflicts and possibilities for confusion, especially for licensed masonry contractors and limited licensed plumbers. All compliance or reporting requirements are mandated by statute.

6. Performance standards for small businesses:

The Tennessee Board for Licensing Contractors expects all businesses, regardless of size, to follow the new requirements.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The amendments to rules 0680-01-.09 Change in Mode of Operation and 0680-01-.25 Contracting in Correct Name require a licensee to pay in the event of a name change.

The amendment to 0680-01-.16 Appendix A of Rule 0680-01-.12 (Classifications System) will require businesses and individuals who once were permitted to perform masonry jobs over twenty-five thousand dollars (\$25,000.00) while only possessing a general contractor's license to apply for the new classification if working in excess of one hundred thousand dollars (\$100,000.00), materials and labor. The application fee will also include an examination fee. This requirement is mandated by statute.

**Economic Impact Statement:**

1. Types of small businesses directly affected:

All small businesses who have been issued a contractor's license and subsequently change the mode of operation or the name in which they do business will be affected. The requirement for license revision existed before the rules were proposed but there was no distinguishable deadline for the reporting requirement.

All small businesses who wish to bid on or perform masonry jobs in excess of one hundred thousand dollars (\$100,000.00), materials and labor must apply for the new license classification. All small business who act as the masonry subcontractor must provide this license information when bidding to a prime contractor. All small businesses who act as a prime contractor must list this license information on the outside of the bid envelope.

2. Projected reporting, recordkeeping, and other administrative costs:

There is no foreseeable alteration in small business reporting or recordkeeping that will result from the promulgation of these rules.

3. Probable effect on small businesses:

There is no foreseeable substantial effect on small businesses by the imposition of the rules.

4. Less burdensome, intrusive, or costly alternative methods:

The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses. The necessary costs to small businesses to implement the changes required by the proposed changes and additions to the rules are offset by the protections provided to citizens of Tennessee.

5. Comparison with federal and state counterparts:

There are no federal counterparts to the issues addressed by these rules.

6. Effect of possible exemption of small businesses:

In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses are held to the same standards as larger businesses regarding conducting business in the same name as they are licensed and making appropriate license revisions as the need arises due to

changes to the licensee's business operation; small businesses are held to the same standards as larger businesses regarding licensure in the appropriate classification; and, it is imperative that small businesses are held to the same standards as larger businesses regarding compliance with proper bidding procedures. An exemption of small businesses from the aforementioned requirements could be a detriment to health, safety and welfare of the citizens of Tennessee

### **Impact on Local Governments**

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The rules are not expected to have a financial impact on local governments.

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Sequence Number: 07-12-11  
 Rule ID(s): 4966-4967  
 File Date: 07/25/2011  
 Effective Date: 10/23/2011

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205*

<b>Agency/Board/Commission:</b>	Tennessee Board for Licensing Contractors
<b>Division:</b>	
<b>Contact Person:</b>	Jenny Gray
<b>Address:</b>	500 James Robertson Parkway, 12 <sup>th</sup> Floor, Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 532-6308
<b>Email:</b>	Jenny.Gray@tn.gov

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

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

Chapter Number	Chapter Title
0680-01	Licensing
Rule Number	Rule Title
0680-01-.09	Change in Mode of Operation
0680-01-.16	Appendix A of Rule 0680-01-.12 (Classification System)
0680-01-.19	Civil Penalties
0680-01-.24	Bidding Procedures
0680-01-.25	Contracting in Correct Name; Change of Name

Chapter Number	Chapter Title
0680-04	Limited Licensed Plumbers
Rule Number	Rule Title
0680-04-.01	Definitions
0680-04-.07	Inspections

Rule 0680-01-.09 Change in Mode of Operation is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read as follows:

0680-01-.09 Change in Mode of Operation

- (1) Whenever a partnership licensed as a contractor dissolves, no former member of the partnership shall further undertake contracting before filing a new application with the Board and receiving a license.
- (2) In the case of a merger, purchase by non-stockholders of the majority interest, or reorganization pursuant to a bankruptcy proceeding, ~~of any corporation or any other type of change in mode of operation of an entity~~ engaged in contracting, the ~~corporation~~ entity shall make written application to the Board and obtain a new license before further undertaking contracting.
- (3) Individuals or ~~Corporations~~ entities seeking a new license pursuant to T.C.A. § 62-6-111(f) ~~or and(g)~~ shall submit a letter which addresses the requirements of ~~§§ 62-6-111(f) and (g) that section~~. In addition, the applicant shall submit an affidavit that all liabilities of the ~~partnership or proprietorship~~ entity were satisfied or will be satisfied by the individual or ~~corporation~~ entity.
- (4) In the event of a change in mode of operation as outlined in T.C.A. § 62-6-111(e), ~~appearance the qualified agent or majority stockholder must appear~~ before the Board ~~will be necessary unless specifically waived by the Board~~.
- (5) In the event of any change in mode of operation, the licensed entity in question shall have ninety (90) days from the date of the change in mode of operation to submit either an application for a mode change if there are no changes in ownership or officers, or a new application if there are such changes. The entity may not bid on or enter into new contracts until a new or revised license has been issued; however, the entity may continue to work on already existing contracts that were entered into prior to the change in mode of operation, provided the application is made within the ninety (90) day period.

Authority: T.C.A. §§ 62-6-103, 62-6-108, 62-6-111, and 62-6-115

Rule 0680-01-.16 Appendix A of Rule 0680-01-.12 (Classifications System) is amended by placing a notation beside No. 9 Masonry as listed under Building Categories. The section shall read as follows:

9. Masonry-under one hundred thousand dollars (\$100,000.00), materials and labor

Authority: T.C.A. §§ 62-6-102, 62-6-108, 62-6-111.

Rule 0680-01-.16 Appendix A of Rule 0680-01-.12 (Classifications System) is amended by adding a new classification to the rule. The classification shall be placed after J. Fuel Gas Piping and Systems as listed under the MC-Mechanical Contracting classification and before the E-Electrical Contracting classification. The new classification shall read as follows:

LMC—Licensed Masonry Contractor

Authority: T.C.A. §§ 62-6-102, 62-6-108, 62-6-111.

0680-01-.19 Civil Penalties is amended by deleting the reference to ~~T.C.A. § 62-6-118(e)~~ and substituting instead T.C.A. § 62-6-120(d).

Authority: T.C.A. §§ 62-6-103, 62-6-108, 56-1-308, and 62-6-120.

Rule 0680-01-.24 Bidding Procedures is amended by deleting the rule in its entirety and substituting instead the following language so that, as amended, the rule shall read as follows:

#### 0680-01-.24 Bidding Procedures

- (1) Pursuant to ~~T.C.A. §§ 62-6-119(b)~~ T.C.A. § 62-6-102, a subcontractor is required to be licensed in order to perform electrical, plumbing, heating ventilation and air conditioning subcontractors bidding to a prime contractor shall furnish evidence of a license with appropriate classification and monetary limit work when the amount is twenty-five thousand dollars (\$25,000.00) or more; and masonry work when the amount is one hundred thousand dollars (\$100,000.00) or more, including materials and labor. It is the subcontractor's responsibility to furnish evidence to the prime contractor of an active license with the appropriate name, classification, monetary limit, and expiration date, regardless of how the bid is transmitted. ~~Provided however,~~ Failure to comply with this rule shall not require nonconsideration of the subcontractor's bid if appropriately licensed, but said subcontractor shall may be subject to discipline by the Board.
- (2) Any prime contractor submitting a bid pursuant to T.C.A. § 62-6-119(b) shall list on the outside of the bid envelope or in the submission of an electronic bid only one electrical contractor, one plumbing contractor, one heating ventilation and air conditioning contractor, and one masonry contractor with appropriate classification and monetary limit or the bid shall not be considered. Award of the subcontract to one not listed on the base bid envelope or in the submission of an electronic bid in violation of T.C.A. § 62-6-119 will be subject to review and disciplinary action by the Board.

Authority: T.C.A. §§ 62-6-102, 62-6-103, 62-6-108, 62-6-111, 62-6-119.

Rule 0680-01-.25 Contracting in Correct Name is amended by deleting the rule in its entirety and substituting the following language so that, as amended, the rule shall read as follows:

#### Rule 0680-01-.25 Contracting in Correct Name; Change of Name

- (1) Upon receiving a certificate of licensure from this Board, the licensee has an affirmative responsibility to enter into contracts and operate its related contracting business under the name in which it is licensed in order to notify and prevent confusion on the part of the public at large of an entity's licensure status. Contracting in a name different than that in which an individual or entity is licensed by this Board is considered a violation of this chapter, and will be subject to discipline accordingly cause for appropriate disciplinary action.
- (2) In the event of a name change of a licensee, the licensee must complete an application request for a name change and be approved prior to contracting in the new name. The licensee shall have ninety (90) days from the date that the new entity is formed to apply for a license in the new entity name. The licensee cannot bid on or enter into contracts in the new name until it has been issued a revised license; however, the entity may continue to work on already existing contracts that were entered into prior to the name change, provided the application is made within the ninety (90) day period.

Authority: T.C.A. §§ 62-6-103, 62-6-108, 62-6-115.

Chapter 0680-04  
Limited Licensed Plumbers

#### Amendment

Rule 0680-04-.01 Definitions is amended by deleting subsection (1) in its entirety and substituting instead the following language so that, as amended, the subsection shall read as follows:

- (1) For the purposes of Rules 0680-04-.01 through 0680-04-.06.07, the following definitions are applicable:

- (a) "Limited licensed plumber" means any person who performs any plumbing work that has a total cost of less than twenty-five thousand dollars (\$25,000.00) and who is required to be registered under the provisions of the Limited Licensed Plumbers' Act of 2004.
- (b) "Limited licensed plumbing work" means the construction, alteration, repair, improvement, movement, demolition, putting up, tearing down or furnishing of labor to install material or equipment within any residential or commercial building of all piping, fixtures and appliances for the supply of gas, water, liquids or disposal of waste water or sewage; provided, that the total cost of the work performed is less than twenty-five thousand dollars (\$25,000.00) and the work is not otherwise exempt under T.C.A. Title 62, Chapter 6, Part 4.
- (c) "Board" means the state board for licensing contractors pursuant to T.C.A. § 62-6-104.

Authority: T.C.A. §§ 62-6-108, 62-6-402, 62-6-403, and 62-6-405.

Chapter 0680-04  
Limited Licensed Plumbers

New Rule

Rule 0680-04-.07 Limited Licensed Plumber Inspections

- (1) The work performed by limited licensed plumbers shall comply with the applicable provisions of T.C.A. § 68-120-101 and the rules promulgated thereunder.
- (2) All inspections and permit fees associated with the work performed by limited licensed plumbers shall be governed by Rule 0780-02-23 One and Two Family Dwellings and Townhouses. Compliance with the inspection provisions of Chapter 0780-02-23 One and Two Family Dwellings and Townhouses by a limited licensed plumber shall be sufficient to satisfy the requirements of T.C.A. § 62-6-406.

Authority: T.C.A. §§ 62-6-108, 62-6-406, and 62-6-409

\* 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)
Keith Whittington	X				
Mark Brodd	X				
Reese Smith	X				
Cindi DeBusk				X	
Jerry Hayes	X				
William (Bill) Mason			X		
Ernest M. Owens				X	
Marvin Sandrell				X	
Jack Ronnie Tickle	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board for Licensing Contractors on 11/17/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 09/14/10

Rulemaking Hearing(s) Conducted on: (add more dates). 11/17/10



Date: 5-13-11

Signature: Jenny Gray  
Name of Officer: Jenny Gray

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 5/13/11

Notary Public Signature: [Signature]

My commission expires on: 5/6/12

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.

[Signature]  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
7-19-11  
Date

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2011 JUL 15 PM 3:32  
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ADMINISTRATIVE SERVICES

**Department of State Use Only**

Filed with the Department of State on: 7/25/11

Effective on: 10/23/11



---

Tre Hargett  
Secretary of State

**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Medicaid: Smoking Cessation Products

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 71-5-15 and 71-5-109

EFFECTIVE DATES: July 1, 2011 through December 28, 2011

FISCAL IMPACT: The promulgation of this rule and a similar rule for TennCare Standard is projected to increase annual state expenditures by \$3,500,000.

STAFF RULE ABSTRACT: This rule amendment reflects that effective July 1, 2011, TennCare Medicaid is covering smoking cessation products for adult enrollees.

## Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

There is no projected impact on local governments.

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Nashville, TN 37243  
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Fax: 615-741-5133  
Email: [register.information@tn.gov](mailto:register.information@tn.gov)

For Department of State Use Only

Sequence Number: 07-01-11  
Rule ID(s): 4961  
File Date (effective date): 07/01/2011  
End Effective Date: 12/28/2011

## Emergency Rule Filing Form

Emergency rules are effective from date of filing for a period of up to 180 days.

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road Nashville, Tennessee
Zip:	37243
Phone:	(615) 507-6443
Email:	George.woods@tn.gov

**Rule Type:**

Emergency Rule

**Revision Type (check all that apply):**

Amendments

New

Repeal

**Statement of Necessity:**

Pursuant to T.C.A. § 4-5-208, the Bureau of TennCare is authorized to adopt emergency rules in the event that the agency is required by enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures for promulgation of permanent rules.

The Appropriations Act, Public Chapter 473, effective July 1, 2011, requires the Bureau of TennCare to provide coverage for smoking cessation products for adult enrollees. Previously, smoking cessation was only covered for children and pregnant women. Further, the Appropriations Act specifically authorizes the promulgation of emergency rules when necessary to fiscally function within the appropriations provided for the TennCare program.

I have made the finding that the attached amendments are required by the above-referenced enactment of the general assembly and the timely implementation of these amendments as mandated precludes promulgation through ordinary rulemaking procedures.

For a copy of these emergency rules contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.

  
Darin J. Gordon  
Director, Bureau of TennCare

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

Chapter Number	Chapter Title
1200-13-13	TennCare Medicaid
Rule Number	Rule Title
1200-13-13-.04	Covered Services
1200-13-13-.10	Exclusions
1200-13-13-.11	Appeal of Adverse Actions Affecting TennCare Services or Benefits

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Paragraph (C) the last paragraph of the "BENEFIT FOR PERSONS AGED 21 AND OLDER" column of Part 25. of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new (C) which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
		(C) Over-the-counter (OTC) drugs for TennCare adults are not covered even if the enrollee has a prescription for such service, unless the drug is listed on the "Covered OTC Drug List" that is available on the TennCare website located at <a href="http://www.tn.gov/tenncare">www.tn.gov/tenncare</a> on the date of service.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Part 5. "Agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d." of Subparagraph (c) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and subsequent Parts renumbered accordingly.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Subpart (v) "Agents when used to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. §1396d" of Part 20. of Subparagraph (a) of Paragraph (3) of Rule 1200-13-13-.10 Exclusions is deleted in its entirety and subsequent Parts are renumbered accordingly.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Subpart (v) "agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d;" of Part 2. of Subparagraph (b) of Paragraph (5) of Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent Subparts are renumbered accordingly.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

GW10111168

Chapter Number	Chapter Title
1200-13-13	TennCare Medicaid
Rule Number	Rule Title
1200-13-13-.04	Covered Services
1200-13-13-.10	Exclusions
1200-13-13-.11	Appeal of Adverse Actions Affecting TennCare Services or Benefits

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Paragraph (C) the last paragraph of the "BENEFIT FOR PERSONS AGED 21 AND OLDER" column of Part 25. of Subparagraph (b) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new (C) which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
		<p><del>(C) Over-the-counter drugs for Medicaid adults are not covered even if the enrollee has a prescription for such service, except for prenatal vitamins for pregnant women</del></p> <p><u>(C) Over-the-counter (OTC) drugs for TennCare adults are not covered even if the enrollee has a prescription for such service, unless the drug is listed on the "Covered OTC Drug List" that is available on the TennCare website located at <a href="http://www.tn.gov/tenncare">www.tn.gov/tenncare</a> on the date of service.</u></p>

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Part 5. "Agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d." of Subparagraph (c) of Paragraph (1) of Rule 1200-13-13-.04 Covered Services is deleted in its entirety and subsequent Parts renumbered accordingly.

(c) Pharmacy

TennCare is permitted under the terms and conditions of the demonstration project approved by the federal government to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. TennCare must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by TennCare as described in Section 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

1. Agents for weight loss or weight gain.
2. Agents to promote fertility or for the treatment of impotence or infertility or for the reversal of sterilization.
3. Agents for cosmetic purposes or hair growth.
4. Agents for symptomatic relief of coughs and colds.

- ~~5.~~ Agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d.
- ~~6-5.~~ Agents which are benzodiazepines or barbiturates.
- ~~7-6.~~ Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.
- ~~8-7.~~ Nonprescription drugs.
- 9-8. Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or his designee.

TennCare shall not cover drugs considered by the FDA to be Less Than Effective (LTE) and DESI drugs, or drugs considered to be Identical, Related and Similar (IRS) to DESI and LTE drugs or any other pharmacy services for which federal financial participation (FFP) is not available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age. TennCare shall not cover experimental or investigational drugs which have not received final approval from the FDA.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Subpart (v) "Agents when used to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. §1396d" of Part 20. of Subparagraph (a) of Paragraph (3) of Rule 1200-13-13-.10 Exclusions is deleted in its entirety and subsequent Parts are renumbered accordingly.

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES program or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

(a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21

20. Certain pharmacy items as follows:

- (i) Agents when used for anorexia or weight loss
- (ii) Agents when used to promote fertility
- (iii) Agents when used for cosmetic purposes or hair growth
- (iv) Agents when used for the symptomatic relief of cough and colds
- ~~(v)~~ Agents when used to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d
- ~~(vi)~~(v) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee
- ~~(vii)~~(vi) Nonprescription drugs
- ~~(viii)~~(vii) Barbiturates
- ~~(ix)~~(viii) Benzodiazepines

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Subpart (v) "agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d," of Part 2. of Subparagraph (b) of Paragraph (5) of Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent Subparts are renumbered accordingly.

- (b) A pharmacist shall dispense a seventy-two (72) hour interim supply of the prescribed drug, as mandated by the preceding paragraph, provided that:
2. The medication is not a drug in one of the non-covered TennCare therapeutic categories that include:
    - (i) agents for weight loss or weight gain;
    - (ii) agents to promote fertility or to treat impotence;
    - (iii) agents for cosmetic purposes or hair growth;
    - (iv) agents for the symptomatic relief of coughs and colds;
    - ~~(v) agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d;~~
    - ~~(vi)~~(v) prescription vitamins and mineral products except prenatal vitamins and fluoride preparations;
    - ~~(vii)~~(vi) nonprescription drugs;
    - ~~(viii)~~(vii) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or
    - ~~(ix)~~(viii) barbiturates or benzodiazepines.

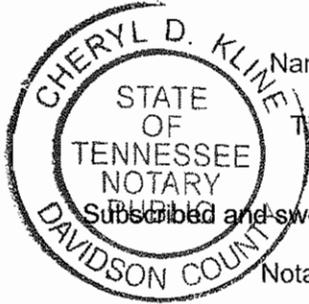
Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

GW10111168R

I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 6/27/2011

Signature: [Handwritten Signature]



Name of Officer: Darin J. Gordon

Title of Officer: Director, Bureau of TennCare  
Tennessee Department of Finance and Administration

Subscribed and sworn to before me on: 6/27/11

Notary Public Signature: [Handwritten Signature]

My commission expires on: 9/30/2012

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.

[Handwritten Signature]  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
6-30-11  
Date

Department of State Use Only

Filed with the Department of State on: 07/01/2011

Effective for: 180 \*days

Effective through: 12/28/2011

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

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Tre Hargett  
Secretary of State

**G.O.C. STAFF RULE ABSTRACT**

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: TennCare Standard: Smoking Cessation Products

STATUTORY AUTHORITY: Tennessee Code Annotated, Sections 71-5-15 and 71-5-109

EFFECTIVE DATES: July 1, 2011 through December 28, 2011

FISCAL IMPACT: The promulgation of this rule and a similar rule for TennCare Medicaid is projected to increase annual state expenditures by \$3,500,000.

STAFF RULE ABSTRACT: This rule amendment reflects that effective July 1, 2011, TennCare Standard is covering smoking cessation products for adult enrollees.

## Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

There is no projected impact on local governments.

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**For Department of State Use Only**

Sequence Number: 07-02-11  
Rule ID(s): 4962  
File Date (effective date): 07/01/2011  
End Effective Date: 12/28/2011

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing for a period of up to 180 days.*

<b>Agency/Board/Commission:</b>	Tennessee Department of Finance and Administration
<b>Division:</b>	Bureau of TennCare
<b>Contact Person:</b>	George Woods
<b>Address:</b>	310 Great Circle Road Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	(615) 507-6443
<b>Email:</b>	George.woods@tn.gov

**Rule Type:**

Emergency Rule

**Revision Type (check all that apply):**

Amendments

New

Repeal

**Statement of Necessity:**

Pursuant to T.C.A. § 4-5-208, the Bureau of TennCare is authorized to adopt emergency rules in the event that the agency is required by enactment of the general assembly to implement rules within a prescribed period of time that precludes utilization of rulemaking procedures for promulgation of permanent rules.

The Appropriations Act, Public Chapter 473, effective July 1, 2011, requires the Bureau of TennCare to provide coverage for smoking cessation products for adult enrollees. Previously, smoking cessation was only covered for children and pregnant women. Further, the Appropriations Act specifically authorizes the promulgation of emergency rules when necessary to fiscally function within the appropriations provided for the TennCare program.

I have made the finding that the attached amendments are required by the above-referenced enactment of the general assembly and the timely implementation of these amendments as mandated precludes promulgation through ordinary rulemaking procedures.

For a copy of these emergency rules contact: George Woods at the Bureau of TennCare by mail at 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6446.



Darin J. Gordon  
Director, Bureau of TennCare

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

Chapter Number	Chapter Title
1200-13-14	TennCare Standard
Rule Number	Rule Title
1200-13-14-.04	Covered Services
1200-13-14-.10	Exclusions
1200-13-14-.11	Appeal of Adverse Actions Affecting TennCare Services or Benefits

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

The seventh paragraph of the "BENEFIT FOR PERSONS AGED 21 AND OLDER" column of Part 25. of Subparagraph (b) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new seventh paragraph which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
		<p><del>Over-the-counter drugs for Medicaid adults are not covered even if the enrollee has a prescription for such service, except for prenatal vitamins for pregnant women.</del></p> <p><u>Over-the-counter (OTC) drugs for TennCare adults are not covered even if the enrollee has a prescription for such service, unless the drug is listed on the "Covered OTC Drug List" that is available on the TennCare website located at <a href="http://www.tn.gov/tenncare">www.tn.gov/tenncare</a> on the date of service.</u></p>

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Part 5. "Agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d." of Subparagraph (c) of Paragraph (1) of Rule 1200-13-14-.04 Covered Services is deleted in its entirety and subsequent Parts renumbered accordingly.

(c) Pharmacy

TennCare is permitted under the terms and conditions of the demonstration project approved by the federal government to restrict coverage of prescription and non-prescription drugs to a TennCare-approved list of drugs known as a drug formulary. TennCare must make this list of covered drugs available to the public. Through the use of a formulary, the following drugs or classes of drugs, or their medical uses, shall be excluded from coverage or otherwise restricted by TennCare as described in Section 1927 of the Social Security Act [42 U.S.C. §1396r-8]:

1. Agents for weight loss or weight gain.
2. Agents to promote fertility or for the treatment of impotence or infertility or for the reversal of sterilization.
3. Agents for cosmetic purposes or hair growth.
4. Agents for symptomatic relief of coughs and colds.

- ~~5.~~ Agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d.
- ~~6-5.~~ Agents which are benzodiazepines or barbiturates.
- ~~7-6.~~ Prescription vitamins and mineral products, except prenatal vitamins and fluoride preparations.
- ~~8-7.~~ Nonprescription drugs.
- 9-8. Covered outpatient drugs, which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or his designee.

TennCare shall not cover drugs considered by the FDA to be Less Than Effective (LTE) and DESI drugs, or drugs considered to be Identical, Related and Similar (IRS) to DESI and LTE drugs or any other pharmacy services for which federal financial participation (FFP) is not available. The exclusion of drugs for which no FFP is available extends to all TennCare enrollees regardless of the enrollee's age. TennCare shall not cover experimental or investigational drugs which have not received final approval from the FDA.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Subpart (v) "Agents when used to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. §1396d" of Part 20. of Subparagraph (a) of Paragraph (3) of Rule 1200-13-14-.10 Exclusions is deleted in its entirety and subsequent Parts are renumbered accordingly.

(3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115 waiver program unless excepted by paragraph (2) herein. Some of these services may be covered under the CHOICES program or outside TennCare under a Section 1915(c) Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.

(a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21.

20. Certain pharmacy items as follows:

- (i) Agents when used for anorexia or weight loss
- (ii) Agents when used to promote fertility
- (iii) Agents when used for cosmetic purposes or hair growth
- (iv) Agents when used for the symptomatic relief of cough and colds
- ~~(v)~~ Agents when used to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d
- ~~(vi)~~(v) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee
- ~~(vii)~~(vi) Nonprescription drugs
- ~~(viii)~~(vii) Barbiturates
- ~~(ix)~~(viii) Benzodiazepines

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

Subpart (v) "agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d;" of Part 2. of Subparagraph (b) of Paragraph (5) of Rule 1200-13-13-.11 Appeal of Adverse Actions Affecting TennCare Services or Benefits is deleted in its entirety and subsequent Subparts are renumbered accordingly.

- (b) A pharmacist shall dispense a seventy-two (72) hour interim supply of the prescribed drug, as mandated by the preceding paragraph, provided that:
  - 2. The medication is not a drug in one of the non-covered TennCare therapeutic categories that include:
    - (i) agents for weight loss or weight gain;
    - (ii) agents to promote fertility or to treat impotence;
    - (iii) agents for cosmetic purposes or hair growth;
    - (iv) agents for the symptomatic relief of coughs and colds;
    - ~~(v)~~ agents to promote smoking cessation, except such agents shall be covered for pregnant women in accordance with 42 U.S.C. § 1396d;
    - ~~(vi)~~(v) prescription vitamins and mineral products except prenatal vitamins and fluoride preparations;
    - ~~(vii)~~(vi) nonprescription drugs;
    - ~~(viii)~~(vii) covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee; or
    - ~~(ix)~~(viii) barbiturates or benzodiazepines.

Statutory Authority: T.C.A. §§ 4-5-208, 71-5-105 and 71-5-109.

GW10211168R

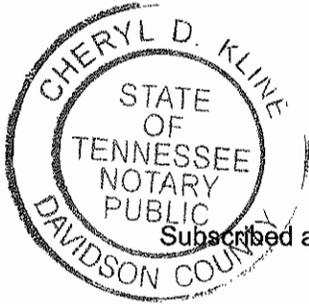
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 6/27/2011

Signature: D. J. Gordon

Name of Officer: Darin J. Gordon  
Director, Bureau of TennCare

Title of Officer: Tennessee Department of Finance and Administration



Subscribed and sworn to before me on: 6-27-11

Notary Public Signature: Cheryl D. Kline

My commission expires on: 9/31/2012

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.

Robert E. Cooper, Jr.

Robert E. Cooper, Jr.  
Attorney General and Reporter

6-30-11

Date

**Department of State Use Only**

Filed with the Department of State on: 07/01/2011

Effective for: 180 \*days

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Tre Hargett

Tre Hargett  
Secretary of State

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