

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Finance and Administration

DIVISION: Bureau of TennCare

SUBJECT: ICF/MR Rates

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 71-5-105

EFFECTIVE DATES: December 20, 2011 through June 17, 2012

FISCAL IMPACT: The agency anticipates that this rule will decrease annual state expenditures by \$1,435,100.

STAFF RULE ABSTRACT: This rule permits the state to adjust ICF/MR rates to contain expenditures within budgetary limits.

Pursuant to Tennessee Code Annotated, § 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 reduce expenditures for certain health care providers, including ICFs/MR, effective January 1, 2012, if the State does not receive reimbursement from the federal Medicare program of costs of the special disability workload (SDW). In October the Bureau of TennCare learned that the federal Department of Health and Human Services (DHHS) was notifying individual states that reimbursement of the SDW claims will not be made until federal legislation can be passed. DHHS has determined that a new federal law authorizing the Medicare program to directly reimburse states is required before DHHS can repay the states for services which should have been provided by Medicare. The timing of the passage of this needed federal legislation is as yet unknown, which precludes the reception of any of these funds by the Bureau prior to January 1, 2012. Current rules do not permit the adjustment of ICF/MR rates to contain them within budgetary limits.

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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Sequence Number: 12-17-11
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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
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment
 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 reduce expenditures for certain health care providers, including ICFs/MR, effective January 1, 2012, if the State does not receive reimbursement from the federal Medicare program of costs of the special disability workload (SDW). In October the Bureau of TennCare learned that the federal Department of Health and Human Services (DHHS) was notifying individual states that reimbursement of the SDW claims will not be made until federal legislation can be passed. DHHS has determined that a new federal law authorizing the Medicare program to directly reimburse states is required before DHHS can repay the states for services which should have been provided by Medicare. The timing of the passage of this needed federal legislation is as yet unknown, which precludes the reception of any of these funds by the Bureau prior to January 1, 2012. Current rules do not permit the adjustment of ICF/MR rates to contain them within budgetary limits.

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

(Rule 1200-13-01-.29, continued)

- (f) Medicaid benefits other than those specified in the Waiver's scope of Covered Services shall be reimbursed by the State Medicaid Agency as otherwise provided for by federal and state rules and regulations.
 - (g) The Operational Administrative Agency shall be responsible for obtaining the physician's initial certification and subsequent Enrollee re-evaluations. Failure to perform re-evaluations in a timely manner and in the format approved by the State Medicaid Agency shall require a corrective action plan and shall result in partial or full recoupment of all amounts paid by the State Medicaid Agency during the time period when a re-evaluation had lapsed.
 - (h) The Operational Administrative Agency shall be responsible for ensuring that the Financial Administration entity fulfills its financial, ministerial, and clerical responsibilities associated with the provision of Financial Administration services to an Enrollee who Self-Directs one or more Covered Services. Examples of such responsibilities include the hiring and employment of service providers by the Enrollee or the Enrollee's guardian or conservator; management of Enrollee accounts; disbursement of funds to Waiver service providers while withholding appropriate deductions; reviewing documentation of Covered Services to assure Enrollee approval prior to payment; ensuring that Waiver service providers possess the necessary qualifications established by the State Medicaid Agency.
 - (i) The State Medicaid Agency shall be responsible for defining and establishing the billing units to be used by the Operational Administrative Agency in billing for Waiver Services.
 - (j) An Operational Administrative Agency that enrolls an individual without an approved ICF/MR Pre-Admission Evaluation or, where applicable, an approved Transfer Form does so without the assurance of reimbursement. An Operational Administrative Agency that enrolls an individual who has not been determined by the Tennessee Department of Human Services to be financially eligible to have Medicaid make reimbursement for covered services does so without the assurance of reimbursement.
- (12) Appeals. An Enrollee shall have the right to appeal an adverse action in accordance with TennCare rule 1200-13-13-.11.

Authority: T.C.A. 4-5-202, 4-5-208, 4-5-209, 71-5-105, 71-5-109, Executive Order No. 23.
Administrative History: Original rule filed June 20, 2007; effective September 3, 2007. Public necessity rules filed July 1, 2009; effective through December 13, 2009. Amendments filed September 11, 2009; effective December 10, 2009. Emergency rule filed March 1, 2010; effective through August 28, 2010. Amendments filed May 27, 2010; effective August 25, 2010.

1200-13-01-.30 TENNCARE ICF/MR SERVICES.

- (1) Definitions. See Rule 1200-13-01-.02.
- (2) Eligibility for Medicaid-reimbursed care in an ICF/MR.
 - (a) The individual must be determined by DHS to be financially and categorically eligible for Medicaid-reimbursed LTC services.
 - (b) The individual must have a valid, unexpired ICF/MR PAE that has been approved by the Bureau in accordance with Rule 1200-13-01-.15.
- (3) Conditions of participation for ICFs/MR.

(Rule 1200-13-01-.30, continued)

- (a) The ICF/MR must enter into a provider agreement with the Bureau.
 - (b) The ICF/MR must be certified by the State, showing it has met the standards set out in 42 C.F.R., Part 442, Subpart C and 42 C.F.R., Part 483.
 - (c) ICFs/MR participating in the State of Tennessee's TennCare Program shall be terminated as TennCare providers if certification or licensure is canceled by the State.
 - (d) If the resident has resources to apply toward payment, the payment made by the State will be his current maximum payment per day, charges or per diem cost (whichever is less), minus the available patient resources.
 - (e) Payments for residents requiring ICF/MR services will not exceed per diem costs or charges, whichever is less.
 - (f) If an ICF/MR (upon submission of a cost report and audit of its cost), has collected on a per diem basis during the period covered by the cost report and audit, more than cost reimbursement allowed for the ICF/MR patient, the facility shall be required to reimburse the State (through the Bureau and/or the ICF/MR's Third Party), for that portion of the reimbursement collected in excess of the cost reimbursement allowed.
 - (g) Regardless of the reimbursement rate established for an ICF/MR, no ICF/MR may charge TennCare Enrollees an amount greater than the amount per day charge to private paying patients for equivalent accommodations and services.
 - (h) Personal laundry services in an ICF/MR shall be considered a covered service and included in the per diem rate. TennCare Enrollees may not be charged for personal laundry services.
- (4) Conditions that ICFs/MR must meet to receive Medicaid reimbursement.
- (a) An ICF/MR that has entered into a provider agreement with the Bureau of TennCare is entitled to receive Medicaid reimbursement for covered services provided to an ICF/MR Eligible if
 1. The Bureau has received an approvable ICF/MR PAE for the individual within ten (10) calendar days of the ICF/MR PAE Request Date or the physician certification date, whichever is earlier. The PAE Approval Date shall not be more than ten (10) days prior to date of submission of an approvable PAE. An approvable PAE is one in which any deficiencies in the submitted application are cured prior to disposition of the PAE.
 2. For the transfer to an ICF/MR of an individual having an approved unexpired ICF/MR PAE, the Bureau has received an approvable Transfer Form within ten (10) calendar days after the date of the transfer. For transfer from ICF/MR services to an HCBS MR Waiver program, the transfer form must be submitted and approved prior to enrollment in the HCBS MR Waiver Program.
 3. For a retroactive eligibility determination, the Bureau has received a Notice of Disposition or Change and has received an approvable request to update an approved, unexpired ICF/MR PAE within thirty (30) calendar days of the mailing date of the Notice of Disposition or Change. The effective date of payment for ICF/MR services shall not be earlier than the PAE Approval Date of the original approved, unexpired PAE which has been updated.

(Rule 1200-13-01-.30, continued)

- (b) Any deficiencies in a submitted PAE application must be cured prior to disposition of the PAE to preserve the PAE submission date for payment purposes.
 - 1. Deficiencies cured after the PAE is denied but within thirty (30) days of the original PAE submission date will be processed as a new application, with reconsideration of the earlier denial based on the record as a whole (including both the original denied application and the additional information submitted). If approved, the effective date of PAE approval can be no earlier than the date of receipt of the information which cured the original deficiencies in the denied PAE. Payment will not be retroactive back to the date the deficient application was received or to the date requested in the deficient application.
 - 2. Once a PAE has been denied, the original denied PAE application must be resubmitted along with any additional information which cures the deficiencies of the original application. Failure to include the original denied application may delay the availability of Medicaid reimbursement for ICF/MR services.
 - (c) An ICF/MR that admits a Medicaid Eligible without an approved ICF/MR PreAdmission Evaluation or, where applicable, an approved Transfer Form does so without the assurance of reimbursement from the Bureau.
- (5) Reimbursement methodology for ICFs/MR.
- (a) Private for-profit and private not-for-profit ICFs/MR shall be reimbursed at the lower of Medicaid cost or charges. An annual inflation factor will be applied to operating costs. The trending factor shall be computed for facilities that have submitted cost reports covering at least six (6) months of program operations. For facilities that have submitted cost reports covering at least three (3) full years of program participation, the trending factor shall be the average cost increase over the three-year (3-year) period, limited to the seventy-fifth (75th) percentile trending factor of facilities participating for at least three (3) years. Negative averages shall be considered zero (0). For facilities that have not completed three (3) full years in the program, the one-year (1-year) trending factor shall be the fiftieth (50th) percentile trending factor of facilities participating in the program for at least three (3) years. For facilities that have failed to file timely cost reports, the trending factor shall be zero (0). Capital-related costs are not subject to indexing. Capital-related costs are property, depreciation, and amortization expenses included in Section F.18 and F.19 of the Nursing Facility Cost Report Form. All other costs, including home office costs and management fees, are operating costs. Once a per-diem rate is determined from a clean cost report, the rate will not be changed until the next rate determination except for audit adjustments, correction of errors, or termination of a budgeted rate. *- Add two sentences*
 - (b) Public ICFs/MR that are owned by government shall be reimbursed at one hundred percent (100%) of allowable Medicaid costs with no cost-containment incentive. Reimbursement shall be based on Medicare principles of retrospective cost reimbursement with year-end cost report settlements. Interim per-diem rates for the fiscal year beginning July 1, 1995 and ending June 30, 1996 shall be established from budgeted cost and patient day information submitted by the government ICF/MR facilities. Thereafter, interim rates shall be based on the providers' cost reports. There will be a tentative year-end cost settlement within thirty (30) days of submission of the cost reports and a final settlement within twelve (12) months of submission of the cost reports.
 - (c) Costs for supplies and other items, including any facility staff required to deliver the service, which are billed to Medicare Part B on behalf of all patients must be included as a reduction to reimbursable expenses in Section G of the NF cost report.

(Rule 1200-13-01-.30, continued)

(6) Bed holds.

An ICF/MR will be reimbursed in accordance with this Paragraph for the recipient's bed in that facility during the recipient's temporary absence from that facility in accordance with the following:

- (a) For days not to exceed fifteen (15) days per occasion while the recipient is hospitalized and the following conditions are met:
1. The resident intends to return to the ICF/MR.
 2. The hospital provides a discharge plan for the resident.
 3. At least eighty-five percent (85%) of all other beds in the ICF/MR certified at the recipient's designated level of care (i.e., intensive training, high personal care or medical), when computed separately, are occupied at the time of hospital admission. An occupied bed is one that is actually being used by a patient. Beds being held for other patients while they are hospitalized or otherwise absent from the facility are not considered to be occupied beds, for purposes of this calculation. Computations of occupancy percentages will be rounded to the nearest percentage point.
 4. Each period of hospitalization must be physician ordered and so documented in the patient's medical record in the ICF/MR.
- (b) For days not to exceed sixty (60) days per state fiscal year and limited to fourteen (14) days per occasion while the recipient, pursuant to a physician's order, is absent from the facility on a therapeutic home visit or other therapeutic absence.

(7) Other reimbursement issues.

- (a) No change of ownership or controlling interest of an existing Medicaid provider, including ICFs/MR, can occur until monies as may be owed to the Bureau or its contractors are provided for. The purchaser shall notify the Bureau of the purchase at the time of ownership change and is financially liable for the outstanding liabilities to the Bureau or its contractors for one (1) year from the date of purchase or for one (1) year following the Bureau's receipt of the provider's Medicare final notice of program reimbursement, whichever is later. The purchaser shall be entitled to use any means available to it by law to secure and recoup these funds from the selling entity. In addition, purchasers of ICFs/MR are responsible for obtaining an accurate accounting and transfer of funds held in trust for Medicaid residents at the time of the change of ownership or controlling interest.
- (b) If the Bureau or an MCO has not reimbursed a business for TennCare services provided under the TennCare Program at the time the business is sold, when such an amount is determined, the Bureau or the MCO shall be required to reimburse the person owning the business provided such sale included the sale of such assets.
- (c) When a provider was originally paid within a retrospective payment system that is subject to regular adjustments and the provider disputes the proposed adjustment action, the provider must file with the State not later than thirty (30) days after receipt of the notice informing the provider of the proposed adjustment action, a request for hearing. The provider's right to a hearing shall be deemed waived if a hearing is not requested within thirty (30) days after receipt of the notice.

(Rule 1200-13-01-.30, continued)

Authority: T.C.A. §§ 4-5-202, 4-5-208, 71-5-105 and 71-5-109. **Administrative History:** Emergency rule filed March 1, 2010; effective through August 28, 2010. Original rule filed May 27, 2010; effective August 25, 2010.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Treasury

DIVISION: Baccalaureate Education System Trust Fund Board

SUBJECT: 529 Educational Savings Plans

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-7-805

EFFECTIVE DATES: December 29, 2011 through June 26, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The Baccalaureate Education System Trust (BEST) was established by the General Assembly of the State of Tennessee by Public Acts of 1996, Chapter 991 to promote savings by Tennessee residents for the costs of attending institutions of higher education and for the purpose of making higher education more affordable for the citizens of Tennessee by offering the educational services/pre-paid plan. Although the federal law allowed two types of State tuition plans (the educational services/pre-paid plan, and the educational savings plan), the Program offered only the educational services plan, or prepaid plan.

Under the educational services/pre-paid plan, parents, grandparents, relatives, friends and other interested parties may save for future college expenses by purchasing "tuition units" for a child based on the current weighted average tuition costs at Tennessee's four-year public universities. The "tuition units" grow in value as the weighted average tuition increases each academic year.

Each "tuition unit" purchased entitles the beneficiary, that is, the person for whom the units were purchased, to an amount equal to 1% of the current year's weighted average tuition at Tennessee's four-year public colleges and universities for a "normal" academic load (two (2) semesters with 15 credit hours each). So, if a parent or other interested party were to purchase 100 units, they would have paid for approximately one-year's average college tuition at a four-year college or university in Tennessee.

The prepaid plan was established to be a self-supporting plan. In other words, it was expected that investment income earned on the units purchased would equal or outpace the annual increases in tuition rates. Unfortunately, that has not been the case. Weak investment markets and fast-rising college costs have put tremendous financial pressure on the prepaid plan. As a result, the BEST Board determined at its November 22, 2010 meeting that the optimal course of

action was to limit the plan's liabilities by stopping the sale of additional tuitions units.

In 1999, the Tennessee General Assembly enacted Public Chapter 233 to allow the Program to also offer the second type of State tuition plan authorized by federal law, i.e., the educational savings plan. Under the educational savings plan, any person may contribute to a savings account established with the Program on behalf of a beneficiary. Educational savings plans are different from educational services/pre-paid plans in that all growth is based upon market performance of the underlying investments, which typically consist of mutual funds. Most 529 savings plans offer a variety of age-based asset allocation options where the underlying investments become more conservative as the beneficiary gets closer to college age. Under the current prepaid plan being offered, the return on the participant's investment is directly tied to tuition inflation.

Beginning on June 1, 2008, the Tennessee Treasury Department entered into a contract with the State of Georgia Higher Education Saving Plan for the Georgia Plan to market its 529 college Savings Plan to Tennessee residents as a result of its low fees and number of investment choices. Pursuant to the contract, either party may terminate the contract for convenience upon one hundred eighty days (180) days written notice to the other party. The contract further provided that in the event of termination of the contract and the creation of a new Tennessee savings plan, the Georgia Plan must notify all Tennessee residents that participate in the Georgia Plan of the fact that Tennessee has created a new Tennessee savings plan. However, the Georgia Plan has no obligation to provide the notice unless the new Tennessee savings plan is created within one year of the contract termination date.

By letter dated December 21, 2010, the Georgia State Treasurer advised the State that Georgia was terminating the contract effective as of the end of the day on June 30, 2011. As a consequence, the State must create and otherwise launch any new Tennessee savings plan within one year of June 30, 2012 in order for Georgia to notify its Tennessee account holders of the creation of the new plan.

The purpose of these rules is to establish the new Tennessee savings plan pursuant to and consistent with the Public Chapter 233.

These rules would establish a 529 educational savings plan for the purpose of promoting savings by Tennessee residents for the costs of attending institutions of higher education and for the purpose of making higher education more affordable for the citizens of Tennessee. An integral part of 529 savings plans is that such plans offer unsurpassed income tax benefits. Earnings in 529 plans are currently not subject to federal tax so long as the distributions from the plans are used for eligible college expenses, such as tuition and room and board. With the federal government looking to make cuts in various areas by the end of this year, the Tennessee Treasury Department is concerned that it may be possible the federal government will stop allowing any new 529 savings plans from opening. Consequently, it is necessary to protect the welfare of the citizens of this State by establishing a Tennessee educational savings plan prior to the end of this year.

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)

(Insert statement here)

There is no project impact on local governments.

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Sequence Number: 12-25-11
 Rule ID(s): 5103-5104
 File Date (effective date): 12/29/2011
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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 Treasury
Division:	Tennessee Baccalaureate Education System Trust Board
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Rule Type:

Emergency Rule

Revision Type (check all that apply):

Amendment

New

Repeal

Statement of Necessity:

These rules would establish a 529 educational savings plan for the purpose of promoting savings by Tennessee residents for the costs of attending institutions of higher education, and for the purpose of making higher education more affordable for the citizens of Tennessee. An integral part of 529 savings plans is that such plans offer unsurpassed income tax benefits. Earnings in 529 plans are currently not subject to federal tax so long as the distributions from the plans are used for eligible college expenses, such as tuition and room and board. With the federal government looking to make cuts in various areas by the end of this year, the Tennessee Treasury Department is concerned that it may be possible the federal government will stop allowing any new 529 savings plans from opening. Consequently, it is necessary to protect the welfare of the citizens of this State by establishing a Tennessee educational savings plan prior to the end of this year. Any other form of rulemaking authorized by T.C.A., Title 4, Chapter 5 would not adequately protect the public welfare in as much as the rules could not become effective until the year is over.

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
1700-05-04	Educational Savings Plan
Rule Number	Rule Title
1700-05-04-.01	In General
1700-05-04-.02	Board Operations
1700-05-04-.03	Enrollment
1700-05-04-.04	Contributions
1700-05-04-.05	Account Maintenance
1700-05-04-.06	Withdrawals
1700-05-04-.07	Reporting and Notice
1700-05-04-.08	Contract Designations May Not be Defeated by Will
1700-05-04-.09	Plan Termination

Chapter Number	Chapter Title
1700-05-01	Tennessee Baccalaureate Education System Trust
Rule Number	Rule Title
1700-05-01-.01	In General
1700-05-01-.05	Purchase of Tuition Units
1700-05-01-.18	Rollovers

(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>)

New Rules

Rules of

The Treasury Department Tennessee Baccalaureate Education System Trust Board

Chapter 1700-05-04 Educational Savings Plan

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1700-05-04-.01 In General.
1700-05-04-.02 Board Operations.
1700-05-04-.03 Enrollment.
1700-05-04-.04 Contributions.
1700-05-04-.05 Account Maintenance.
1700-05-04-.06 Withdrawals.
1700-05-04-.07 Reporting and Notice.
1700-05-04-.08 Contract Designations May Not be Defeated by Will.
1700-05-04-.09 Plan Termination.

1700-05-04-.01 In General.

- (1) Purpose. T.C.A., Title 49, Chapter 7, Part 8 created the Tennessee Baccalaureate Education System Trust Act. The Act creates a tuition program, as an agency and instrumentality of the State of Tennessee, under which parents and other interested persons may assist students in saving for the tuition cost of attending colleges and universities. The tuition program is comprised of two (2) types of tuition plans: the Educational Savings Plan and the Educational Services Plan. The purpose of these rules is to establish requirements for participation, and administration of the Educational Savings Plan as required by and consistent with the Act. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (2) Definitions. For purposes of these rules:
 - (a) "Academic Term" means the school segment consisting of a single semester, quarter, term or equivalent.
 - (b) "Account" means the record that contains the amount of contributions maintained on behalf of a Beneficiary under a Contract, plus the earnings or losses incurred thereon, including any Withdrawals made from the Account.
 - (c) "Beneficiary" means an individual designated under a Contract as the individual entitled to apply contributions and earnings accrued under the Contract to the payment of that individual's undergraduate, graduate and professional Qualified Higher Education Expenses as defined in 1700-05-04-.01(2)(p) below.
 - (d) "Board" has the same meaning as given in T.C.A. § 49-7-802(2), which is comprised of the members described in T.C.A. § 49-7-804(a).
 - (e) "Contract" means an Educational Savings Plan tuition contract entered into under T.C.A. § 49-7-808 by the Board and a Purchaser to provide for the payment of Qualified Higher Education Expenses, as such term is defined in Rule 1700-05-04-.01(2)(p), below.

- (f) "Educational Savings Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an Account that is established by a Purchaser for a designated Beneficiary.
- (g) "Educational Services Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units under a tuition contract entered into between a purchaser and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary's tuition and other educational costs as set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (h) "Institution of Higher Education" has the same meaning as "eligible educational institution" under Section 529 of the Internal Revenue Code.
- (i) "Legally Incompetent" means that an individual has been declared incompetent by a court of law. An individual shall not be considered to be Legally Incompetent unless proof thereof is furnished in such form and manner as the Board may require.
- (j) "Member of the Family" has the same meaning as "member of the family" under the sections of the Internal Revenue Code which are applicable to the Program.
- (k) "New Beneficiary" means an individual to whom rights under the Contract have been transferred pursuant to Rule 1700-05-04-.05.
- (l) "Permanent Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a Permanent Disability unless proof is furnished of the existence thereof from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a Permanent Disability.
- (m) "Program" means the two (2) types of tuition plans authorized under the Act (the Educational Savings Plan and the Educational Services Plan), and the statutes, rules and policies of the Board that outline the requirements for participation in the Tennessee Baccalaureate Education System Trust Program, as all such materials may be revised or amended from time to time.
- (n) "Purchaser" means an individual, association, corporation, trust or other organized entity who enters into a Contract for the creation and deposit of contributions to an Account on behalf of a Beneficiary and who controls all aspects of the Account, or in the case of the Purchaser's death or Legal Incompetence, the Purchaser's Appointee. Only one (1) individual, association, corporation, trust or other organized entity may be named as the Contract Purchaser.
- (o) "Purchaser's Appointee" means the person who is named in the Contract by the Purchaser to exercise the rights of the Purchaser under the Contract if the Purchaser dies or becomes Legally Incompetent. The Purchaser's Appointee may be the Beneficiary. The Purchaser may change the designation at any time in writing to the Board. If the Purchaser dies or becomes Legally Incompetent, the Purchaser's Appointee shall automatically become the Purchaser for purposes of these Rules and the Contract, including, but not limited to, Rule 1700-05-04-.01(2)(r).
- (p) "Qualified Higher Education Expenses" has the same meaning as given under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.
- (q) "Redemption Value" means the current cash value of an Account attributable to the sum of the principal invested, and the earnings or losses incurred thereon.
- (r) "Refund Recipient" means the person entitled to terminate the Contract and to receive refunds arising out of the Contract. The Refund Recipient may only be the Purchaser.

- (s) "Termination" means a discontinuance of the right to receive tuition payments or other benefits under a Contract.
- (t) "Withdrawal" means a disbursement of funds from the Account that is directed by the Purchaser to be paid to the Purchaser, an Institution of Higher Education, or the Beneficiary.

Authority: T.C.A. § § 49-7-805, 49-7-802, 49-7-803, 49-7-807, 49-7-808, 49-7-809, 49-7-811, and 49-7-812.

1700-05-04-.02 Board Operations.

(1) Meetings.

- (a) How Called. The Board shall meet at the call of the Chair or upon written request to the Chair by four (4) members of the Board. Unless circumstances prevent, the Secretary shall notify members of the date, time and location of each meeting at least two (2) days prior to the date of the meeting. Notice of the Board meetings shall be posted in the Legislative Plaza by the Board Secretary at least forty-eight (48) hours prior to any Board meeting.
- (b) Telephone Conference. The Board may meet by telephone conference call upon a determination by the Board that the matters to be considered at that meeting require timely action by the Board, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by telephone is, therefore, necessary. Such determination, and a recitation of the facts and circumstances on which it is based, must be included in the minutes of the meeting and filed with the Office of the Secretary of State as prescribed in T.C.A. § 8-44-108. Unless circumstances prevent, the Board Secretary shall notify members of the date, time and location of any telephone conference meeting at least two (2) hours prior to the time of the telephone conference call. Notice of any meeting by telephone conference call shall be posted in the Legislative Plaza at least two (2) hours prior to any such meeting and shall state that the meeting will be conducted with some members participating by telephone. Any meeting held by telephonic means must comply with the provisions of T.C.A. § 8-44-108. Any member of the Board participating in a meeting by telephone shall be deemed present at the meeting for purposes of quorum requirements and voting, but not for purposes of determining travel expense reimbursement eligibility.
- (c) Quorum. Five (5) members of the Board shall constitute a quorum for the transaction of business at a meeting of the Board. Voting upon action taken by the Board shall be conducted by a majority vote of the members present at the meeting of the Board; provided five (5) Board members are present at the meeting.

(2) Board Officers.

- (a) Chair. The State Treasurer shall serve as Chair of the Board. The Chair shall preside at meetings of the Board and, together with the Board Secretary, set the agenda for each meeting. If the Chair is unable to attend a meeting of the Board, the Chair shall designate another member of the Board to preside at the meeting. The Chair shall have other duties and powers as may be assigned by the Board by majority vote.
 - (b) Secretary. The Manager of the Tennessee Baccalaureate Education System Trust Division of the Treasury Department shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify Board members and the public of meetings and distribute appropriate materials to Board members.
- (3) Delegation to State Treasurer. The Board hereby delegates to the State Treasurer the duty to carry out the day-to-day operations and responsibilities of the Educational Savings Plan, including, but not limited to, the duty to prescribe and approve the terms and conditions of any payroll deduction agreement authorized pursuant to T.C.A. § 49-7-805. In exercising such delegation, the State Treasurer shall be authorized to exercise such powers as are vested in the Board which are necessary to fulfill the delegated duties and responsibilities, and may assign any such duties and responsibilities to his staff as he deems necessary and proper. The State Treasurer may also

contract for the provision of all or any part of the services necessary for the management and operation of the Plan, provided the State Treasurer or his staff is actively involved on an ongoing basis in the administration of the Plan.

Authority: T.C.A. § § 49-7-805 and 49-7-804.

1700-05-04-.03 Enrollment.

- (1) Requirements. The Purchaser must fully complete the Contract, including all required signatures, and return the signed Contract to the Board to open an Account in the Educational Savings Plan. A Contract shall not become binding upon the Board and the Purchaser unless it is complete and until all of the following occur:
 - (a) Investment Selection. The Purchaser must select at least one investment option. If more than one investment option is chosen, the Purchaser must allocate the contribution among the chosen investment options. The Board may limit the number of investment options that a Purchaser may choose under any one single Contract;
 - (b) Initial Contribution. Receipt by the Board of an initial contribution of at least twenty-five dollars (\$25.00) for each investment option chosen by the Purchaser. All contributions to an Account hereunder may be made only in cash and not in property. For purposes of these Rules, "cash" means United States dollars in the form of negotiable checks (other than travelers checks, cashiers checks, starter checks and credit card convenience checks), and payments made through payroll deductions or other similar methods acceptable to the Board;
 - (c) Board Acceptance. Acceptance of the signed Contract by the Board; and
 - (d) To enable the Board to comply with the record keeping and reporting requirements of the Internal Revenue Code, disclosure of the Social Security numbers requested in the Contract is mandatory. In the case of newborns who do not yet have a Social Security number, the Board will accept the Contract conditionally for thirty (30) calendar days of receipt of the proposed Contract.
- (2) Confirmation. Upon acceptance of the Contract, the Board will send a confirmation of acceptance to the Purchaser and will credit the Account of the named Beneficiary with the amount of the initial contribution made.
- (3) Rejection. If a Purchaser fails to provide all the information required in Paragraph (1) of this Rule within thirty (30) calendar days of the Board's receipt of the proposed Contract, the Board may reject the proposed Contract and refund to the Purchaser all amounts paid thereunder, less any applicable fees. Rejection of a Contract shall not preclude the Purchaser from enrolling in the Program in the future.
- (4) Fraud. The Board may, at its sole discretion, terminate the Contract if the Beneficiary, the Purchaser, or the Purchaser's Appointee knowingly makes any false statement, or falsifies or permits to be falsified any record or records of the Program. The amount of the refund to which the Purchaser is entitled under this Paragraph (4) shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board.
- (5) Inactivity. If a period of ten (10) consecutive years passes with no contributions having been made to the Beneficiary's Account or with no correspondence from the Beneficiary, Purchaser or the Purchaser's Appointee, the Board shall report and deliver the amount of any refund payable under the Contract to the State Treasurer pursuant to T.C.A., Title 66, Chapter 29, Part 1. Prior to delivering the refund to the State Treasurer, the Board will make reasonable efforts to locate the Purchaser, Beneficiary, and the Purchaser's Appointee. The refund shall be equal to the Redemption Value of the Account at the time the refund is delivered, minus any applicable fee charged by the Board. The ten-year period shall not commence any earlier than the year the Beneficiary becomes eighteen (18) years of age, or the year the Account was established, whichever is later. Upon payment of the refund to the State Treasurer, the Board's obligations under the Contract shall cease.

- (6) Fees. The Board may charge fees to the Purchaser and/or collect fees from each Account for administration of the Program or for transactions under the Educational Savings Plan.
- (7) Separate Accounting. The Board will maintain a separate individual account for each Contract, showing the name of the Beneficiary and the Redemption Value of the Account, including any Withdrawals made from the Account.

Authority: T.C.A. § § 49-7-805, 49-7-802, 49-7-806, 49-7-808, 49-7-809 and 49-7-812.

1700-05-04-.04 Contributions.

- (1) Who May Make Contributions. Contributions may be made for an existing Account by individuals or sources other than the Purchaser thereof as provided under Section 529 of the Internal Revenue Code. However, all contributions once made to an individual Account are pooled and are subject to the terms and conditions of the applicable Contract.
- (2) How Contributions May be Made. Contributions may be made only in cash and not in property. For purposes of these Rules, "cash" has the meaning given in Rule 1700-05-04-.03(1)(b) above. Contributions may also be made by rollover of funds from another qualified tuition program established under Section 529 of the Internal Revenue Code by making a written rollover request to the Board on such forms as may be prescribed by the Board.
- (3) Limit on Amount of Contributions. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may have both an Educational Savings Plan tuition contract as described in these Rules and an Educational Services Plan tuition contract as described in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same Beneficiary. In addition, more than one individual may have an Educational Savings Plan tuition contract, an Educational Services Plan tuition contract, or both, on behalf of the same Beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same Beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same Beneficiary total a certain dollar amount as determined by majority vote of the Board pursuant to Rule 1700-05-04-.02(1)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay Qualified Higher Education Expenses for seven (7) years of undergraduate enrollment at the highest cost Institution of Higher Education.
- (4) No Guarantee of Acceptance nor Residency Status. Contributions to an Account hereunder do not guarantee that the Beneficiary will be accepted into an Institution of Higher Education, that the Beneficiary will graduate from an Institution of Higher Education, nor do contributions to an Account guarantee status as a resident for determining the rate of tuition charged by an Institution of Higher Education.

Authority: T.C.A. § § 49-7-805, 49-7-806, 49-7-808, 49-7-809, and 49-7-810.

1700-05-04-.05 Account Maintenance.

- (1) Update Account Information. The Purchaser may make changes and updates to the Account information as needed. These changes include, but are not limited to, addresses, legal name changes, phone numbers, e-mail addresses, and changes to the designation of the Purchaser's Appointee. The changes must be provided in writing or via electronic means acceptable to the Board.
- (2) Change of Beneficiary. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right to change the Beneficiary of the Account at any time provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). If the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must be paid to change the Beneficiary of the Account.
- (3) Reallocation of Funds Among Investment Options. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right at any time to reallocate funds among investment

options under a Contract held for a single Beneficiary provided there is at least twenty-five dollars (\$25.00) in each surviving investment option at the conclusion of the reallocation.

- (4) **Transfer of Account Funds.** Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right at any time to transfer all or a portion of the funds in the Beneficiary's Account to an Account for a different Beneficiary provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). If the transfer is for a portion of funds in the original Account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing Beneficiary and the new Beneficiary will each have at least twenty-five dollars (\$25.00) in their respective accounts. If the New Beneficiary does not have an existing Account and if the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must also be paid to open the new Account for the New Beneficiary. In addition and subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right to transfer all or a portion of the funds in the Beneficiary's Account to another account held for the same Beneficiary. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-05-04-.03(6), then a transfer fee must be paid to transfer the funds.
- (5) **Conditions.** Any change of Beneficiary, reallocation of funds among investment options, or transfer of funds under this Rule is subject to the following conditions:
 - (a) The request must be made in writing, signed by the Purchaser and, if applicable, must state the name and Social Security number of the proposed New Beneficiary. If the request is for the reallocation of funds among investment options, the written request must specify the dollar amount to be reallocated and the selected investment option(s). If the request is for a transfer of funds to an existing Account, the written request must state the Account number to which the transfer is to be made;
 - (b) Payment of any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6);
 - (c) The Purchaser certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for a change of beneficiary or transfer of funds; and
 - (d) Transfers or changes in Beneficiaries under this Rule shall not be permitted to the extent that they would constitute excess contributions under Rule 1700-05-04-.04(3).
- (6) **Eligibility for Use.** Any funds in the Account of a New Beneficiary may be used immediately, provided the funds have been on deposit in the original Beneficiary's Account for the sixty-day period prescribed in Rule 1700-05-04-.06(1) below.
- (7) **Limit on Reallocation of Funds Among Investment Options.** The Purchaser may reallocate funds among investment options once per calendar year or at such other times as permitted under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.

Authority: T.C.A. §§ 49-7-805, 49-7-808, and 49-7-809.

1700-05-04-.06 Withdrawals.

- (1) **Eligibility.** Once a Beneficiary has been accepted for enrollment in an Institution of Higher Education, the Purchaser may begin using funds on deposit in the Account for the payment of Qualified Higher Education Expenses of the Beneficiary. For purposes of these Rules, including for any payments or refunds provided for in Rule 1700-05-04-.06(4) below, funds shall not be deemed on deposit in the Account until the sixtieth-day following receipt of the respective funds by the Board. If the Purchaser desires the Board to send payment directly to the Institution of Higher Education where the Beneficiary is enrolled, the notification must include the name and address of the Institution and the amount of funds needed to pay the Qualified Higher Education Expenses. Failure to provide sufficient notice prior to the start of the Academic Term in which the funds would be used may result in an untimely payment being made to the Institution.
- (2) **Written Request.** Any Withdrawal requests must be made in writing by the Purchaser or via other means acceptable to the Board, including electronic means.

- (3) Amount and Timing of Withdrawal. Subject to Rules 1700-05-04-.06(4) and 1700-05-04-.09 below, the Withdrawal amount will equal the amount requested, not to exceed the Redemption Value of the Beneficiary's Account at the time the Withdrawal is processed. The Withdrawal amount will be paid within sixty (60) calendar days of receipt by the Board of the request required in Subparagraph (2) of this Rule above.
- (4) Types of Withdrawals.
- (a) Withdrawals for Qualified Higher Education Expenses. The Purchaser may direct payment to the Purchaser, the Beneficiary, or an Institution of Higher Education as an advance payment or as reimbursement for Qualified Higher Education Expenses. Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.
- (b) Withdrawals for Non-Qualified Higher Education Expenses. The Purchaser may direct a Withdrawal from the Account for the payment of non-Qualified Higher Education Expenses provided the funds have been on deposit in the Account for at least sixty (60) calendar days and provided there is at least one hundred dollars (\$100.00) in the Account once the Withdrawal is made. Such a Withdrawal may be made without causing termination of the Contract and without requiring the Refund Recipient to establish that the Withdrawal will be used for Qualified Higher Education Expenses. The earnings portion of Withdrawals made for non-Qualified Higher Education Expenses could be subject to federal taxation as prescribed under the sections of the Internal Revenue Code and the regulations promulgated thereunder which are applicable to the Program.
- (c) Scholarship Refund. If a Beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the Beneficiary, the Purchaser may request a Withdrawal of all or a portion of the funds in the Account. The Purchaser must furnish information about the scholarship, allowance or payment to the Board. If the scholarship, allowance or payment has a duration that extends beyond one (1) Academic Term, the Purchaser may request a refund in advance of the scholarship payment. The amount of the refund payable to the Purchaser will be equal to the Redemption Value of the Beneficiary's Account that is not needed to cover the future Qualified Higher Education Expenses on account of the scholarship, allowance or payment minus any applicable fee(s) charged by the Board.
- (d) Contract Termination and Refund. Except as provided in Paragraph 4 (c) of this Rule above, a Contract may not be terminated for any reason except under one of the following circumstances: (i) the Beneficiary has died or suffers from a Permanent Disability; (ii) the Beneficiary is age eighteen (18) or older and has decided not to attend an Institution of Higher Education; (iii) the Beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an Institution of Higher Education and the Beneficiary does not plan to pursue further education; (iv) the Beneficiary has completed the bachelor's degree requirements at an Institution of Higher Education; or (v) the Redemption Value of the Account equals one hundred dollars (\$100.00) or less and no contributions have been deposited to the Beneficiary's Account for a period of at least sixty (60) consecutive days. The Contract termination request must be accompanied with documentation acceptable to the Board to substantiate the reason for Contract termination. In the event a Contract is terminated due to the Permanent Disability or death of the Beneficiary, the amount of the refund paid to the Purchaser shall be equal to the Redemption Value of the Account at the time the refund is made. In the event a Contract is terminated under any of the conditions described in items (ii) – (v) above, the amount of the refund paid to the Refund Recipient shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board. The Actual termination of the Contract will not occur until all funds in the Beneficiary's Account have been refunded.
- (e) Rollovers out of the Program. The Purchaser may rollover all or a portion of the funds in the Beneficiary's Account to an account established for the same Beneficiary or another Beneficiary under another qualified tuition program established under Section 529 of the Internal Revenue Code by making a rollover request to the Board on such forms as may be prescribed by the

Board. If the rollover is for the benefit of another Beneficiary, the Beneficiary to whose Account the funds are being transferred must be a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code. Any rollover made under this Paragraph shall be equal to the amount requested, not to exceed the Redemption Value of the Beneficiary's Account, minus any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6) above. The Redemption Value of the Account shall be determined as of the date the rollover is made.

Authority: T.C.A. §§ 49-7-805, 49-7-809, 49-7-811, and 49-7-812.

1700-05-04-.07 Reporting and Notice.

- (1) Reporting. A statement listing the activity, selected investment options, and Redemption Value of the Account will be sent to the Purchaser periodically. The frequency of such statements will be set by the Board. If a payment has been made from an Account, the Board will report to the Beneficiary or the Purchaser, whichever is applicable, information about such payments to assist in determining that person's tax liability. The report will be furnished by no later than January 31st of the calendar year following the calendar year in which the payment was made. Disclosure documents will also be prepared by the Program and made available to the Purchaser prior to the Purchaser opening an Account.
- (2) Notice. Notice from the Program or Board, including but not limited to, Account statements, tax forms, and information about the Program, a Contract or an Account, may be in any form acceptable to the Board, which may include, but may not be limited to, notice and reporting by electronic means.

Authority: T.C.A. §§ 49-7-805, and 49-7-809.

1700-05-04-.08 Contract Designations May Not be Defeated by Will.

- (1) The right of a Beneficiary or Purchaser to receive benefits in accordance with a Contract shall not be defeated or impaired by any statute or rule of law governing the transfer of property by will or by intestate succession.

Authority: T.C.A. § 49-7-805(16).

1700-05-04-.09 Plan Termination.

- (1) If the Board determines that the Educational Savings Plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the Contracts. Subject to Paragraphs (2) and (3) of this Rule below, the amount of the refund to which the Purchaser is entitled shall be equal to the Redemption Value of the Account at the time the refund is made.
- (2) Notwithstanding any other provision to the contrary, refunds and other benefits payable under a Contract shall be deemed to be due and payable only to the extent that moneys are available therefore to the credit of the Educational Savings Plan, and neither the State nor the Board shall be liable for any amount in excess of such sums.
- (3) Should the Educational Savings Plan be terminated by the Board and the assets of the fund prove to be less than would be required to fully pay all obligations of the Plan in full, the Board shall first defray all administrative expenses of the Plan. The Board shall then reduce payments owed pursuant to a Contract, pro rata, to the degree necessary to bring the total disbursement of the Educational Savings Plan within the amount of the remaining funds.

Authority: T.C.A. §§ 49-7-805, 49-7-823 and 49-7-824.

Chapter 1700-05-01
Tennessee Baccalaureate Educational System Trust

Amendments

Rule 1700-05-01-.01 In General is amended by deleting paragraph (1) in its entirety and by substituting instead the following:

- (1) Purpose. T.C.A., Title 49, Chapter 7, Part 8 created the Tennessee Baccalaureate Education System Trust Act. The Act creates a tuition program, as an agency and instrumentality of the State of Tennessee, under which parents and other interested persons may assist students in saving for tuition cost of attending colleges and universities. The tuition program is comprised of two (2) types of tuition plans: The Educational Savings Plan and the Educational Services Plan. The purpose of these rules is to establish requirements for participation, and administration of the Educational Services Plan as required by and consistent with the Act. The requirements for participation, and administration of the Educational Savings Plan are set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

Authority: T.C.A. § § 49-7-805(16), 49-7-802(7) and 49-7-803.

Rule 1700-05-01-.01 In General is amended by deleting subparagraph (2)(h) in its entirety and by substituting instead the following:

- (h) "Educational savings plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an account that is established by a purchaser for a designated beneficiary as set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the educational savings plan are set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

Authority: T.C.A. § § 49-7-805(16), 49-7-802(3) and (12), 49-7-803, and 49-7-808.

Rule 1700-05-01-.01 In General is amended by deleting subparagraph (2)(o) in its entirety and by substituting instead the following:

- (o) "Program" means the two (2) types of tuition plans authorized under the Act (the educational savings plan as set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee and the educational services plan as set forth in these Rules), and the statutes, rules and policies of the Board that outline the requirements for participation in the Tennessee Baccalaureate Education System Trust Program, as all such materials may be revised or amended from time to time.

Authority: T.C.A. § § 49-7-805(16), 49-7-802(7), 49-7-803, 49-7-807, 49-7-808, and 49-7-809.

Rule 1700-05-01-.05 Purchase of Tuition Units is amended by deleting paragraph (4) in its entirety and by substituting instead the following:

- (4) Limit on Number of Units. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may enter into both an educational services plan tuition contract as described in these rules and an educational savings plan tuition contract as described in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same beneficiary. In addition, more than one individual may enter into an educational savings plan tuition contract, an educational services plan tuition contract, or both, on behalf of the same beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same beneficiary total a certain dollar amount as determined by majority vote of the Board pursuant to Rule 1700-05-01-.02 (2)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay tuition, required fees, and room and board for seven (7) years of undergraduate enrollment at the highest cost institution of higher education.

Authority: T.C.A. § § 49-7-805(16), 49-7-805(11), 49-7-805(12), and 49-7-806.

Rule 1700-05-01-.18 Rollovers is amended by deleting paragraphs (1) and (2) thereof and by substituting instead the following:

- (1) Rollovers to the Credit of Another Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may rollover all or a portion of the funds in the beneficiary's account to an account established for another beneficiary under the educational savings plan established in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee or under another qualified tuition program established under Section 529 of the Internal Revenue Code provided that the beneficiary to whose account the funds are being transferred is a "member of the family" of the original beneficiary, as such term is defined in Rule 1700-05-01-.01(2)(k).
- (2) Rollovers for the Benefit of the Same Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may also rollover all or a portion of the funds in the beneficiary's account to an account established for the same beneficiary under the educational savings plan established in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee or under another qualified tuition program established under Section 529 of the Internal Revenue Code.

Authority: T.C.A. § § 49-7-805(16), 49-7-805(14), and 49-7-809(a)(8).

* 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)
Mark Emkes	✓				
Tre Hargett	✓				
David H. Lillard, Jr.	✓				
John Morgan	✓				
Dr. Joe DiPietro	✓				
Dr. Betty Sue McGarvey	✓				
Dr. Richard Rhoda	✓				
Justin P. Wilson	✓				

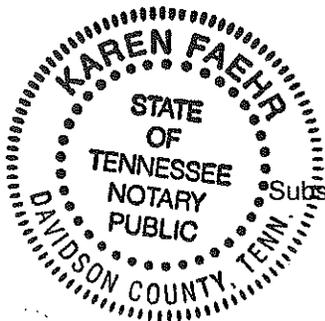
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: November 22, 2011

Signature: [Handwritten Signature]

Name of Officer: David H. Lillard, Jr.

Title of Officer: Chair of the Board and State Treasurer



Subscribed and sworn to before me on: November 22, 2011

Notary Public Signature: Karen Faehr

My commission expires on: September 9, 2014

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
12-7-11
 Date

Department of State Use Only

Filed with the Department of State on: 12/29/2011

Effective for: 180 *days

Effective through: 06/26/2012

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

[Handwritten Signature]
 Tre Hargett
 Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Treasury

DIVISION: Baccalaureate Education System Trust Fund Board

SUBJECT: 529 Educational Savings Plans

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-7-805

EFFECTIVE DATES: May 30, 2012 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The Baccalaureate Education System Trust (BEST) was established by the General Assembly of the State of Tennessee by Public Acts of 1996, Chapter 991 to promote savings by Tennessee residents for the costs of attending institutions of higher education and for the purpose of making higher education more affordable for the citizens of Tennessee by offering the educational services/pre-paid plan. Although the federal law allowed two types of State tuition plans (the educational services/pre-paid plan, and the educational savings plan), the Program offered only the educational services plan, or prepaid plan.

Under the educational services/pre-paid plan, parents, grandparents, relatives, friends and other interested parties may save for future college expenses by purchasing "tuition units" for a child based on the current weighted average tuition costs at Tennessee's four-year public universities. The "tuition units" grow in value as the weighted average tuition increases each academic year.

Each "tuition unit" purchased entitles the beneficiary, that is, the person for whom the units were purchased, to an amount equal to 1% of the current year's weighted average tuition at Tennessee's four-year public colleges and universities for a "normal" academic load (two (2) semesters with 15 credit hours each). So, if a parent or other interested party were to purchase 100 units, they would have paid for approximately one-year's average college tuition at a four-year college or university in Tennessee.

The prepaid plan was established to be a self-supporting plan. In other words, it was expected that investment income earned on the units purchased would equal or outpace the annual increases in tuition rates. Unfortunately, that has not been the case. Weak investment markets and fast-rising college costs have put tremendous financial pressure on the prepaid plan. As a

result, the BEST Board determined at its November 22, 2010 meeting that the optimal course of action was to limit the plan's liabilities by stopping the sale of additional tuitions units.

In 1999, the Tennessee General Assembly enacted Public Chapter 233 to allow the Program to also offer the second type of State tuition plan authorized by federal law, i.e., the educational savings plan. Under the educational savings plan, any person may contribute to a savings account established with the Program on behalf of a beneficiary. Educational savings plans are different from educational services/pre-paid plans in that all growth is based upon market performance of the underlying investments, which typically consist of mutual funds. Most 529 savings plans offer a variety of age-based asset allocation options where the underlying investments become more conservative as the beneficiary gets closer to college age. Under the current prepaid plan being offered, the return on the participant's investment is directly tied to tuition inflation.

Beginning on June 1, 2008, the Tennessee Treasury Department entered into a contract with the State of Georgia Higher Education Saving Plan for the Georgia Plan to market its 529 college Savings Plan to Tennessee residents as a result of its low fees and number of investment choices. Pursuant to the contract, either party may terminate the contract for convenience upon one hundred eighty days (180) days written notice to the other party. The contract further provided that in the event of termination of the contract and the creation of a new Tennessee savings plan, the Georgia Plan must notify all Tennessee residents that participate in the Georgia Plan of the fact that Tennessee has created a new Tennessee savings plan. However, the Georgia Plan has no obligation to provide the notice unless the new Tennessee savings plan is created within one year of the contract termination date.

By letter dated December 21, 2010, the Georgia State Treasurer advised the State that Georgia was terminating the contract effective as of the end of the day on June 30, 2011. As a consequence, the State must create and otherwise launch any new Tennessee savings plan within one year of June 30, 2012 in order for Georgia to notify its Tennessee account holders of the creation of the new plan.

The purpose of these rules is to establish the new Tennessee savings plan pursuant to and consistent with the Public Chapter 233.

These rules would establish a 529 educational savings plan for the purpose of promoting savings by Tennessee residents for the costs of attending institutions of higher education and for the purpose of making higher education more affordable for the citizens of Tennessee. An integral part of 529 savings plans is that such plans offer unsurpassed income tax benefits. Earnings in 529 plans are currently not subject to federal tax so long as the distributions from the plans are used for eligible college expenses, such as tuition and room and board.

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)

(Insert statement here)

There is no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 12-26-11
Rule ID(s): 5105-5106
File Date: 12/29/2011
Effective Date: 05/30/2012

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:	Tennessee Department of Treasury
Division:	Tennessee Baccalaureate Education System Trust Board
Contact Person:	Mary Roberts-Krause
Address:	10 th Floor, Andrew Jackson State Office Building; Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-3855
Email:	mary.roberts-krause@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
1700-05-04	Educational Savings Plan
Rule Number	Rule Title
1700-05-04-.01	In General
1700-05-04-.02	Board Operations
1700-05-04-.03	Enrollment
1700-05-04-.04	Contributions
1700-05-04-.05	Account Maintenance
1700-05-04-.06	Withdrawals
1700-05-04-.07	Reporting and Notice
1700-05-04-.08	Contract Designations May Not be Defeated by Will
1700-05-04-.09	Plan Termination

Chapter Number	Chapter Title
1700-05-01	Tennessee Baccalaureate Education System Trust
Rule Number	Rule Title
1700-05-01-.01	In General
1700-05-01-.05	Purchase of Tuition Units
1700-05-01-.18	Rollovers

(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>)

New Rules

Rules of The Treasury Department Tennessee Baccalaureate Education System Trust Board

Chapter 1700-05-04 Educational Savings Plan

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1700-05-04-.01 In General.

- (1) Purpose. T.C.A., Title 49, Chapter 7, Part 8 created the Tennessee Baccalaureate Education System Trust Act. The Act creates a tuition program, as an agency and instrumentality of the State of Tennessee, under which parents and other interested persons may assist students in saving for the tuition cost of attending colleges and universities. The tuition program is comprised of two (2) types of tuition plans: the Educational Savings Plan and the Educational Services Plan. The purpose of these rules is to establish requirements for participation, and administration of the Educational Savings Plan as required by and consistent with the Act. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (2) Definitions. For purposes of these rules:
 - (a) "Academic Term" means the school segment consisting of a single semester, quarter, term or equivalent.
 - (b) "Account" means the record that contains the amount of contributions maintained on behalf of a Beneficiary under a Contract, plus the earnings or losses incurred thereon, including any Withdrawals made from the Account.
 - (c) "Beneficiary" means an individual designated under a Contract as the individual entitled to apply contributions and earnings accrued under the Contract to the payment of that individual's undergraduate, graduate and professional Qualified Higher Education Expenses as defined in 1700-05-04-.01(2)(p) below.
 - (d) "Board" has the same meaning as given in T.C.A. § 49-7-802(2), which is comprised of the members described in T.C.A. § 49-7-804(a).
 - (e) "Contract" means an Educational Savings Plan tuition contract entered into under T.C.A. § 49-7-808 by the Board and a Purchaser to provide for the payment of Qualified Higher Education Expenses, as such term is defined in Rule 1700-05-04-.01(2)(p), below.

- (f) "Educational Savings Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an Account that is established by a Purchaser for a designated Beneficiary.
- (g) "Educational Services Plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to purchase a tuition unit or units under a tuition contract entered into between a purchaser and the Board on behalf of a designated beneficiary that entitles the beneficiary to apply such units to the payment of that beneficiary's tuition and other educational costs as set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the Educational Services Plan are set forth in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee.
- (h) "Institution of Higher Education" has the same meaning as "eligible educational institution" under Section 529 of the Internal Revenue Code.
- (i) "Legally Incompetent" means that an individual has been declared incompetent by a court of law. An individual shall not be considered to be Legally Incompetent unless proof thereof is furnished in such form and manner as the Board may require.
- (j) "Member of the Family" has the same meaning as "member of the family" under the sections of the Internal Revenue Code which are applicable to the Program.
- (k) "New Beneficiary" means an individual to whom rights under the Contract have been transferred pursuant to Rule 1700-05-04-.05.
- (l) "Permanent Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration. An individual shall not be considered to have a Permanent Disability unless proof is furnished of the existence thereof from a health care professional in such form and manner as the Board may require. The Board must approve any finding of a Permanent Disability.
- (m) "Program" means the two (2) types of tuition plans authorized under the Act (the Educational Savings Plan and the Educational Services Plan), and the statutes, rules and policies of the Board that outline the requirements for participation in the Tennessee Baccalaureate Education System Trust Program, as all such materials may be revised or amended from time to time.
- (n) "Purchaser" means an individual, association, corporation, trust or other organized entity who enters into a Contract for the creation and deposit of contributions to an Account on behalf of a Beneficiary and who controls all aspects of the Account, or in the case of the Purchaser's death or Legal Incompetence, the Purchaser's Appointee. Only one (1) individual, association, corporation, trust or other organized entity may be named as the Contract Purchaser.
- (o) "Purchaser's Appointee" means the person who is named in the Contract by the Purchaser to exercise the rights of the Purchaser under the Contract if the Purchaser dies or becomes Legally Incompetent. The Purchaser's Appointee may be the Beneficiary. The Purchaser may change the designation at any time in writing to the Board. If the Purchaser dies or becomes Legally Incompetent, the Purchaser's Appointee shall automatically become the Purchaser for purposes of these Rules and the Contract, including, but not limited to, Rule 1700-05-04-.01(2)(r).
- (p) "Qualified Higher Education Expenses" has the same meaning as given under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.
- (q) "Redemption Value" means the current cash value of an Account attributable to the sum of the principal invested, and the earnings or losses incurred thereon.
- (r) "Refund Recipient" means the person entitled to terminate the Contract and to receive refunds arising out of the Contract. The Refund Recipient may only be the Purchaser.

- (s) "Termination" means a discontinuance of the right to receive tuition payments or other benefits under a Contract.
- (t) "Withdrawal" means a disbursement of funds from the Account that is directed by the Purchaser to be paid to the Purchaser, an Institution of Higher Education, or the Beneficiary.

Authority: T.C.A. § § 49-7-805, 49-7-802, 49-7-803, 49-7-807, 49-7-808, 49-7-809, 49-7-811, and 49-7-812.

1700-05-04-.02 Board Operations.

(1) Meetings.

- (a) How Called. The Board shall meet at the call of the Chair or upon written request to the Chair by four (4) members of the Board. Unless circumstances prevent, the Secretary shall notify members of the date, time and location of each meeting at least two (2) days prior to the date of the meeting. Notice of the Board meetings shall be posted in the Legislative Plaza by the Board Secretary at least forty-eight (48) hours prior to any Board meeting.
- (b) Telephone Conference. The Board may meet by telephone conference call upon a determination by the Board that the matters to be considered at that meeting require timely action by the Board, that physical presence by a quorum of the members is not practical within the period of time requiring action, and that participation by a quorum of the members by telephone is, therefore, necessary. Such determination, and a recitation of the facts and circumstances on which it is based, must be included in the minutes of the meeting and filed with the Office of the Secretary of State as prescribed in T.C.A. § 8-44-108. Unless circumstances prevent, the Board Secretary shall notify members of the date, time and location of any telephone conference meeting at least two (2) hours prior to the time of the telephone conference call. Notice of any meeting by telephone conference call shall be posted in the Legislative Plaza at least two (2) hours prior to any such meeting and shall state that the meeting will be conducted with some members participating by telephone. Any meeting held by telephonic means must comply with the provisions of T.C.A. § 8-44-108. Any member of the Board participating in a meeting by telephone shall be deemed present at the meeting for purposes of quorum requirements and voting, but not for purposes of determining travel expense reimbursement eligibility.
- (c) Quorum. Five (5) members of the Board shall constitute a quorum for the transaction of business at a meeting of the Board. Voting upon action taken by the Board shall be conducted by a majority vote of the members present at the meeting of the Board; provided five (5) Board members are present at the meeting.

(2) Board Officers.

- (a) Chair. The State Treasurer shall serve as Chair of the Board. The Chair shall preside at meetings of the Board and, together with the Board Secretary, set the agenda for each meeting. If the Chair is unable to attend a meeting of the Board, the Chair shall designate another member of the Board to preside at the meeting. The Chair shall have other duties and powers as may be assigned by the Board by majority vote.
 - (b) Secretary. The Manager of the Tennessee Baccalaureate Education System Trust Division of the Treasury Department shall be the Board Secretary. The Secretary shall keep an accurate record of the proceedings and actions of the Board. Together with the Chair, the Secretary shall set the agenda for each meeting, notify Board members and the public of meetings and distribute appropriate materials to Board members.
- (3) Delegation to State Treasurer. The Board hereby delegates to the State Treasurer the duty to carry out the day-to-day operations and responsibilities of the Educational Savings Plan, including, but not limited to, the duty to prescribe and approve the terms and conditions of any payroll deduction agreement authorized pursuant to T.C.A. § 49-7-805. In exercising such delegation, the State Treasurer shall be authorized to exercise such powers as are vested in the Board which are necessary to fulfill the delegated duties and responsibilities, and may assign any such duties and responsibilities to his staff as he deems necessary and proper. The State Treasurer may also

contract for the provision of all or any part of the services necessary for the management and operation of the Plan, provided the State Treasurer or his staff is actively involved on an ongoing basis in the administration of the Plan.

Authority: T.C.A. §§ 49-7-805 and 49-7-804.

1700-05-04-.03 Enrollment.

- (1) Requirements. The Purchaser must fully complete the Contract, including all required signatures, and return the signed Contract to the Board to open an Account in the Educational Savings Plan. A Contract shall not become binding upon the Board and the Purchaser unless it is complete and until all of the following occur:
 - (a) Investment Selection. The Purchaser must select at least one investment option. If more than one investment option is chosen, the Purchaser must allocate the contribution among the chosen investment options. The Board may limit the number of investment options that a Purchaser may choose under any one single Contract;
 - (b) Initial Contribution. Receipt by the Board of an initial contribution of at least twenty-five dollars (\$25.00) for each investment option chosen by the Purchaser. All contributions to an Account hereunder may be made only in cash and not in property. For purposes of these Rules, "cash" means United States dollars in the form of negotiable checks (other than travelers checks, cashiers checks, starter checks and credit card convenience checks), and payments made through payroll deductions or other similar methods acceptable to the Board;
 - (c) Board Acceptance. Acceptance of the signed Contract by the Board; and
 - (d) To enable the Board to comply with the record keeping and reporting requirements of the Internal Revenue Code, disclosure of the Social Security numbers requested in the Contract is mandatory. In the case of newborns who do not yet have a Social Security number, the Board will accept the Contract conditionally for thirty (30) calendar days of receipt of the proposed Contract.
- (2) Confirmation. Upon acceptance of the Contract, the Board will send a confirmation of acceptance to the Purchaser and will credit the Account of the named Beneficiary with the amount of the initial contribution made.
- (3) Rejection. If a Purchaser fails to provide all the information required in Paragraph (1) of this Rule within thirty (30) calendar days of the Board's receipt of the proposed Contract, the Board may reject the proposed Contract and refund to the Purchaser all amounts paid thereunder, less any applicable fees. Rejection of a Contract shall not preclude the Purchaser from enrolling in the Program in the future.
- (4) Fraud. The Board may, at its sole discretion, terminate the Contract if the Beneficiary, the Purchaser, or the Purchaser's Appointee knowingly makes any false statement, or falsifies or permits to be falsified any record or records of the Program. The amount of the refund to which the Purchaser is entitled under this Paragraph (4) shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board.
- (5) Inactivity. If a period of ten (10) consecutive years passes with no contributions having been made to the Beneficiary's Account or with no correspondence from the Beneficiary, Purchaser or the Purchaser's Appointee, the Board shall report and deliver the amount of any refund payable under the Contract to the State Treasurer pursuant to T.C.A., Title 66, Chapter 29, Part 1. Prior to delivering the refund to the State Treasurer, the Board will make reasonable efforts to locate the Purchaser, Beneficiary, and the Purchaser's Appointee. The refund shall be equal to the Redemption Value of the Account at the time the refund is delivered, minus any applicable fee charged by the Board. The ten-year period shall not commence any earlier than the year the Beneficiary becomes eighteen (18) years of age, or the year the Account was established, whichever is later. Upon payment of the refund to the State Treasurer, the Board's obligations under the Contract shall cease.

- (6) Fees. The Board may charge fees to the Purchaser and/or collect fees from each Account for administration of the Program or for transactions under the Educational Savings Plan.
- (7) Separate Accounting. The Board will maintain a separate individual account for each Contract, showing the name of the Beneficiary and the Redemption Value of the Account, including any Withdrawals made from the Account.

Authority: T.C.A. §§ 49-7-805, 49-7-802, 49-7-806, 49-7-808, 49-7-809 and 49-7-812.

1700-05-04-.04 Contributions.

- (1) Who May Make Contributions. Contributions may be made for an existing Account by individuals or sources other than the Purchaser thereof as provided under Section 529 of the Internal Revenue Code. However, all contributions once made to an individual Account are pooled and are subject to the terms and conditions of the applicable Contract.
- (2) How Contributions May be Made. Contributions may be made only in cash and not in property. For purposes of these Rules, "cash" has the meaning given in Rule 1700-05-04-.03(1)(b) above. Contributions may also be made by rollover of funds from another qualified tuition program established under Section 529 of the Internal Revenue Code by making a written rollover request to the Board on such forms as may be prescribed by the Board.
- (3) Limit on Amount of Contributions. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may have both an Educational Savings Plan tuition contract as described in these Rules and an Educational Services Plan tuition contract as described in Chapter 1700-05-01 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same Beneficiary. In addition, more than one individual may have an Educational Savings Plan tuition contract, an Educational Services Plan tuition contract, or both, on behalf of the same Beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same Beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same Beneficiary total a certain dollar amount as determined by majority vote of the Board pursuant to Rule 1700-05-04-.02(1)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay Qualified Higher Education Expenses for seven (7) years of undergraduate enrollment at the highest cost Institution of Higher Education.
- (4) No Guarantee of Acceptance nor Residency Status. Contributions to an Account hereunder do not guarantee that the Beneficiary will be accepted into an Institution of Higher Education, that the Beneficiary will graduate from an Institution of Higher Education, nor do contributions to an Account guarantee status as a resident for determining the rate of tuition charged by an Institution of Higher Education.

Authority: T.C.A. §§ 49-7-805, 49-7-806, 49-7-808, 49-7-809, and 49-7-810.

1700-05-04-.05 Account Maintenance.

- (1) Update Account Information. The Purchaser may make changes and updates to the Account information as needed. These changes include, but are not limited to, addresses, legal name changes, phone numbers, e-mail addresses, and changes to the designation of the Purchaser's Appointee. The changes must be provided in writing or via electronic means acceptable to the Board.
- (2) Change of Beneficiary. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right to change the Beneficiary of the Account at any time provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). If the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must be paid to change the Beneficiary of the Account.
- (3) Reallocation of Funds Among Investment Options. Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right at any time to reallocate funds among investment

options under a Contract held for a single Beneficiary provided there is at least twenty-five dollars (\$25.00) in each surviving investment option at the conclusion of the reallocation.

- (4) **Transfer of Account Funds.** Subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right at any time to transfer all or a portion of the funds in the Beneficiary's Account to an Account for a different Beneficiary provided the New Beneficiary is a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). If the transfer is for a portion of funds in the original Account, the transfer will be permitted so long as at the time the transfer is completed by the Board the existing Beneficiary and the new Beneficiary will each have at least twenty-five dollars (\$25.00) in their respective accounts. If the New Beneficiary does not have an existing Account and if the Board has chosen to charge an application fee pursuant to Rule 1700-05-04-.03(6), then an application fee must also be paid to open the new Account for the New Beneficiary. In addition and subject to the conditions set forth in Paragraph (5) below, the Purchaser shall have the right to transfer all or a portion of the funds in the Beneficiary's Account to another account held for the same Beneficiary. If the Board has chosen to charge a transfer fee pursuant to Rule 1700-05-04-.03(6), then a transfer fee must be paid to transfer the funds.
- (5) **Conditions.** Any change of Beneficiary, reallocation of funds among investment options, or transfer of funds under this Rule is subject to the following conditions:
 - (a) The request must be made in writing, signed by the Purchaser and, if applicable, must state the name and Social Security number of the proposed New Beneficiary. If the request is for the reallocation of funds among investment options, the written request must specify the dollar amount to be reallocated and the selected investment option(s). If the request is for a transfer of funds to an existing Account, the written request must state the Account number to which the transfer is to be made;
 - (b) Payment of any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6);
 - (c) The Purchaser certifies in writing that no payment other than the above fees paid to the Board has been or will be made to anyone for a change of beneficiary or transfer of funds; and
 - (d) Transfers or changes in Beneficiaries under this Rule shall not be permitted to the extent that they would constitute excess contributions under Rule 1700-05-04-.04(3).
- (6) **Eligibility for Use.** Any funds in the Account of a New Beneficiary may be used immediately, provided the funds have been on deposit in the original Beneficiary's Account for the sixty-day period prescribed in Rule 1700-05-04-.06(1) below.
- (7) **Limit on Reallocation of Funds Among Investment Options.** The Purchaser may reallocate funds among investment options once per calendar year or at such other times as permitted under Section 529 of the Internal Revenue Code and the regulations promulgated thereunder.

Authority: T.C.A. § 49-7-805, 49-7-808, and 49-7-809.

1700-05-04-.06 Withdrawals.

- (1) **Eligibility.** Once a Beneficiary has been accepted for enrollment in an Institution of Higher Education, the Purchaser may begin using funds on deposit in the Account for the payment of Qualified Higher Education Expenses of the Beneficiary. For purposes of these Rules, including for any payments or refunds provided for in Rule 1700-05-04-.06(4) below, funds shall not be deemed on deposit in the Account until the sixtieth-day following receipt of the respective funds by the Board. If the Purchaser desires the Board to send payment directly to the Institution of Higher Education where the Beneficiary is enrolled, the notification must include the name and address of the Institution and the amount of funds needed to pay the Qualified Higher Education Expenses. Failure to provide sufficient notice prior to the start of the Academic Term in which the funds would be used may result in an untimely payment being made to the Institution.
- (2) **Written Request.** Any Withdrawal requests must be made in writing by the Purchaser or via other means acceptable to the Board, including electronic means.

- (3) Amount and Timing of Withdrawal. Subject to Rules 1700-05-04-.06(4) and 1700-05-04-.09 below, the Withdrawal amount will equal the amount requested, not to exceed the Redemption Value of the Beneficiary's Account at the time the Withdrawal is processed. The Withdrawal amount will be paid within sixty (60) calendar days of receipt by the Board of the request required in Subparagraph (2) of this Rule above.
- (4) Types of Withdrawals.
- (a) Withdrawals for Qualified Higher Education Expenses. The Purchaser may direct payment to the Purchaser, the Beneficiary, or an Institution of Higher Education as an advance payment or as reimbursement for Qualified Higher Education Expenses. Third party documentation to substantiate the request shall not be required unless otherwise provided for in Section 529 of the Internal Revenue Code or the regulations promulgated thereunder.
- (b) Withdrawals for Non-Qualified Higher Education Expenses. The Purchaser may direct a Withdrawal from the Account for the payment of non-Qualified Higher Education Expenses provided the funds have been on deposit in the Account for at least sixty (60) calendar days and provided there is at least one hundred dollars (\$100.00) in the Account once the Withdrawal is made. Such a Withdrawal may be made without causing termination of the Contract and without requiring the Refund Recipient to establish that the Withdrawal will be used for Qualified Higher Education Expenses. The earnings portion of Withdrawals made for non-Qualified Higher Education Expenses could be subject to federal taxation as prescribed under the sections of the Internal Revenue Code and the regulations promulgated thereunder which are applicable to the Program.
- (c) Scholarship Refund. If a Beneficiary is the recipient of a scholarship, allowance or payment described in Section 25A(g)(2) of the Internal Revenue Code that the Board determines cannot be converted into money by the Beneficiary, the Purchaser may request a Withdrawal of all or a portion of the funds in the Account. The Purchaser must furnish information about the scholarship, allowance or payment to the Board. If the scholarship, allowance or payment has a duration that extends beyond one (1) Academic Term, the Purchaser may request a refund in advance of the scholarship payment. The amount of the refund payable to the Purchaser will be equal to the Redemption Value of the Beneficiary's Account that is not needed to cover the future Qualified Higher Education Expenses on account of the scholarship, allowance or payment minus any applicable fee(s) charged by the Board.
- (d) Contract Termination and Refund. Except as provided in Paragraph 4 (c) of this Rule above, a Contract may not be terminated for any reason except under one of the following circumstances: (i) the Beneficiary has died or suffers from a Permanent Disability; (ii) the Beneficiary is age eighteen (18) or older and has decided not to attend an Institution of Higher Education; (iii) the Beneficiary has completed the requirements for a degree that is less than a bachelor's degree at an Institution of Higher Education and the Beneficiary does not plan to pursue further education; (iv) the Beneficiary has completed the bachelor's degree requirements at an Institution of Higher Education; or (v) the Redemption Value of the Account equals one hundred dollars (\$100.00) or less and no contributions have been deposited to the Beneficiary's Account for a period of at least sixty (60) consecutive days. The Contract termination request must be accompanied with documentation acceptable to the Board to substantiate the reason for Contract termination. In the event a Contract is terminated due to the Permanent Disability or death of the Beneficiary, the amount of the refund paid to the Purchaser shall be equal to the Redemption Value of the Account at the time the refund is made. In the event a Contract is terminated under any of the conditions described in items (ii) – (v) above, the amount of the refund paid to the Refund Recipient shall be equal to the Redemption Value of the Account at the time the refund is made, minus any applicable fee charged by the Board. The Actual termination of the Contract will not occur until all funds in the Beneficiary's Account have been refunded.
- (e) Rollovers out of the Program. The Purchaser may rollover all or a portion of the funds in the Beneficiary's Account to an account established for the same Beneficiary or another Beneficiary under another qualified tuition program established under Section 529 of the Internal Revenue Code by making a rollover request to the Board on such forms as may be prescribed by the

Board. If the rollover is for the benefit of another Beneficiary, the Beneficiary to whose Account the funds are being transferred must be a "Member of the Family" of the original Beneficiary, as such term is defined in Rule 1700-05-04-.01(2)(j). Any rollover under this Rule shall be administered in accordance with the applicable rollover provisions of the Internal Revenue Code. Any rollover made under this Paragraph shall be equal to the amount requested, not to exceed the Redemption Value of the Beneficiary's Account, minus any applicable fees charged by the Board pursuant to Rule 1700-05-04-.03(6) above. The Redemption Value of the Account shall be determined as of the date the rollover is made.

Authority: T.C.A. § § 49-7-805, 49-7-809, 49-7-811, and 49-7-812.

1700-05-04-.07 Reporting and Notice.

- (1) Reporting. A statement listing the activity, selected investment options, and Redemption Value of the Account will be sent to the Purchaser periodically. The frequency of such statements will be set by the Board. If a payment has been made from an Account, the Board will report to the Beneficiary or the Purchaser, whichever is applicable, information about such payments to assist in determining that person's tax liability. The report will be furnished by no later than January 31st of the calendar year following the calendar year in which the payment was made. Disclosure documents will also be prepared by the Program and made available to the Purchaser prior to the Purchaser opening an Account.
- (2) Notice. Notice from the Program or Board, including but not limited to, Account statements, tax forms, and information about the Program, a Contract or an Account, may be in any form acceptable to the Board, which may include, but may not be limited to, notice and reporting by electronic means.

Authority: T.C.A. § § 49-7-805, and 49-7-809.

1700-05-04-.08 Contract Designations May Not be Defeated by Will.

- (1) The right of a Beneficiary or Purchaser to receive benefits in accordance with a Contract shall not be defeated or impaired by any statute or rule of law governing the transfer of property by will or by intestate succession.

Authority: T.C.A. § 49-7-805(16).

1700-05-04-.09 Plan Termination.

- (1) If the Board determines that the Educational Savings Plan is, for any reason, financially unfeasible, or is not beneficial to the citizens of Tennessee or to the State itself, then the Board, pursuant to T.C.A. § 49-7-823, may terminate the Contracts. Subject to Paragraphs (2) and (3) of this Rule below, the amount of the refund to which the Purchaser is entitled shall be equal to the Redemption Value of the Account at the time the refund is made.
- (2) Notwithstanding any other provision to the contrary, refunds and other benefits payable under a Contract shall be deemed to be due and payable only to the extent that moneys are available therefore to the credit of the Educational Savings Plan, and neither the State nor the Board shall be liable for any amount in excess of such sums.
- (3) Should the Educational Savings Plan be terminated by the Board and the assets of the fund prove to be less than would be required to fully pay all obligations of the Plan in full, the Board shall first defray all administrative expenses of the Plan. The Board shall then reduce payments owed pursuant to a Contract, pro rata, to the degree necessary to bring the total disbursement of the Educational Savings Plan within the amount of the remaining funds.

Authority: T.C.A. § § 49-7-805, 49-7-823 and 49-7-824.

Chapter 1700-05-01
Tennessee Baccalaureate Educational System Trust

Amendments

Rule 1700-05-01-.01 In General is amended by deleting paragraph (1) in its entirety and by substituting instead the following:

- (1) Purpose. T.C.A., Title 49, Chapter 7, Part 8 created the Tennessee Baccalaureate Education System Trust Act. The Act creates a tuition program, as an agency and instrumentality of the State of Tennessee, under which parents and other interested persons may assist students in saving for tuition cost of attending colleges and universities. The tuition program is comprised of two (2) types of tuition plans: The Educational Savings Plan and the Educational Services Plan. The purpose of these rules is to establish requirements for participation, and administration of the Educational Services Plan as required by and consistent with the Act. The requirements for participation, and administration of the Educational Savings Plan are set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

Authority: T.C.A. § § 49-7-805(16), 49-7-802(7) and 49-7-803.

Rule 1700-05-01-.01 In General is amended by deleting subparagraph (2)(h) in its entirety and by substituting instead the following:

- (h) "Educational savings plan" means a plan which permits individuals, associations, corporations, trusts and other organized entities to make contributions to an account that is established by a purchaser for a designated beneficiary as set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee. The requirements for participation, and administration of the educational savings plan are set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee.

Authority: T.C.A. § § 49-7-805(16), 49-7-802(3) and (12), 49-7-803, and 49-7-808.

Rule 1700-05-01-.01 In General is amended by deleting subparagraph (2)(o) in its entirety and by substituting instead the following:

- (o) "Program" means the two (2) types of tuition plans authorized under the Act (the educational savings plan as set forth in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee and the educational services plan as set forth in these Rules), and the statutes, rules and policies of the Board that outline the requirements for participation in the Tennessee Baccalaureate Education System Trust Program, as all such materials may be revised or amended from time to time.

Authority: T.C.A. § § 49-7-805(16), 49-7-802(7), 49-7-803, 49-7-807, 49-7-808, and 49-7-809.

Rule 1700-05-01-.05 Purchase of Tuition Units is amended by deleting paragraph (4) in its entirety and by substituting instead the following:

- (4) Limit on Number of Units. Subject to Section 529 of the Internal Revenue Code and the regulations promulgated thereunder, an individual may enter into both an educational services plan tuition contract as described in these rules and an educational savings plan tuition contract as described in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee on behalf of the same beneficiary. In addition, more than one individual may enter into an educational savings plan tuition contract, an educational services plan tuition contract, or both, on behalf of the same beneficiary. Provided, however, that no additional contributions can be made to any contract on behalf of the same beneficiary if at the time of the proposed contribution the total account balance of all contracts on behalf of the same beneficiary total a certain dollar amount as determined by majority vote of the Board pursuant to Rule 1700-05-01-.02 (2)(c). Such dollar amount will be set by the Board on an annual basis and shall not exceed the amount determined by actuarial estimates to be necessary to pay tuition, required fees, and room and board for seven (7) years of undergraduate enrollment at the highest cost institution of higher education.

Authority: T.C.A. §§ 49-7-805(16), 49-7-805(11), 49-7-805(12), and 49-7-806.

Rule 1700-05-01-.18 Rollovers is amended by deleting paragraphs (1) and (2) thereof and by substituting instead the following:

- (1) Rollovers to the Credit of Another Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may rollover all or a portion of the funds in the beneficiary's account to an account established for another beneficiary under the educational savings plan established in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee or under another qualified tuition program established under Section 529 of the Internal Revenue Code provided that the beneficiary to whose account the funds are being transferred is a "member of the family" of the original beneficiary, as such term is defined in Rule 1700-05-01-.01(2)(k).
- (2) Rollovers for the Benefit of the Same Beneficiary. Subject to the conditions set forth in Paragraph (3) below, the purchaser may also rollover all or a portion of the funds in the beneficiary's account to an account established for the same beneficiary under the educational savings plan established in Chapter 1700-05-04 of the Official Compilation of the Rules and Regulations of the State of Tennessee or under another qualified tuition program established under Section 529 of the Internal Revenue Code.

Authority: T.C.A. §§ 49-7-805(16), 49-7-805(14), and 49-7-809(a)(8).

* 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)
Mark Emkes	✓				
Tre Hargett	✓				
David H. Lillard, Jr.	✓				
John Morgan	✓				
Dr. Joe Dipietro	✓				
Dr. Betty Sue McGarvey	✓				
Dr. Richard Rhoda	✓				
Justin P. Wilson	✓				

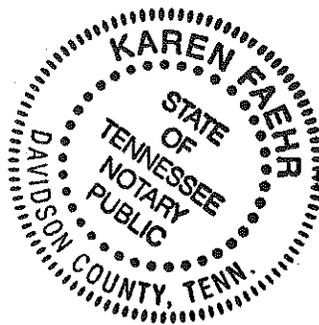
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Baccalaureate Education System Trust Board on November 16, 2011, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the 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: November 22, 2011

Signature: [Handwritten Signature]

Name of Officer: David H. Lillard, Jr.

Title of Officer: Chair of the Board and State Treasurer



Subscribed and sworn to before me on: November 22, 2011

Notary Public Signature: Karen Faehr

My commission expires on: September 9, 2014

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State

DIVISION: Business Services

SUBJECT: Construction Services Providers Exemptions under Workers' Compensation

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 50-6-901

EFFECTIVE DATES: March 13, 2012 through June 30, 2012

FISCAL IMPACT: The agency has provided the following fiscal impact information:

Increase State Revenue — \$2,000/Recurring/Employee Misclassification Education and Enforcement Fund
Increase State Expenditures - \$44,700 One-Time/Employee Misclassification Education and Enforcement Fund

Assumptions:
Based on information provided by the Secretary of State, 100 individuals who are currently listed on the exemption registry will apply. The exemption registry fee is \$20. Such fee will be due every two years. Therefore, an increase in state revenue of \$2,000 (100 X \$20 fee) every two years to the Employee Misclassification Education and Enforcement Fund (EMEEF) beginning in FY11-12.

Program coding for the exemption registry will be required. An increase in one-time state expenditures of \$44,700 for 360 contractor programming hours and 108 contractor analyst coding hours.

STAFF RULE ABSTRACT: This rule is being promulgated to accommodate the additional construction services provider exemption registrations under workers' compensation that were authorized by Chapter 422 of the Public Acts of 2011.

Public Hearing Comments

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

There were no comments, written or oral, filed at the rulemaking hearing for the above-referenced rules held at the Department of State on November 18, 2011.

Regulatory Flexibility Addendum

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

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

The rules do not overlap, duplicate, or conflict with other federal, state, and local government rules.

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

The rules are amended to mirror language that is contained in the statute based on passage of Public Chapter 422 of the Public Acts of 2011. Therefore, the rules are clear, concise, and are not ambiguous.

(3) The establishment of flexible compliance and reporting requirements for small businesses.

The rules language that is contained in the statute based on passage of Public Chapter 422 of the Public Acts of 2011 which allows a business owner the option to exempt him/herself from having to carry workers' compensation insurance.

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

The rules mirror the statute and allow a business owner to choose whether or not to opt out of carrying workers' compensation insurance on him/herself.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses.

Compliance is simplified because it provides a single process for individual business owners involved in the construction industry to exempt themselves from carrying workers' compensation insurance on themselves.

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

The rules do not impact performance, design, or operational standards for small businesses.

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

The rules do not create unnecessary entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs. The rules mirror the statutory language and allow a business owner the option to exempt him/herself from having to carry workers' compensation insurance.

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)

If adopted, these rules will not have any impact on the expenditures or revenues of local government.

REDLINE

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Sequence Number: 12-12-11
Rule ID(s): 6082
File Date: _____
Effective Date: _____

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:	Department of State
Division:	Business Services
Contact Person:	Nathan Burton
Address:	312 Rosa L. Parks Ave., Snodgrass Tower, 6 th Floor, Nashville, TN
Zip:	37243
Phone:	615-741-2819
Email:	nathan.burton@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
1360-09-01	Workers' Compensation Exemption Registration
Rule Number	Rule Title
1360-09-01-.01	Definitions
1360-09-01-.05	Fees

44

(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>)

Chapter 1360-09-01
Workers' Compensation Exemption Registration

Rule 1360-09-01-.01 Definitions is amended by deleting the text of subdivision (h) in its entirety and substituting instead the following language so that, as amended, subdivision (h) shall read as follows:

Rule 1360-09-01-.01 Definitions.

- (1) The following terms shall have the respective meanings provided in this rule.
 - (a) "Active and in good standing as reflected in the records of the secretary of state" means a corporation, limited liability company, or partnership that is in existence, registered or authorized to transact business in this state as reflected in the records of the secretary of state; and in the case of a corporation, limited liability company, limited liability partnership, or limited partnership, such entity is in good standing with the Tennessee department of revenue.
 - (b) "Board" means the state board for licensing contractors.
 - (c) "Commercial construction project" means any construction project that is not:
 1. The construction, erection, remodeling, repair, improvement, alteration or demolition of one, two, three or four family unit residences not exceeding three stories in height or accessory use structures in connection with the residences.
 2. The construction, erection, remodeling, repair, improvement, alteration or demolition of any building or structure for use and occupancy by the general public which, pursuant to T.C.A. §62-6-112(f)(2), a small commercial building contractor is authorized to bid on and contract for.
 3. Performed by any person, municipality, county, metropolitan government, cooperative, board, commission, district, or any entity created or authorized by public act, private act or general law to provide electricity, natural gas, water, waste water services, telephone service, telecommunications service, cable service, or internet service or any combination thereof, for sale to consumers in any particular service area.
 - (d) "Construction project" means the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking; provided that if a general contractor contracts to erect, remodel, repair, improve, alter or demolish multiple buildings, structures or undertakings in one contract, all such buildings, structures or undertakings described in such contract shall constitute one construction project.
 - (e) "Construction services provider" or "provider" means any person or entity engaged in the construction industry.
 - (f) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation of a corporation that in the case of a domestic corporation is formed under the laws of this state pursuant to T.C.A. Title 48, Chapters 11 – 68 or in the case of a foreign corporation is authorized to transact business in this state pursuant to T.C.A. Title 48, Chapters 11 – 68; provided that a domestic or foreign corporation is active and in good standing as reflected in the records of the secretary of state.
 - (g) "Direct labor" means the performance of any activity that would be assigned to the Contracting Group as those classifications are designated by the rate service organization designated by the commissioner of commerce and insurance as provided in T.C.A. §56-5-320, but does not include:

1. Classification code 5604, or any subsequent classification code, for construction executives, supervisors, or foremen that are responsible only for the oversight of laborers.
 2. Classification code 5606, or any subsequent classification code, for project managers, construction executives, construction managers and construction superintendents having only administrative or managerial responsibilities for construction projects by exercising operational control indirectly through job supervisors or foremen.
- ~~(h) "Engaged in the construction industry" any person or entity assigned to the Contracting Group as those classifications are designated by the rate service organization designated by the commissioner of commerce and insurance as provided in T.C.A. §56-5-320.~~
- (h) "Engaged in the construction industry" means any person or entity assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320; provided, where more than one (1) classification applies, the governing classification, as that term is defined by the rate service organization designated by the Commissioner of Commerce and Insurance as provided by § 56-5-320, shall be used to determine whether the person or entity is engaged in the construction industry.
- (i) "Family owned business" means a business entity in which members of the same family of the applicant have an aggregate of at least ninety-five percent ownership of such business.
 - (j) "General contractor" means the person or entity responsible to the owner or developer for the supervision or performance of substantially all of the work, labor, and the furnishing of materials in furtherance of the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking and who contracts directly with the owner or developer of the building, structure or other undertaking; "general contractor" includes a prime contractor.
 - (k) "Good standing with the Tennessee department of revenue" means the secretary of state has received and verified through electronic confirmation or a certificate of tax clearance issued by the commissioner of revenue that a corporation, limited liability company, limited liability partnership, or limited partnership is current on all fees, taxes, and penalties to the satisfaction of the commissioner.
 - (l) "Member of a limited liability company" means any member of a limited liability company formed pursuant to T.C.A. Title 48, Chapters 201 – 249 that is active and in good standing as reflected in the records of the secretary of state.
 - (m) "Members of the same family of the applicant" means parents, children, siblings, grandparents, grandchildren, stepparents, stepchildren, stepsiblings, or spouses of such, and includes adoptive relationships.
 - (n) "Partner" means any person who is a member of an association that is formed by two (2) or more persons to carry on as co-owners of a business or other undertaking for profit and such association is active and in good standing as reflected in the records of the secretary of state.
 - (o) "Person" means only a natural person and does not include a business entity.
 - (p) "Registry" means the construction services provider workers' compensation exemption registry established pursuant to this part and maintained by the secretary of state.
 - (q) "Sole proprietor" means one (1) person who owns a form of business in which that person owns all the assets of such business.

Authority: T.C.A. §50-6-901(8) and Tenn. Pub. Acts, ch. 422 (2011).

Rule 1360-09-01-.05 Fees is amended by adding subdivisions (i) and (j) so that, as amended, the additional subdivisions shall read as follows:

Rule 1360-09-01-.05 Fees.

- (1) The following fees apply to documents issued or filed in writing or online:
 - (a) The fee for the issuance of a construction services provider registration to providers who have not been issued a license by the board is one hundred dollars (\$100).
 - (b) The fee for the issuance of a construction services provider workers' compensation exemption is one hundred dollars (\$100).
 - (c) The fee for the filing of correction information pursuant to T.C.A. §50-6-905(c) is twenty dollars (\$20).
 - (d) The fee for the filing of change of address information pursuant to T.C.A. §50-6-905(d) is twenty dollars (\$20).
 - (e) The fee for the filing of a construction services provider workers' compensation exemption renewal is one hundred dollars (\$100).
 - (f) The fee for the filing of a construction services provider registration renewal to providers who have not been issued a license by the board is one hundred dollars (\$100).
 - (g) The fee for the filing of a revocation pursuant to T.C.A. §50-6-908(a) is twenty dollars (\$20).
 - (h) The fee for the issuance of a copy of the notice issued pursuant to T.C.A. §50-6-905(a)(1) is twenty dollars (\$20).
 - (i) The fee for the issuance of a second or subsequent construction services provider workers' compensation exemption registration is twenty dollars (\$20) per registration.
 - (j) The fee for the filing of a second or subsequent construction services provider workers' compensation exemption renewal is twenty dollars (\$20) per renewal.
- (2) In addition to the fees authorized in subsection (1), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications submitted online.
- (3) To facilitate credit card payment and fee collection the Secretary of State may establish a merchant ID or may cause one to be established in the Department of Labor and Workforce Development specifically for the Employee Misclassification Education and Enforcement Fund. If the merchant ID is established in the Department of Labor and Workforce Development all transaction and other fees associated with credit card payments will be paid directly from the Employee Misclassification Education and Enforcement Fund.

Authority: T.C.A. §50-6-912 and Tenn. Pub. Acts, ch. 422 (2011).

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Board of Regents

DIVISION:

SUBJECT: Use of Campus Property and Facilities

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-8-203

EFFECTIVE DATES: May 30, 2012 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This proposed rule repeals Rule 0240-01-01, relative to the use of campus property and facilities, due to changes in federal and state laws and Board of Regents policy.

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)

No Impact on Local Governments

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Sequence Number: 12-02-11
 Rule ID(s): 5076
 File Date: 12/02/2011
 Effective Date: 05/30/2012

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:	Tennessee Board of Regents
Division:	Systemwide Administrative Rules
Contact Person:	Mickey Sheen
Address:	1415 Murfreesboro Rd. Ste. 336 Nashville, Tennessee
Zip:	37217
Phone:	615-366-4437
Email:	Mickey.Sheen@tbr.edu

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
0240-01-01	Use of Campus Property and Facilities
Rule Number	Rule Title

Chapter 0240-01-01
Tennessee Board of Regents
Systemwide Administrative Rules
Use of Campus Property and Facilities

Repeal

Rule 0240-01-01 Tennessee Board of Regents Systemwide Administrative Rules Use of Campus Property and Facilities, is repealed in its entirety.

Authority: T.C.A. § 49-8-203. Administrative History: Repeal of all rules by Public Chapter 261; effective July 1, 1983. New rule filed April 28, 1983; effective July 13, 1983. Amendment filed August 28, 1984; effective November 13, 1984. Amendment filed June 1, 1990; effective September 26, 1990. Amendment filed on sections 0240-01-01-.02, 0240-01-01-.03, and 0240-01-01-.04 on July 29, 1988; effective October 29, 1988. Amendment filed May 13, 1991; effective August 28, 1991. Amendment filed on section 0240-01-01-.04 on August 11, 2004; effective December 29, 2004. Public Necessity rule filed on section 0240-01-01-.06 on October 29, 2008; effective through April 12, 2009. Public Necessity rule filed October 29, 2008, and effective through April 12, 2009, expired April 13, 2009, and reverted to its previous status.

The vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam				X	
Steve Copeland	X				
Gregory Duckett	X				
John Farris	X				
Lee Gatts	X				
Tom Griscom	X				
Commissioner Kevin Huffman				X	
Commissioner Julius Johnson				X	
Fran Marcum	X				
Paul Montgomery	X				
Emily Reynolds	X				
Howard Roddy	X				
Robert Thomas	X				
Danni Varlan	X				
Linda Weeks	X				

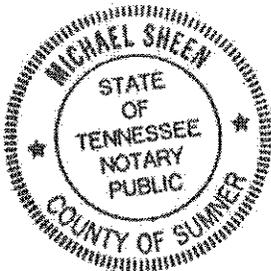
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Tennessee Board of Regents on 09/23/2011, and is in compliance with the provisions of T.C.A. §4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: 9/27/2011

Signature: Christine Modisher

Name of Officer: Christine Modisher

Title of Officer: General Counsel and Board Secretary



Subscribed and sworn to before me on: 9-27-11

Notary Public Signature: [Signature]

My commission expires on: February 26, 2013

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Definition of "Tennessee Public School"

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-16-102

EFFECTIVE DATES: May 30, 2012 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule amends Rule 0520-01-02-.01, relative to the definition of Tennessee public school, by deleting the language "one plant" from such definition. This amendment stems from the recognition that such language inhibits the creation of virtual schools. This rule amendment will thus give local school districts the ability to establish virtual schools without being inhibited by the physical plant requirement.

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)

Not applicable.

Impact on Local Governments

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

There will be no impact on local governments.

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Sequence Number: 12-03-11
 Rule ID(s): 5071
 File Date: 12/05/2011
 Effective Date: 05/30/2012

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
 Address: 9th Floor, 710 James Robertson Pkwy, Nashville, TN
 Zip: 37243
 Phone: 615-253-5707
 Email: Dannelle.walker@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
0520-01-02	ADMINISTRATIVE RULES AND REGULATIONS
Rule Number	Rule Title
0520-01-02-.01	Definition of a Tennessee Public School
Chapter Number	Chapter Title
Rule Number	Rule Title

RULES
OF
THE TENNESSEE DEPARTMENT OF EDUCATION
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-02
ADMINISTRATIVE RULES AND REGULATIONS

Redline

Rule 0520-01-02-.01 Definition of a Tennessee Public School is amended by deleting the present language in its entirety and replacing it with the following:

A public school is the basic administrative unit of a state, county, city or special district school system, consisting of one or more grade groups, one or more teachers to give instruction, one plant, and one principal, which school shall be subject to the statutes of the State of Tennessee, and to rules, regulations, and minimum standards of the Tennessee State Board of Education.

Authority: T.C.A. §49-3-306. **Administrative History:** Original rule certified June 10, 1974. Amendment filed August 20, 1984; effective November 13, 1984. Amendment filed September 26, 1985; effective December 14, 1985. Amendment filed September 20, 1987; effective December 22, 1987. Amendment filed October 18, 1988; effective January 29, 1989. New rule filed February 16, 1989; effective April 2, 1989. Amendment filed July 11, 1990; effective October 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992.

* 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				
Edwards				X	
Justice	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Woods	X				

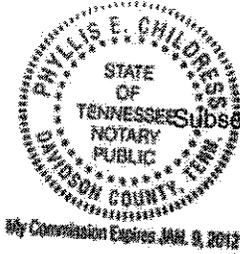
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 08/05/2011, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed 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: 11-7-11

Signature: Gary Nixon

Name of Officer: Dr. Gary Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 11/7/11

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.
 Attorney General and Reporter
11-23-11
 Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Adult High Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-6-409

EFFECTIVE DATES: May 30, 2012 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: Part (b) of paragraph (2) of Rule 0520-01-02-05 Adult High Schools is amended by the deletion of "Except for the Tennessee Proficiency Test" because this language is outdated and is no longer used to describe the testing programs in Tennessee.

Part (c) of paragraph (2) of Rule 0520-01-02-05 Adult High Schools is amended by the deletion of "provided hours per credit requirements are met." This recommendation stems from the recognition that seat time is not an adequate measure of student competency.

Part (d) of paragraph (2) of Rule 0520-01-02-05 Adult High Schools is amended by the deletion of "and must have withdrawn from the regular school program." It was noted that some adult high schools offer credit recovery and other supports to traditional high school students who are *not* enrolled full-time at the adult high school. Removing this requirement clarifies confusion about such activities and allows for more innovation, thereby supporting localized dropout prevention efforts.

Part (f) of paragraph (2) of Rule 0520-01-02-.05 Adult High Schools is amended by deletion of this part in its entirety which states that "To earn one unit of credit in an adult high school, a minimum of 133 contact hours per course shall be required." This recommendation stems from the recognition that seat time is not an adequate measure of student competency.

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)

Not applicable.

Impact on Local Governments

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

This will have no impact on local governments.

RULES
OF
THE TENNESSEE DEPARTMENT OF EDUCATION
THE STATE BOARD OF EDUCATION

CHAPTER 0520-01-02
ADMINISTRATIVE RULES AND REGULATIONS

Rule 0520-01-02-.05 Adult High Schools is amended by deleting the present language and replacing it with the following:

- (1) Adult high schools may be established and maintained by local boards of education.
- (2) Before the FTEADM of any adult high school shall be counted in distribution of state funds, such schools shall meet the standards of an approved school and shall provide without fee all services, such as free textbooks, to which any student of grades 9 through 12 is entitled under rules and regulations of the State Board of Education, state and federal statutes, and policies of local boards of education, with the exceptions listed below:
 - (a) The computation of the FTEADM of adult high schools shall be on the basis of a 4 hour day and twenty (20) day school month. The FTEADM for any month shall be determined by dividing the total hours for which persons were enrolled during the month by 80.
 - (b) While in attendance at an adult high school, students may earn all or a portion of the required credits necessary for graduation. Physical education, however, shall not be a requirement for graduation. ~~Except for the Tennessee Proficiency Test, S~~students are exempted from other state-mandated testing ~~programstests~~.
 - (c) Adult high schools may operate twelve months per year and provide flexible scheduling necessary for both day and night programs, ~~provided hours per credit requirements are met.~~ All terms in a year round operation are considered regular terms.
 - (d) Adult high school students must be at least 17 years of age ~~and must have withdrawn from the regular school program.~~
 - (e) Adult high school students may register for and earn as few as 1/2 unit of credit per term.
 - (f) ~~To earn one unit of credit in an adult high school, a minimum of 133 contact hours per course shall be required.~~

* 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				
Edwards				X	
Justice	X				
Pearre	X				
Roberts	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 08/05/2011, 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: 11-21-11

Signature: Gary Nixon

Name of Officer: Dr. Gary Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 11/21/11

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.

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

12-12-11

Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Summer Schools

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-6-409

EFFECTIVE DATES: May 30, 2012 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rule amendment deletes the following language from Rule 0520-01-03-.03, relative to summer schools: "A minimum of 133 contact hours shall be required in order to earn one unit of credit."

The agency reports that this rule amendment stems from the recognition that seat time is not an adequate measure of student competency.

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)

Not applicable.

Impact on Local Governments

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

There will be no impact on local governments.

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Sequence Number: 12-04-11
 Rule ID(s): 5078
 File Date: 12/05/2011
 Effective Date: 05/30/2012

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
Address:	9th Floor, 710 James Robertson Pkwy, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.walker@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
0520-01-03	MINIMUM REQUIREMENTS FOR THE APPROVAL OF PUBLIC SCHOOLS
Rule Number	Rule Title
0520-01-03-.03	Administration of Schools, Requirement B

Chapter Number	Chapter Title
Rule Number	Rule Title

**RULES
OF
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-03
MINIMUM REQUIREMENTS FOR THE APPROVAL
OF PUBLIC SCHOOLS**

Rule 0520-01-03-.03 Administration of Schools, Requirement B, Item (1) Part (b) of paragraph (7) is amended by deleting the present language in its entirety. The new rule will read as the following:

(7) Summer Schools.

- (a) Summer schools shall be under the control and management of the local board of education having jurisdiction.
- (b) The following shall be required for grades 9 through 12:
 - 1. ~~A minimum of 133 contact hours shall be required in order to earn one unit of credit.~~
 - 2. State curriculum frameworks shall be used for all courses.
 - 3. Summer school teachers shall be licensed and hold endorsements in the subject areas in which they are teaching.

* 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				
Edwards				X	
Justice	X				
Pearre	X				
Roberts	X				
Rogers	X				
Rolston	X				
Sloyan	X				
Wright	X				
Woods	X				

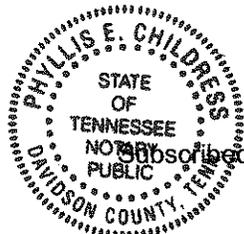
I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the State Board of Education on 08/05/2011, and is in compliance with the provisions of TCA 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed 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: 11-7-11

Signature: Gary Nixon

Name of Officer: Dr. Gary Nixon

Title of Officer: Executive Director



Subscribed and sworn to before me on: 11/7/11

Notary Public Signature: Phyllis E Childress

My Commission Expires JAN. 9, 2012 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.

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

11-23-11
 Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: State Board of Education

DIVISION:

SUBJECT: Teacher and Principal Evaluation

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 49-1-301

EFFECTIVE DATES: May 30, 2012 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The First to the Top Legislation passed in the Extraordinary Session of 2010 calls for teachers and principals to be evaluated annually. The legislation established a Teacher Evaluation Advisory Council (TEAC) and charged it with the responsibility of developing and recommending criteria and guidelines for teacher and principal evaluations for the Board to consider. The legislation also charged the TEAC with recommending to the Board a grievance procedure for LEAs to implement regarding the accuracy of the data and the fidelity to the process used to evaluate teachers and principals.

The State Board approved the implementing rules at its January 2011 meeting. The State Board approved the Educator Evaluation Policy at its April 2011 meeting. The approved rule states that the Department of Education will adopt a model for teacher evaluation. It was the Board's intent that the Department of Education would develop and recommend the model plan to the State Board for approval. This item contains an amendment to the rule that implements the Board's original intent.

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)

Not applicable.

Impact on Local Governments

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

No Impact on Local Governments

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Sequence Number: 12-15-11
Rule ID(s): 5084
File Date: 12/16/2011
Effective Date: 05/30/2012

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
Address:	9th Floor, 710 James Robertson Pkwy, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.walker@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
0520-02-01	EVALUATIONS
Rule Number	Rule Title
0520-02-01-.01	General Requirements for Evaluations
0520-02-01-.02	Local Evaluations

Chapter Number	Chapter Title
Rule Number	Rule Title

RULES
OF
THE STATE BOARD OF EDUCATION

CHAPTER 0520-02-01
EVALUATIONS

0520-02-01-.01 GENERAL REQUIREMENTS FOR EVALUATIONS.

- (1) The Department of Education shall develop and recommend a model plan for teacher evaluation to the State Board of Education for approval. The model plan will be developed in accordance with these rules and the Educator Evaluation Policy adopted by the State Board of Education.
- (4) ~~The Department of Education shall adopt a model plan for teacher evaluation developed in accordance with these rules and the guidelines and criteria adopted by the State Board of Education.~~
- (2) Local boards of education shall use either the model plan for teacher evaluation or evaluation models that have been adopted by the local board of education and approved by the State Board of Education.
 - a. Prior to review by the State Board of Education, locally adopted evaluation models must:
 - i. Be reviewed by the Commissioner of the Department of Education for compliance with the guidelines and criteria adopted by the State Board of Education, and;
 - ii. Following conditional approval by the commissioner, have been implemented for a one (1) year pilot in a Tennessee LEA.
 - b. Following the pilot year, evaluation models shall be reviewed by the Commissioner and submitted to the State Board of Education for final approval.
 - c. Evaluation models approved by the State Board of Education may, with local board approval, be used in any LEA.
- (3) Annual evaluation shall be made of all educators in the state.
- (4) Local boards of education shall develop a local-level evaluation grievance procedure that complies with the State Board of Education's Teacher Evaluation Policy. This procedure shall provide a means for evaluated teachers and principals to challenge only the accuracy of the data used in the evaluation and the adherence to the evaluation policies adopted by the State Board of Education.

Authority: T.C.A. §§ 49-1-201, 49-1-301, and 49-5-5205. **Administrative History:** Original rule certified June 10, 1974. Repeal and new rule filed July 17, 1981; effective October 28, 1981. Amendment filed March 7, 1983; effective June 15, 1983. Amendment filed September 30, 1986; effective November 14, 1986. Amendment filed October 18, 1989; effective January 29, 1989. Amendment filed November 18, 1988; effective February 28, 1989. Amendment filed October 31, 1989; effective January 29, 1990. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Repeal and new rule filed February 18, 2011; effective July 29, 2011.

0520-02-01-.02 PROCEDURES FOR APPROVAL AND MONITORING OF LOCAL EVALUATIONS.

- (1) Prior to the beginning of the 2011-2012 school year, each LEA shall submit the evaluation system that has been approved by the local board of education to the Commissioner of Education.
- (2) The Commissioner of Education shall verify that each LEA's evaluation system complies with the State Board approved guidelines and criteria no later than September 1 of each year. Changes made in a locally developed evaluation system shall be submitted to the Commissioner of Education by July 1 prior to the proposed implementation year.
 - a. By June 15 annually, LEAs' evaluation plans and recommendations of all apprentice teachers who are in their final apprentice year shall be submitted for state review and approval.
 - b. Evaluation deadlines for first and second year apprentice teachers and professionally licensed teachers may be determined by the local school system, but must occur no later than June 15.

~~The Commissioner of Education shall verify that each LEA's evaluation system complies with the State Board approved guidelines and criteria no later than September 1 of each year.~~

- (3) Changes made in a locally developed evaluation system shall be submitted to the Commissioner of Education by July 1 prior to the proposed implementation year.
 - a. By May 15 annually, LEAs' evaluation plans and recommendations of all apprentice teachers who are in their final apprentice year shall be submitted for state review and approval.
 - b. Evaluation deadlines for first and second year apprentice teachers and professionally licensed teachers may be determined by the local school system, but must occur no later than May 15.
- (4) The Department of Education shall collect data from each LEA on approved teacher evaluation models and shall make an annual report to the State Board of Education. Such data shall include but not be limited to the following: the evaluation model being implemented, the relationship between the principal's rating and student achievement, the percentage of licensed staff trained as evaluators, the percentage of licensed staff grieving the evaluation, and the distribution of teachers by effectiveness group.
- (5) Training of Evaluators. Anyone conducting an evaluation and/or observation must complete a training process approved by the Department of Education. The approved training process must be conducted by a trainer certified by the Department of Education. Local boards of education that choose an alternative evaluation plan shall present their training plans to the Department of Education by August 15 of each year.

Authority: T.C.A. §§ 49-1-201, 49-1-301 and 49-5-5205. **Administrative History:** Original rule certified June 10, 1974. Amendment filed June 10, 1974; effective July 10, 1974. Repeal and new rule filed July 17, 1981; effective October 28, 1981. Amendment filed September 30, 1986; effective November 14, 1986. Amendment filed September 20, 1987; effective December 22, 1987. Amendment filed January 31, 1991; effective May 1, 1991. Repeal and new rule filed March 16, 1992; effective June 29, 1992. Amendment filed April 27, 1998; effective August 28, 1998. Amendment filed May 28, 1999; effective September 28, 1999. Amendment filed April 28, 2000; effective August 28, 2000. Amendment filed October 31, 2002; effective February 28, 2003. Amendment filed September 6, 2007; effective January 28, 2008. Repeal and new rule filed February 18, 2011; effective July 29, 2011.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: State Parks

SUBJECT: State Park Passports; Use of Golf Carts and Bicycles

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 11-1-101

EFFECTIVE DATES: March 20, 2012 through June 30, 2012

FISCAL IMPACT: The agency expects the revenues resulting from these rules to be less than 2% of the agency's annual budget and less than \$500,000.

STAFF RULE ABSTRACT:

Rule 0400-01-01 -.03(4)(b)4 is amended at the request of the Government Operations Committees in a prior rule review meeting to limit the cost of a lifetime Tennessee State Park Passport to \$30 for senior citizens.

Rule 0400-02-02-05(9) is being added to limit the use of golf carts within State Parks to paved surfaces and to persons possessing a valid driver license.

Rule 0400-02-05-.03(3) is amended to only require bicycle riders under the age of 16 to wear a helmet while riding a bicycle in State Parks.

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.

This rulemaking will not affect any small businesses.

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

There are not costs to small business resulting from this rulemaking.

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

There are not impacts on small businesses and consumers resulting from this rulemaking.

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

This rulemaking will not affect any small businesses.

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

The Department is not aware of any.

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

This rulemaking will not affect any small businesses.

Impact on Local Governments

Pursuant to T.C.A. 4-5-220 and 4-5-228 "any rule to be 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 does not anticipate that these amended rules will have a financial impact on local governments.

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Sequence Number: REDLWE
 Rule ID(s): _____
 File Date: _____
 Effective Date: _____

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:	Environment and Conservation
Division:	Tennessee State Parks
Contact Person:	Wayne Gregory
Address:	11 th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-6420
Email:	Wayne.Gregory@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
0400-01-01	Fees and Charges for Certain Departmental Services
Rule Number	Rule Title
0400-01-01-.03	State Parks Entrance Fees and Parking Fees
Chapter Number	Chapter Title
0400-02-02	Public Use and Recreation
Rule Number	Rule Title
0400-02-02-.05	Camping
Chapter Number	Chapter Title
0400-02-05	Vehicles and Traffic Safety
Rule Number	Rule Title
0400-02-05-.03	Bicycles

(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>)

Chapter 0400-01-01
Fees and Charges for Certain Departmental Services

Amendment

Part 4 of subparagraph (b) of paragraph (4) of Rule 0400-01-01-.03 State Parks Entrance Fees and Parking Fees is amended by deleting it in its entirety and replacing it with a new part 4 to read as follows:

4. For an additional fee, not to exceed thirty (30) dollars, as determined by the Commissioner, a Tennessee State Parks Passport that is purchased by a person sixty-five (65) years of age or older shall be valid for the lifetime of that person.

Authority: T.C.A. §§ 11-1-101 et seq. and 4-5-201 et seq.

Chapter 0400-02-02
Public Use and Recreation

Amendment

Rule 0400-02-02-.05 Camping is amended by adding a new paragraph (9) to read as follows:

- (9) Golf carts are only allowed on the paved roads within the campgrounds. Anyone operating a golf cart in the campgrounds must have a valid driver's license.

Authority: T.C.A. §§ 11-1-101 et seq. and 4-5-201 et seq.

Chapter 0400-02-05
Vehicles and Traffic Safety

Amendment

Paragraph (3) of Rule 0400-02-05-.03 Bicycles is amended by deleting it in its entirety and replacing it with a new paragraph (3) to read as follows:

- (3) ~~Helmet are required by all riders~~ Anyone under the age of 16 is required to wear a helmet while operating or riding bicycles on any state park property.

Authority: T.C.A. §§ 11-1-101 et seq. and 4-5-201 et seq.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT: Environment and Conservation

DIVISION: Underground Storage Tanks

SUBJECT: Technical Amendments to Underground Storage Tanks Rules

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

EFFECTIVE DATES: March 7, 2012 through June 30, 2012

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT: This rulemaking makes changes to reflect the reorganization of all TDEC rules in order to be more logical and user friendly. This rulemaking affects Chapter 1200-01-15, and its various additions and modifications will incorporate:

- (1) Changes to the numbering designation of rules from 1200-01-15 to 0400-18-01; and
- (2) Corrects typographical errors throughout all rule chapters.

Regulatory Flexibility Addendum

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

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

This rulemaking changes the rule numbers from Chapter 1200-01-15 to 0400-18-01. It also makes housekeeping changes correcting editorial errors. Therefore, this is no impact on small businesses.

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

There are no projected additional reporting, recordkeeping or administrative costs as a result of this rulemaking.

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

There is no adverse affect on small businesses as a result of this rulemaking.

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

The Department is unaware of alternatives to the proposed rules.

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

There is no exact match with any federal or state counterparts.

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

Due to the administrative nature of this rulemaking, small businesses could not be exempted from this rulemaking.

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)

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

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 Rule ID(s): _____
 File Date: _____
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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:	Environment and Conservation
Division:	Underground Storage Tanks
Contact Person:	Rhonda Key
Address:	4 th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243-1541
Phone:	615-532-0989
Email:	Rhonda.Key@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
0400-18-01	Underground Storage Tank Program
Rule Number	Rule Title
0400-18-01-.01	Program Scope, Definitions and Proprietary Information
0400-18-01-.02	UST System: Installation and Operation
0400-18-01-.03	Notification, Reporting and Record Keeping
0400-18-01-.04	Release Detection
0400-18-01-.05	Release Reporting, Investigation, and Confirmation
0400-18-01-.06	Petroleum Release Response, Remediation and Risk Management
0400-18-01-.07	Out-of-Service UST Systems and Closure
0400-18-01-.08	Financial Responsibility
0400-18-01-.09	Petroleum Underground Storage Tank Fund
0400-18-01-.10	Fee Collection
0400-18-01-.11	Appeals
0400-18-01-.12	Indicia of Ownership
0400-18-01-.13	Voluntary Registry
0400-18-01-.14	Record Retention by the Division
0400-18-01-.15	Petroleum Product Delivery
0400-18-01-.16	Certified Operator Program

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 System: Installation and Operation
1200-01-15-.03	Notification, Reporting and Record Keeping
1200-01-15-.04	Release Detection
1200-01-15-.05	Release Reporting, Investigation, and Confirmation
1200-01-15-.06	Petroleum Release Response, Remediation and Risk Management
1200-01-15-.07	Out-of-Service UST Systems and Closure
1200-01-15-.08	Financial Responsibility
1200-01-15-.09	Petroleum Underground Storage Tank Fund
1200-01-15-.10	Fee Collection
1200-01-15-.11	Appeals
1200-01-15-.12	Indicia of Ownership
1200-01-15-.13	Voluntary Registry
1200-01-15-.14	Record Retention by the Division
1200-01-15-.15	Petroleum Product Delivery
1200-01-15-.16	Certified Operator Program

(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://in.gov/sos/rules/1360/1360.htm>)

Repeal

Chapter 1200-01-15 Underground Storage Tank Program is repealed.

Authority: T.C.A. §§ 68-215-101 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-18-01
Underground Storage Tank Program

Table of Contents

0400-18-01-01	Program Scope, Definitions and Proprietary Information	0400-18-01-09	Petroleum Underground Storage Tank Fund
0400-18-01-02	UST System: Installation and Operation	0400-18-01-10	Fee Collection
0400-18-01-03	Notification, Reporting and Record Keeping	0400-18-01-11	Appeals
0400-18-01-04	Release Detection	0400-18-01-12	Indicia of Ownership
0400-18-01-05	Release Reporting, Investigation, and Confirmation	0400-18-01-13	Voluntary Registry
0400-18-01-06	Petroleum Release Response, Remediation and Risk Management	0400-18-01-14	Record Retention by the Division
0400-18-01-07	Out-of-Service UST Systems and Closure	0400-18-01-15	Petroleum Product Delivery
0400-18-01-08	Financial Responsibility	0400-18-01-16	Certified Operator Program

~~1200-01-15-01~~ 0400-18-01-01 Program Scope, Definitions and Proprietary Information.

(1) Program scope: general.

(a) Purpose, scope, and applicability.

This rule provides definitions of terms, general standards and procedures, as well as overview information applicable to these rules.

(b) Use of number and gender.

As used in these rules:

1. Words in the masculine gender also include the feminine and neuter genders;
2. Words in the singular include the plural; and
3. Words in the plural include the singular.

(c) Rule structure.

These rules are organized, numbered, and referenced according to the following outline form:

- (1) paragraph
 - (a) subparagraph
 - 1. part
 - (i) subpart
 - (I) item

I. subitem

A. section

(A) subsection

(2) Program scope: applicability.

(a) The requirements of this chapter apply to all owners and/or operators of an UST system as defined in paragraph (4) of this rule except as otherwise provided in subparagraph (b) and (c) of this paragraph. Any UST systems listed in subparagraph (b) of this paragraph shall meet the requirements of paragraph (3) of this rule.

(b) Deferrals.

Rules ~~4200-01-15-02~~ 0400-18-01-02 through ~~4200-01-15-05~~ 0400-18-01-05 and ~~4200-01-15-07~~ 0400-18-01-07 through ~~4200-01-15-10~~ 0400-18-01-10 do not apply to any of the following types of UST systems:

1. Wastewater treatment tank systems;
2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);
3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR Part 50, Appendix A;
4. Airport hydrant fuel distribution systems;
5. UST systems with field-constructed tanks;
6. Equipment or machinery that contains petroleum for operational purposes such as hydraulic lift tanks and electrical equipment tanks;
7. Any UST system whose capacity is 110 gallons or less;
8. Any UST system that contains a de minimis concentration of petroleum; or
9. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(c) Deferrals – Emergency generator UST systems.

1. Except as provided for in part 2 of this subparagraph, release detection requirements in Rule ~~4200-01-15-04~~ 0400-18-01-04 do not apply to any UST system that stores fuel solely for use by emergency power generators.
2. New tanks and piping components of an emergency generator UST system installed on or after July 24, 2007, shall be secondarily contained and be equipped with interstitial monitoring in accordance with rules ~~4200-01-15-02~~ 0400-18-01-02 subparagraphs (2)(a) and (b) and paragraph (6) of Rule 0400-18-01-02. However, if the new or replacement piping meets the requirements for safe suction piping set forth in rule ~~4200-01-15-04~~ 0400-18-01-04 part (2)(b)2 of Rule 0400-18-01-04, the piping components do not have to be secondarily contained.

(3) Interim prohibition for deferred UST systems.

- (a) No person may install an UST system for the purpose of storing petroleum unless the UST system (whether of single or double-wall construction):
1. Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
 2. Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any petroleum; and
 3. Is constructed or lined with material that is compatible with the petroleum.
- (b) Notwithstanding subparagraph (a) of this paragraph, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and/or operators shall maintain records that demonstrate compliance with the requirements of this subparagraph for the remaining life of the tank.

(4) Definitions.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the petroleum moves to or from an UST system.

"Access" means the ability and opportunity to gain knowledge of proprietary information in any manner whatsoever.

"Accidental release" means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner and/or operator.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of petroleum to and from an UST.

"Annual aggregate" means the total amount of financial responsibility available to cover all obligations that might occur in one year.

"Assets" means properties, tangible or intangible, owned by a business enterprise that have monetary value.

"Authorized person" means any person, including members of the board, authorized to receive proprietary information. Except for members of the board, such authorization shall be granted in writing by the commissioner.

"Bedrock" means any rock, solid and continuous, which is exposed at the surface of the earth or overlain by unconsolidated material.

"Below ground release" means any release to the subsurface of the land or to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the petroleum moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Board" means Tennessee Petroleum Underground Storage Tank Board established under T.C.A. § 68-215-101 et seq.

"Bodily injury" means those bodily injuries caused by a release of petroleum from an UST system for which Tennessee law allows recovery.

"Bond rating agency" means a financial service entity, such as Moody's and Standard and Poor's, which provide ratings with respect to the overall quality of corporately issued bonds as measured by the safety of the principal and the interest. The ratings are used as indicators of a business' ability to self-assure.

"Borrower", "debtor" or "obligor" is a person whose petroleum underground storage tank or UST system is encumbered by a security interest. These terms are used interchangeably.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons shall have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Caused" in the context of third party claims means that degree of causation required by Tennessee law to allow recovery for damages caused by a release of petroleum from an UST system.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Chemicals of concern" means those chemicals that have been designated as such by the division in a chemicals of concern list. The chemicals of concern shall be chemicals that are constituents of or result from the degradation of petroleum product(s) and/or additives released from regulated petroleum underground storage tanks. The list will include those chemicals with the highest risk to human health and/or the environment. The chemicals of concern for diesel fuel will be different from the chemicals of concern for gasoline.

"Chief executive officer" means:

1. In the case of a company or corporation, the highest ranking executive officer within a company or corporation who has responsibility for overall management of its day-to-day affairs under the supervision of a board of commissioners. The term chief executive officer may indicate an officer with dual responsibilities such as chief executive officer and president or chairman of the board and chief executive officer. The chief executive officer makes recommendations to the board on business policy and proposal but can also take specific actions on subsidiary matters. The chief executive officer also appoints most other officers of the corporation with the approval of the board of commissioners.
2. In the case of local government tank owners and operators or guarantors, the individual with the overall authority and responsibility for the collection, disbursement and use of funds by the local government.

"Class A Operator" means any person having primary responsibility for on-site operation and maintenance of underground storage tank systems and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule ~~4200-01-16-16~~ 0400-18-01-16.

"Class B Operator" means any person having daily on-site responsibility for the operation and maintenance of underground storage tank systems and has successfully completed training

requirements for this operator class in accordance with paragraph (2) of Rule ~~1200-01-15-16~~
0400-18-01-16.

"Class C Operator" means any on-site employee having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system and has successfully completed training requirements for this operator class in accordance with paragraph (2) of Rule ~~1200-01-15-16~~ 0400-18-01-16.

"Commissioner" means Commissioner of Environment and Conservation, his authorized representatives, or in the event of his absence or a vacancy in the commissioner's office, the Deputy Commissioner.

"Compartmentalized tank" means an underground storage tank that consists of two or more tank compartments, which are separated from each other by a wall or bulkhead.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which petroleum flows. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumption" with respect to heating oil means consumed on the premises where stored.

"Containment sump" means a liquid-tight compartment that provides containment of any product releases. Containment sumps are typically used underneath product dispensers and/or for enclosing the submersible turbine pump and piping connections at the top of an underground storage tank.

"Continuous in-tank leak detection system" means a release detection system that allows an underground storage tank to operate continuously or nearly continuously without interruption for release detection tests. However, the system may default to a standard or shut down test, requiring the tank to be taken briefly out of service at the end of the month if sufficient good data has not been obtained over the month. These methods include continuous automatic tank gauging systems and continual reconciliation systems.

"Corrective action" means any activity, including but not limited to evaluation, planning, design, engineering, construction, and ancillary service, which is carried out in response to any discharge or release of petroleum.

"Corrective action contractor" or "CAC" means a person who is carrying out any corrective action, including a person retained or hired by such person to provide services relating to a corrective action.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person shall submit documentation for review by the division that they have accreditation or certification as a corrosion specialist or senior corrosion technologist by the National Association of Corrosion Engineers (NACE) or have education and a minimum of four (4) years responsible charge work experience in the corrosion field. If it is determined by the division that a person has sufficient experience and education to be qualified to take responsible charge in corrosion control of buried or submerged metal piping systems and metal tanks, then that person shall be classified by the division as a corrosion expert for the purposes of this rule.

"Damages" in the context of third party claims means the value or cost of bodily injury or property damage caused by the release of petroleum from an UST system as determined by using methods allowed under Tennessee law.

"Date of release" means the earliest date that proof of a release exists. This will be the date a release is reported to or discovered by the division unless an earlier date is determined during the investigation of the release.

"De minimis" means very low concentrations of petroleum.

"Department" means the Tennessee Department of Environment and Conservation.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (for example, tank from piping).

"Director" means the director of the division.

"Dispenser" means a device that discharges petroleum products from underground storage tanks into tanks in motorized vehicles, equipment tanks, or other containers, while simultaneously measuring the amount of petroleum dispensed.

"Division" means the division designated by the commissioner of the Department of Environment and Conservation as the agency to implement the Underground Storage Tank Program in Tennessee.

"Document" means any recorded information regardless of its physical form or characteristics, including, but not limited to, written or printed material; processing cards and tapes; maps; charts; paintings; drawings; engravings; sketches; working papers and notes; reproductions of such things by any means or process; and sound, voice, or electronic recordings in any form.

"Document control number" means the unique number assigned by the document control officer to any document containing proprietary information.

"Document control officer" means the individual authorized by the commissioner in writing to be responsible for all incoming and outgoing documents identified as containing proprietary information.

"Drinking water supply" means any aquifer or water source whose chemical characteristics meet the primary and secondary drinking water standards as defined under rule Chapter 1200-05-01 and provides a yield of at least one-half gallon per minute. This shall also include any water supply used for drinking by the citizens of the state.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Engineering control" means a modification to a site to reduce or eliminate the potential for migration of, and exposure to, chemicals of concern. An engineering control can be used to eliminate a pathway to reduce future risk. Engineering controls may include, but are not limited to: physical or hydraulic control measures, caps, liners, point-of-use treatments, slurry walls or vapor barriers.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Exposure pathway" means the course a chemical(s) of concern takes from a source area(s) to a receptor. Each exposure pathway includes a source area(s), a point of exposure, and an exposure route, and usually a transport/exposure medium or media.

"Face amount" or "face value" means the total amount the insurer is obligated to pay under an insurance policy.

"Facility is operating", for purposes of Rule ~~4200-01-15-16~~ 0400-18-01-16, means normal or extended business hours when product can be dispensed from UST systems. This does not include periods when a facility is closed for business, nor when a facility is closed, but deliveries can be made to UST systems.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank shall be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Financial reporting year" means the annual period for which a business compiles its performance data for the purpose of the assessment of the business as "a going concern" by its managers, investors, creditors, and government regulators.

"Financial statements" means financial performance data compiled by the subject business that have undergone the review and evaluation of an independent certified public accountant for the purpose of assessing the conformity of the business' accounting practices with generally accepted accounting principles (GAAP). The independent Certified Public Accountant (CPA), issues a statement summarizing his/her assessment or findings.

"Financial strength ratios" mean a financial comparison of the relationship of any two or more performance indicators of a business with the industry standard for the relationship between such performance indicators. The calculation of these ratios and their subsequent comparison to industry norms can be helpful in assessing the ability of a business to provide self-assurance to meet the financial assurance requirements of this rule. These regulations utilize the following three ratios to evaluate a business's ability to self assure:

1. "Total liabilities to net worth" means a ratio that expresses the relationship between capital contributed by creditors and capital contributed by owners. If debt is substantial relative to equity, it means that a relatively small decrease in the value of assets could wipe out the owner's equity and remove protection from creditors who could force the business into bankruptcy.
2. "Net income, depreciation, depletion and amortization to total liabilities" means a ratio that expresses the ability of a business to service its debt, long term and short term, from cash flow from business operations without borrowing money for the repayment of debt.
3. "Current assets to current liabilities" means a ratio that is used to measure the short term solvency of a business. It is the most commonly used ratio and indicates the extent to which the claims of short-term creditors are covered by assets expected to be converted to cash in a period roughly corresponding to the maturity of the claim.

"Flow-through process tank" means a tank whose principle use is not for storage but is primarily used in the manufacture of a product or in a treatment process. Flow-through process tanks form an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Foreclosure" or "foreclosure and its equivalent" means purchase at a foreclosure sale, acquisition or assignment of title in lieu of foreclosure, termination of a lease or other repossession, acquisition of right to title or possession, an agreement in satisfaction of the

obligation, or any other formal or informal manner (whether pursuant to law under warranties, covenants, conditions, representations or promise from the borrower) by which the holder acquires title to or possession of secured property.

"Free product" refers to petroleum that is present as a nonaqueous phase liquid (that is, liquid not dissolved in water).

"Fund" means the petroleum underground storage tank fund established under T.C.A. § 68-215-101 et seq. unless the context clearly indicates otherwise.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Ground water" means water below the land surface in a zone of saturation.

"Guidance" means written guidelines and/or guidance documents provided by the division. Such guidance is not mandatory, but provides information and instruction for achieving regulatory compliance. Other approaches to achieving regulatory compliance may be used in lieu of guidance provided by the division, if those other approaches are proposed, in writing, by tank owners and/or operators for review and approval by the division prior to implementation.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Holder" is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum underground storage tank or UST system. A holder includes the initial holder or purchaser (such as a loan originator), any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market), any subsequent assignee, transferee or purchaser from a holder, guarantor of an obligation, surety or any other person who holds ownership who acts on behalf of or for the benefit of a holder.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and/or other similar devices.

"Impacted drinking water" means a water supply that contains chemicals of concern at levels that do or potentially may place human health at risk and that is being used for human consumption, and/or other human domestic use including, but not limited to, bathing, cooking, and dishwashing.

"Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest or evidence of an interest in real or personal property securing a loan or other obligations, including any legal or equitable title to real or personal property acquired incident to foreclosure and its equivalents. Evidence of such interests includes, but is not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (herein "lease financing transaction"), and legal or equitable title obtained pursuant to foreclosure, and its equivalents. Evidence of such interests also includes assignments, pledges or other rights to or other forms of encumbrances against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

"Information" means knowledge which can be communicated by any means.

"Installation" is the process of constructing a UST system for operation.

"Institutional control" means a legal means of limiting exposure to chemicals of concern at a petroleum site with a confirmed release of petroleum.

"Instruction" in the context of proprietary information means fully informing individuals in writing of their responsibilities for safeguarding proprietary information and the security procedures they shall follow.

"Legal defense cost" means any expense that an owner or operator, petroleum site owner, or provider of financial assurance incurs in defending against claims or actions brought:

1. By EPA or a state to require corrective action or to recover the costs of corrective action;
2. By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
3. By any person to enforce the terms of a financial assurance mechanism.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing petroleum.

"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.

"Month" means from the first day to the last day of the calendar month.

"Monthly" means at least once during a calendar month.

"Monitoring well" means a hole drilled into the earth, by boring or otherwise, constructed for the primary purpose of obtaining information on the elevation or physical, chemical, radiological or biological characteristics of the ground water and/or for the recovery of ground water for treatment.

"Noncommercial purposes", with respect to motor fuel, means not for resale.

"Occurrence" means the discovery of environmental contamination at a specific time and date, due to the release of petroleum from petroleum underground storage tanks.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operation" means the use, storage, filling or dispensing of petroleum contained in a petroleum underground storage tank or an underground storage tank (UST) system.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under Rule ~~4200-01-15-07~~ 0400-18-01-07.

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Operator Training", for purposes of Rule ~~4200-01-15-16~~ 0400-18-01-16, means a program recognized by the ~~Division~~ division as meeting the specific requirements for each operator class as published by EPA in the Final Grant Guidelines To States For Implementing The Operator Training Provision Of The Energy Policy Act Of 2006, August, 2007.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the petroleum to the environment.

"Owner" means:

1. In the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of petroleum; and
2. In the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Owner or operator," in the context of financial responsibility, when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.

"Penal sum" means a sum to be paid as a penalty especially under the terms of a bond.

"Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this state or any other state or country.

"Petroleum" means crude oil or any fraction thereof that is liquid at standard temperature and pressure (sixty degrees (60') Fahrenheit and 14.7 pounds per square inch absolute). The term petroleum includes but is not limited to petroleum and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Petroleum marketing facilities" include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.

"Petroleum marketing firms" are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other hazardous substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or "piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Primarily to protect a security interest" means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation, but does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as a protection of a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why ownership indicia are held shall be for protection of a security interest.

"Property damage" means those type damages to property caused by the release of petroleum from an UST system for which Tennessee law allows recovery.

"Property improvements" in the context of fund reimbursement includes, but is not limited to, petroleum dispensing equipment, canopies, signage, buildings and outbuildings, underground storage tanks, asphalt and concrete.

"Proprietary information" means any confidential information that relates to a trade secret, product, apparatus, process, operation, style of work, or financial information which is owned (not necessarily exclusively) by or licensed to a person and claimed by that person to be proprietary and confidential; provided that the claim is accompanied by a written statement from such person relating the reasons why such information should be held confidential. Such information may be submitted to the division by the owner/licensee of the trade secret, product, etc.; or by another governmental agency which has obtained the information. If submitted by the owner/licensee, the written statement accompanying the information claimed proprietary shall, at a minimum, answer the questions in parts 1 through 4 of this definition. If submitted by another governmental agency, the written statement need include only the accompanying statements/reasons obtained by that agency.

1. Will disclosure of the information be likely to substantially harm your competitive position? If so, what would the harm be, and why should it be viewed as substantial? What is the relationship between the disclosure and the harm?
2. What measures have you taken to guard against undesired disclosure of the information to others?
3. To what extent has the information been disclosed to others, and what precautions have you taken in connection with that disclosure?
4. Has the U.S. Environmental Protection Agency or any other Federal or State of Tennessee agency made a pertinent confidentiality determination? (If so, please include a copy of this determination, if available.)

"Provider of financial assurance" means an entity that provides financial assurance to an owner or operator of an underground storage tank through a mechanism or mechanisms allowed by rule ~~4200-01-15-08~~ subparagraph (4)(a) of Rule 0400-18-01-08, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or the State of Tennessee.

"Reasonable cost" means that monetary amount or range, as determined by the division, to be commensurate with a corrective action. The division's determination is based on an evaluation of typical costs expected for the particular corrective action under review considering the scope and complexity of the activities involved and/or hourly rates which are competitive among approved corrective action contractors.

"Receptor" means a person, structure, surface water body, or drinking water supply that receives or may potentially receive exposure to a chemical of concern as the result of a petroleum release.

"Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of a petroleum substance from an UST including its associated piping, into groundwater, surface water, or subsurface soils.

"Release detection" means determining whether a release of petroleum has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier immediately around or beneath it.

"Repair" means:

1. In the context of UST system operation, to restore the tank or UST system component that has caused the release of petroleum from the UST system;

2. In the context of replacement of piping on or after July 24, 2007, restoration of a portion of piping in lieu of replacement of an entire piping run authorized by the ~~Division~~ division in writing; or
3. In the context of fund eligibility of property improvements, restoration of a property improvement to the position and condition it was in immediately prior to removal for the purpose of remediation of the contamination caused by a leaking petroleum underground storage tank system.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Retraining" means any remedial training approach imposed by the ~~Division~~ division when significant operational compliance violations are discovered at a facility. Retraining may be directed to any or all operator classes assigned to a facility and may include requirements to successfully complete additional education, testing, and/or training, or be subject to other administrative or enforcement options at the discretion of the ~~Division~~ division.

"Risk Based Cleanup Level" or "RBCL" means the concentration of a chemical(s) of concern in soils or ground water in the source area(s) that will assure an acceptable risk at the point of exposure, based upon conservative non-site-specific assumptions and default parameters.

"Routinely contains petroleum" means those parts of the UST system designed to store, transport or dispense petroleum.

"SARA" means the Superfund Amendments and Reauthorization Act of 1986.

"Secondary containment" means a system designed and installed so that any material that is released from the primary containment is prevented from reaching the soil or ground water outside the system.

"Security interest" means an interest in a petroleum underground storage tank or UST system or petroleum site which is created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens and title pursuant to lease financing transaction. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, inventory and/or other personal property financing arrangements and consignments, if the transaction creates or establishes an interest in a petroleum underground storage tank or UST system or petroleum site for the purpose of securing a loan or other obligation.

"Septic tank" is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Site specific cleanup level" or "SSCL" means the concentration of a chemical(s) of concern in soils or ground water in the source area(s) that will assure an acceptable risk at the point of exposure, based upon site specific conditions.

"Source" means the source of contamination. Sources may include, but are not limited to, a leaking tank, a leaking underground storage tank system, a spill, an overflow, free product or residual contaminated soil or ground water.

"Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Submersible turbine pump" or "STP" means pump located inside a petroleum underground storage tank, positioned near the bottom of the tank, thereby "submerged" in the petroleum.

"Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

"Tank" is a stationary device designed to contain an accumulation of petroleum and constructed of non-earthen materials (for example, wood, concrete, steel, fiberglass) that provide structural support.

"Tank compartment" means a portion of a UST that is separated from other portions of that UST by one or more walls, or bulkheads, creating two (2) or more individual storage spaces within the UST.

"Termination" in the context of financial responsibility means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.

"Third party" means any person except: the owner or operator of an UST system from which a release of petroleum occurred; the owner of the petroleum site; any person in his or her capacity as an agent, servant or employee of such owner or operator or petroleum site owner; the division; the department; or the Environmental Protection Agency.

"Third party claim" means any civil action brought or asserted by a third party against any owner and/or operator for damages resulting in bodily injury or property damages which are caused by a release of petroleum from an UST system.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any below ground release.

"Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of petroleum, and the volume of which (including the volume of underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of eleven hundred (1,100) gallons or less capacity used for storing motor fuel for non-commercial purposes;
2. Tank used for storing heating oil for consumption on the premises where stored;
3. Septic tank;
4. Pipeline facility (including gathering lines) regulated under:
 - (i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or
 - (ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or
 - (iii) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in subparts 4(i) or (ii) of this definition;
5. Surface impoundment, pit, pond, or lagoon;
6. Storm-water or wastewater collection system;

7. Flow-through process tank;
8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in parts 1 through 9 of this definition.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of petroleum.

"UST facility" means any location at which one or more regulated underground storage tank systems are located.

"UST system" or "tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

"Waters" means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to, and retained within, the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters.

"Week" means any seven day period, provided that days run consecutively.

"Weekly", in the context of manual tank gauging, means once per week, resulting in a minimum of four weekly tests per month.

(5) Proprietary information.

(a) General.

1. Purpose, scope and applicability.

Any information which is supplied to the division as required or necessitated by the Tennessee Petroleum Underground Storage Tank Act or the regulations promulgated pursuant thereto or which is supplied by other governmental agencies and which is designated proprietary information (as defined in paragraph (4) of this rule) shall be handled by the division as specified in this paragraph to assure that its confidentiality is maintained. Unless it is claimed or designated as proprietary at the time it is first delivered to the division together with the supporting information required by paragraph (4) of this rule, any claim that it is proprietary is waived and any information supplied to the division under or relating to these rules shall be available for public review at any time during the division's normal business hours, subject to availability and scheduling limitations set by the division, without further notice to any person supplying the information or having an interest in the information.

2. Policy.

Division employees are prohibited from disclosing, in any manner and to any extent not authorized by law or regulations, any proprietary information coming to them in the course of their employment or official duties. Proprietary information is to be held in

confidence, protected in accordance with the procedures described in this paragraph, and released to authorized persons.

(b) Responsibilities.

1. Commissioner.

The commissioner is responsible for:

- (i) Designating a document control officer;
- (ii) Assuring that all division employees receiving and handling proprietary information receive instruction as to their responsibility for controlling proprietary information;
- (iii) Maintaining a record which lists all employees who have authorized access to proprietary information;
- (iv) Obtaining a "Confidentiality Agreement" from all employees having access to proprietary information;
- (v) Obtaining a "Confidentiality Agreement upon Transfer or Termination" from all employees having access to proprietary information in the event such employees decide to terminate employment or are transferred to a position not requiring such access;
- (vi) Assuring that the appropriate requirements for storage and use are met, including control of access to keys and combination;
- (vii) Taking appropriate disciplinary action concerning any division employees who fail to comply with the requirements of this paragraph; and
- (viii) Notifying the person submitting proprietary information which has been disclosed in violation of the requirements of this paragraph of such occurrence.

2. Document control officer.

The document control officer is responsible for the maintenance, control and distribution of all proprietary information received by the division as follows:

- (i) Logging of all proprietary information as received by the division, both incoming and outgoing;
- (ii) Assigning a document control number to each document received containing proprietary information;
- (iii) Maintaining a system which identifies employees authorized to receive proprietary information;
- (iv) Releasing proprietary information only to persons from whom the confidentiality agreements of subparts 1(iv) and (v) of this subparagraph have been obtained;
- (v) Maintaining a system to insure that any proprietary information transmitted to field locations is received;
- (vi) Maintaining at division offices a system for retrieval of documents that are furnished to other program offices;

- (vii) Authorizing and supervising the reproduction and destruction of proprietary information; and
- (viii) Assuring that recipients of proprietary information have proper storage capability prior to release of such documents, or, if they do not, requiring return of the released proprietary information the same day.

3. Employees.

Employees are responsible for:

- (i) Controlling all proprietary information entrusted to them;
- (ii) Only discussing proprietary information with authorized persons;
- (iii) Never leaving the proprietary information unattended when not properly stored;
- (iv) Never discussing the proprietary information over the telephone except upon approval of the document control officer should the proprietary information be needed in an emergency situation;
- (v) Storing the proprietary information as specified in part (c)5 of this paragraph when not in use and at the close of business;
- (vi) Not reproducing proprietary information documents. Additional copies shall be obtained through the document control officer; and
- (vii) Reporting immediately possible violations of these regulations to the commissioner.

(c) Procedures.

1. Receipt and handling.

The document control officer shall:

- (i) Receive all information claimed as proprietary and confidential which is submitted to the division;
- (ii) Log in all proprietary information received by the division;
- (iii) Assign a document control number to all proprietary information;
- (iv) Attach a proprietary information cover sheet to the document;
- (v) Release proprietary information only to authorized persons; and
- (vi) Review the claim and, using the written statement accompanying the information claimed proprietary, the answers to the questions in the definition of proprietary information in paragraph (4) of this rule and other information as may be required, determine whether to approve or deny it, in part or in whole.

2. Transmission.

- (i) Proprietary information shall be transmitted in a double envelope by Registered Mail, Return Receipt Requested. The inner envelope shall reflect the address of the recipient with the following wording on the front side of the inner envelope:

"Confidential Business – To Be Opened By Document Control Officer Only."

The outer envelope shall reflect the normal address without the additional wording.

- (ii) All requests to the document control officer for proprietary information shall be in writing and signed by the requesting employee.
- (iii) Proprietary information may be hand carried to other division facilities by authorized persons provided the dispatching document control officer maintains a record and obtains a receipt from the receiving document control officer. Information being hand carried shall be packaged as described in subpart (i) of this part.
- (iv) Proprietary information within a division office shall be hand delivered only by an authorized person. At no time shall proprietary information be transmitted through inner office mailing channels.

3. Reproduction.

Proprietary information shall not be reproduced except upon approval by and under the supervision of the document control officer. Any reproduction shall be limited by a document control system and be subject to the same control requirements as for the original.

4. Destruction.

Proprietary information shall not be destroyed except upon approval by and under the supervision of the document control officer. The document control officer shall keep a record of destruction in the appropriate log and notify the person submitting the proprietary information.

5. Storage.

- (i) Documents containing proprietary information shall be stored within a locked cabinet so as to limit access to authorized persons.
- (ii) Keys and/or combinations to cabinets and/or rooms where the data is stored shall be issued only to an authorized person.

(d) Transmittal outside division offices.

Proprietary information shall not be transmitted outside division offices without the approval of the commissioner and such information shall be transmitted by the document control officer in accordance with part (c)2 of this paragraph. The person submitting the proprietary information shall be notified when such occurs.

(e) Release to EPA.

Notwithstanding any requirement of this paragraph seemingly to the contrary, proprietary information may be released to the U.S. Environmental Protection Agency in connection with the commissioner's or board's implementation of his or its responsibilities pursuant to the Act or as necessary to comply with federal law. Any such release of proprietary information to EPA, however, may be made with a confidentiality claim and shall be accompanied by the written statement received by the division pursuant to the definition of proprietary information as set forth in paragraph (4) of this rule. Any transmittal of proprietary information to EPA shall be subject to the requirements of subparagraph (d) of this paragraph. The commissioner shall notify the submitter of proprietary information of the release of such information to EPA as soon as practicable, to be no later than five (5) days after such release, following receipt of EPA's request for the information.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~4200-01-15-03~~ 0400-18-01-02 UST Systems: Installation and Operation.

(1) Installation.

- (a) At least fifteen (15) days prior to the installation of any tank and/or new UST system construction activities at the site, the tank owner shall notify the division in the following manner:
1. Submit a pre-installation notification form in accordance with rule ~~4200-01-15-03~~ part (1)(a)1 of Rule 0400-18-01-03 for all the petroleum underground storage tanks and/or UST systems for which installation and/or construction is planned; and
 2. Submit annual tank fees for all tanks, tank compartments and/or UST systems, which are listed in the pre-installation notification form, in accordance with rule ~~4200-01-15-10~~ paragraph (3) of Rule 0400-18-01-10.
- (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 ~~4200-01-15-04~~ subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-04, and/or motor fuel dispensers installed on or after July 24, 2007, shall be secondarily contained in accordance with paragraph (2) of this rule.
- (d) The following requirements take effect when a petroleum product is being placed into a tank, tank compartment and/or UST system either during or following installation:
1. Petroleum shall not be placed into an underground storage tank, tank compartment and/or UST system until such time as a notification form has been submitted to the ~~Division~~ division in accordance with part (a)1 of 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 0400-18-01-04 immediately if the tank or tank compartment contains more than two and one-half (2.5) centimeters (one (1) inch) of product.
 5. 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 subparagraph (4)(b) of Rule 0400-18-01-04 and a tank tightness test in accordance with rule 1200-01-15-04 subparagraph (3)(c) of Rule 0400-18-01-04 shall be performed upon completion of the installation and prior to the dispensing of fuel from the UST system. The results of this tightness test shall be maintained for the operational life of the underground storage tank system. Such records shall be transferred in accordance with rule 1200-01-15-03 subparagraph (2)(d) of Rule 0400-18-01-03 at the time of ownership transfer.
- (e) Installation shall be certified in accordance with rule 1200-01-15-03 part (1)(d)1 of Rule 0400-18-01-03 within fifteen (15) days following completion of the installation.
- (2) Secondary Containment.
- (a) Tanks.
- Tanks that are required to be secondarily contained in accordance with rule 1200-01-15-04 subparagraph (2)(c) of Rule 0400-18-01-01, with subparagraph (1)(c) of this rule, or with paragraph (6) of this rule shall comply with the following:
1. Tanks shall be double-walled or jacketed and shall have an interstitial space;
 2. Tanks shall meet the interstitial monitoring requirements of rule 1200-01-15-04 part (3)(g)1 of Rule 0400-18-01-04;
 3. Tanks shall prevent the release of petroleum to the environment for the operational life of the underground storage tanks;
 4. Tanks shall contain a release until detected and removed; and
 5. Tanks shall be monitored for a release at least every thirty (30) days in accordance with part 2 of this subparagraph.
- (b) Piping:
- Pressurized piping or suction piping that does not meet the requirements of rule 1200-01-15-04 subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-04 that is required to be secondarily contained in accordance with rule 1200-01-15-04 subparagraph (2)(c) of Rule 0400-18-01-01, with subparagraphs (1)(c) of this rule, or with paragraph (6) of this rule shall comply with the following:
1. Piping shall comply with one of the following:
 - (i) Piping shall be one hundred percent (100%) double-walled; or
 - (ii) Piping shall be secondarily contained with single-walled piping ends that terminate in tank and dispenser sumps that meet the requirements of parts (c)1 through 3 of subparagraph (c) of this paragraph;
 2. Piping shall meet the interstitial monitoring requirements of rule 1200-01-15-04 part (3)(g)1 of Rule 0400-18-01-04;
 3. Piping shall prevent the release of petroleum to the environment for the operational life of the piping;

4. Piping shall contain a release until detected and removed; and
5. Piping shall be monitored for a release at least every thirty (30) days.

(c) Motor fuel dispensers.

Motor fuel dispensers that are required to be secondarily contained in accordance with subparagraphs (1)(c) of this rule or with paragraph (6) of this rule shall comply with the following:

1. The containment sump shall be liquid tight on the sides, the bottom and at any penetrations;
2. The containment sump shall be compatible with the petroleum products stored in the UST system; and
3. The containment sump shall be designed to allow for a visual inspection and access to the components of containment systems, including that used for piping, and shall be monitored in accordance with rule 1200-01-15-04 subparagraph (1)(g) of Rule 0400-18-01-04.

(3) Spill and overfill prevention.

(a) Equipment.

1. Except as provided in part 2 of this subparagraph, to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment:
 - (i) Spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
 - (ii) Overfill prevention equipment that will:
 - (I) Automatically shut off flow into the tank when the tank is no more than ninety-five percent (95%) full;
 - (II) Alert the transfer operator when the tank is no more than ninety percent (90%) full by restricting the flow into the tank or triggering a high-level alarm; or
 - (III) Restrict flow thirty (30) minutes prior to overfilling, alert the operator with a high level alarm one (1) minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.
2. Owners and/or operators are not required to use the spill and overfill prevention equipment specified in part 1 of this subparagraph if:
 - (i) Alternative equipment is used that is determined by the division to be no less protective of human health and the environment than the equipment specified in subpart 1(i) or (ii) of this subparagraph; or
 - (ii) The UST system is filled by transfers of no more than twenty-five (25) gallons at one time.

(b) Operating requirements.

1. For as long as the UST system is used to store petroleum, owners and/or operators shall ensure that releases due to spilling or overfilling do not occur. The owner and/or operator shall ensure that the volume available in the tank is greater than the volume of petroleum to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.
2. Each spill catchment basin shall be provided with a lid that is in good condition and is not in contact with the fill cap.
3. Owners and/or operators shall keep spill catchment basins free of water, dirt, debris and/or other substances that could interfere with the ability of the catchment basin to prevent spills.
4. Spill catchment basins shall be visually inspected by the owner and/or operator at least once per month to assure the integrity of the storage space provided for spill containment. A log of these inspections showing at a minimum the last twelve (12) months shall be maintained by the owner and/or operator. Unless directed or allowed to do otherwise by the ~~Division~~ division the log shall be maintained in a format established by the ~~Division~~ division and in accordance with guidance provided by the ~~Division~~ division.
5. The owner and/or operator shall report, investigate, and clean up any spills and overfills in accordance with ~~rule 1200-04-16-05~~ paragraph (4) of Rule 0400-18-01-05.

(4) Corrosion protection.

(a) Tank construction.

Each tank shall be properly designed and constructed and/or properly upgraded. Any portion underground that routinely contains petroleum shall utilize one of the following methods of corrosion protection:

1. The tank is constructed of fiberglass-reinforced plastic.
2. The tank is constructed of steel which is cathodically protected in the following manner:
 - (i) The tank is coated with a suitable dielectric material unless cathodic protection has been added to the tank for the purpose of upgrading;
 - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
 - (iii) Impressed current systems are designed to allow determination of current operating status as required in part (c)4 of this paragraph;
 - (iv) Cathodic protection systems are operated and maintained in accordance with subparagraph (c) of this paragraph or in a manner determined by the division to provide equivalent protection against corrosion, provided that such determination is made by the division prior to installation and/or operation; and
 - (v) If cathodic protection was initially installed for the purpose of upgrading subsequent to UST system installation, the integrity of the tank has been ensured using one of the following methods:
 - (I) Internal inspection and assessment ensured that the tank was structurally sound and free of corrosion holes prior to installing the cathodic protection system.
 - (II) At the time of installation of the cathodic protection system, the tank had been installed for less than ten (10) years and monthly monitoring was

being conducted in accordance with ~~rule 1200-01-15-04~~ subparagraphs (3)(d) through (h) of Rule 0400-18-01-04.

- (III) The tank was assessed for corrosion holes by conducting two (2) tightness tests that met the requirements of ~~rule 1200-01-15-04~~ subparagraph (3)(c) of Rule 0400-18-01-04:
 - I. The first tightness test was conducted no more than one hundred twenty (120) days prior to installing the cathodic protection system.
 - II. The second tightness test was conducted between three (3) and six (6) months following the first operation of the cathodic protection system.
- (IV) The tank was assessed for corrosion holes by a method determined by the division, prior to assessment, to be no less protective of human health and the environment than items (I) through (III) of this subpart.

3. The tank, which is constructed of steel and was installed on or before December 22, 1988, was lined subsequent to installation of the tank and has satisfied the following requirements:

- (i) The lining was installed in accordance with at least the following procedures and practices:
 - (I) The lining was installed so as to effectively prevent releases for the operational life of the tank;
 - (II) The lining material is compatible with the product to be stored;
 - (III) The tank shell was structurally sound prior to lining;
 - (IV) Lining manufacturers directions were followed during installation of lining;
 - (V) After the tank was lined and before the tank was returned to service, the tank was tank tightness tested according to ~~rule 1200-01-15-04~~ subparagraph (3)(c) of Rule 0400-18-01-04; and
 - (VI) Records that demonstrate compliance with this part shall be maintained for the remaining operational life of the tank. Such records shall be transferred in accordance with ~~rule 1200-01-15-03~~ subparagraph (2)(d) of Rule 0400-18-01-03 at the time of ownership transfer; and
- (ii) Within ten (10) years after lining, and every five (5) years thereafter, the lined tank is/was internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications. However, tanks which use lining in combination with cathodic protection systems operated in accordance with subparagraph (c) of this paragraph do not have to be internally inspected subsequent to addition of cathodic protection.
- (iii) Lining may be used in combination with cathodic protection if the cathodic protection system meets the requirements of subparts 2(ii) through (v) of this subparagraph.
- (iv) Unless directed to do otherwise by the ~~Division~~ division, a tank shall be permanently closed in accordance with ~~Rule 1200-01-15-07~~ 0400-18-01-07 if the internal inspection required in subpart (ii) of this part determines:

- I. The tank is not structurally sound; and/or
 - II. The lining is not performing in accordance with original design specifications.
- (v) Unless directed to do otherwise by the ~~Division~~ division, a tank constructed of steel that was lined on or before December 22, 1999, to which a cathodic protection system was not installed on or before December 22, 2012, shall be permanently closed by December 22, 2012.
4. The tank is constructed of a steel-fiberglass-reinforced-plastic composite.
 5. The tank is constructed of metal without additional corrosion protection measures provided that:
 - (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operational life; and
 - (ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (i) of this part for the remaining operational life of the tank. Such records shall be transferred in accordance with ~~rule 1200-01-15-03~~ subparagraph (2)(d) of Rule 0400-18-01-03 at the time of ownership transfer.
 6. The tank construction and corrosion protection are determined by the division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than parts 1 through 5 of this subparagraph.

(b) Piping construction.

Piping that routinely contains petroleum and is in contact with the ground or with standing water or other liquids shall be properly designed and constructed and/or properly upgraded. However, the presence of condensate within a sump or containment area shall not constitute contact with standing water. Piping shall also utilize at least one of the following methods of corrosion protection:

1. Piping, whether rigid or flexible in design, that is constructed of nonmetallic materials, and complies with subparts (i) and (ii) of this part.
 - (i) Piping installed on or after November 1, 2006, shall meet or exceed the Standard for Safety established by Underwriters Laboratory in UL 971 - "Non-Metallic Underground Piping for Flammable Liquids", July 1, 2005. This requirement shall apply to all new and/or replacement piping.
 - (ii) Pipe marking or labeling shall comply with the Underwriters Laboratory standard referenced in subpart (i) of this part. Piping shall, at a minimum, be permanently and legibly marked with the following information at ten (10) foot intervals:
 - (I) The manufacturer's name, trade name, trademark, or other information that identifies the manufacturer;
 - (II) Manufacturing date, or a verifiable date code, accurate to at least the quarter of a year in which the pipe was manufactured;
 - (III) The nominal size of the pipe and a number identifying the pipe, such as a catalog, model or part number;

- (IV) The maximum pressure rating (psig) and the statement: Underground Use Only;
- (V) The type of pipe system(s), which may be abbreviated, and which may include, but not be limited to:
 - I. Primary Carrier;
 - II. Secondary Containment;
 - III. Integral Primary/Secondary;
 - IV. Normal Vent; and/or Vapor Recovery;
- (VI) The flammable liquid group rating(s), which may be abbreviated, and which may include, but not be limited to:
 - I. Motor Vehicle Fuels;
 - II. Concentrated Fuels;
 - III. High Blend Fuel; and/or
 - IV. Aviation and Marine Fuels.

2. The piping, whether rigid or flexible in design, including flex connectors, is constructed of steel and cathodically protected in the following manner:
 - (i) The piping is coated with a suitable dielectric material unless cathodic protection was added for the purpose of upgrading;
 - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
 - (iii) Impressed current systems are designed to allow determination of current operating status as required in part (c)4 of this paragraph; and
 - (iv) Cathodic protection systems are operated and maintained in accordance with subparagraph (c) of this paragraph or in a manner determined by the division to provide equivalent protection against corrosion, provided that such determination is made by the division prior to installation and/or operation of the cathodic protection system.
3. The piping is constructed of metal without additional corrosion protection measures provided that:
 - (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operational life; and
 - (ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (i) of this part for the remaining operational life of the piping. Such records shall be transferred in accordance with rule 1200-01-45-03 subparagraph (2)(d) of Rule 0400-18-01-.03 at the time of ownership transfer.
4. The piping construction and corrosion protection are determined by the division to be designed to prevent the release or threatened release of any stored petroleum in a

manner that is no less protective of human health and the environment than the requirements in parts 1 through 3 of this subparagraph.

5. Fill piping used for introducing petroleum into an underground storage tank system shall not be required to have cathodic protection if it is lined with a drop tube.

(c) Operation and maintenance of corrosion protection.

All owners and/or operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store petroleum:

1. All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank, piping and underground ancillary equipment that routinely contains petroleum and is in contact with the ground or with standing water or other liquids. However, the presence of condensate within a sump or containment area shall not constitute contact with standing water.
2. All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
 - (i) Frequency. All cathodic protection systems shall be tested within six (6) months of installation and at least every three (3) years thereafter;
 - (ii) The cathodic protection system shall be functioning as designed and is effectively preventing corrosion; and
 - (iii) Test results shall be recorded in a format established by the ~~Division~~ division, completed in accordance with guidance provided by the ~~Division~~ division, and maintained by the owner and/or operator to demonstrate compliance with this subparagraph.
3. All UST systems to which sacrificial anodes have been added for the purpose of replacing or enhancing an existing cathodic protection system shall be tightness tested in accordance with subparagraphs (3)(c) and (4)(b) of Rule ~~1200-01-15-04~~ 0400-18-01-04. The tightness test shall be conducted no later than six (6) months, but no sooner than three (3) months, following the addition of the anodes.
4. UST systems with impressed current cathodic protection systems shall also be inspected every sixty (60) days to ensure the equipment is running properly. The results of the inspection shall be recorded in a format established by the division and in accordance with the instructions provided by the division.
5. For UST systems using cathodic protection, records of the operation of the cathodic protection shall be maintained, in accordance with rule ~~1200-01-15-03~~ paragraph (2) of Rule 0400-18-01-03, to demonstrate compliance with the performance standards in this paragraph. These records shall be maintained in accordance with the following:
 - (i) The results of testing from the last two inspections required in part 2 of this subparagraph shall be retained;
 - (ii) A record of the addition of sacrificial anodes to an existing cathodic protection system shall be retained for the remaining operational life of the underground storage tank system and such records shall be transferred in accordance with rule ~~1200-01-15-03~~ subparagraph (2)(d) of Rule 0400-18-01-03 at the time of ownership transfer;

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- (iii) The results of tightness testing required in part 3 of this subparagraph shall be retained for the remaining operational life of the underground storage tank system. Such records shall be transferred in accordance with ~~rule 1200-01-15-03~~ subparagraph (2)(d) of Rule 0400-18-01-03 at the time of ownership transfer; and
- (iv) The results of the last three inspections required in part 4 of this subparagraph shall be retained.

6. UST systems with impressed current systems that have failed to provide continuous protection in accordance with part 1 of this subparagraph shall comply with this part in accordance with the following:

- (i) For UST systems with impressed current systems which have been turned off or inoperable for a period of less than twelve (12) months, unless directed to do otherwise by the ~~Division~~ division, the tanks and lines shall be tightness tested in accordance with subparagraphs (3)(c) and (4)(b) of ~~Rule 1200-01-15-04~~ 0400-18-01-04. Another tightness test shall be conducted no later than six (6) months, but no sooner than three (3) months, following the return of the impressed current system to operation.
- (ii) For UST systems with impressed current systems which have been turned off or inoperable for a period of twelve (12) months or more, unless directed to do otherwise by the ~~Division~~ division, the tanks shall be permanently closed.

(5) Compatibility.

Owners and/or operators shall use an UST system made of or lined with materials that are compatible with the petroleum stored in the UST system.

(6) Replacement.

Tank owners and/or operators replacing any tanks, piping and/or motor fuel dispensers on or after July 24, 2007, shall comply with the following:

- (a) Tank owners and/or operators replacing any tanks, piping and/or motor fuel dispensers shall install secondary containment and interstitial monitoring for the replacement tanks, pressurized piping, and suction piping that does not meet the requirements of ~~rule 1200-01-15-04~~ subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-04 and secondary containment for replacement motor fuel dispensers in accordance with paragraph (2) of this rule.
- (b) In the case of the replacement of an existing underground storage tank or existing piping connected thereto, the requirements in subparagraph (a) of this paragraph shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes located at the underground storage tank facility.
- (c) Unless determined to be a piping repair by the ~~Division~~ division in accordance with subparagraph (d) of this paragraph, if piping is being replaced, all piping connected to that particular underground storage tank shall be removed and secondarily contained piping with interstitial monitoring shall be installed in accordance with paragraph (2) of this rule. However, if the replacement piping meets the requirements for suction piping set forth in ~~rule 1200-01-15-04~~ subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-04, the piping does not have to be secondarily contained.
- (d) Piping repairs:
 - 1. The division may authorize a repair of underground piping, which shall not be considered a replacement;

2. Requests for ~~Division~~ division authorization of piping repairs shall be submitted in writing. However, ~~Division~~ division authorization shall not be required and the repair shall not be considered replacement if:
 - (i) The repair does not involve replacement of any piping; or
 - (ii) The repair is limited to replacement of a flexible connector;
 3. The division may request additional information about the proposed repair as deemed necessary; and
 4. Requests for division authorization of piping repairs shall be approved or denied by the division.
- (e) Replacement of a motor fuel dispenser has occurred and is subject to the provisions of this paragraph as well as the requirements in subparagraph (2)(c) of this rule if the existing dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the piping is replaced. Connecting equipment includes one of the following:
1. Components beneath the dispenser that are below the shear valve in a pressurized piping system; or
 2. Components beneath the dispenser that are below the union in a suction piping system.
- (f) Records documenting the replacement of tanks, piping and/or dispensers shall be maintained for the operational life of the UST system. Such records shall document compliance with the design criteria set forth in paragraph (2) of this rule. However, if the replacement piping meets the requirements for suction piping set forth in ~~rule 1200-01-15-04~~ subparts (2)(b)2(i) through (iii) of Rule 0400-18-01-04, the piping components do not have to be secondarily contained.
- (7) Repairs allowed.
- Owners and/or operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store petroleum. The repairs shall meet the following requirements:
- (a) Repairs to UST systems shall be conducted so as to effectively prevent releases for the operational life of the tank system.
 - (b) Repairs to fiberglass-reinforced plastic tanks shall be made by the manufacturer's authorized representatives or in accordance with the manufacturer's specifications.
 - (c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced in accordance with subparagraphs (6)(a) through (d) and (6)(f) of this rule. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications if ~~Division~~ division approval has been granted in accordance with subparagraph (6)(d) of this rule.
 - (d) Repaired tanks and/or piping shall be tightness tested in accordance with subparagraphs (3)(c) and (4)(b) of ~~Rule 1200-01-15-04~~ 0400-18-01-04 within thirty (30) days following the date of the completion of the repair except as provided in parts 1 through 3 of this subparagraph:
 1. The repaired tank is internally inspected prior to placing product in the tank; or
 2. The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in ~~rule 1200-01-15-04~~ subparagraphs (3)(d) through (h) of Rule 0400-18-01-04; however, on or after January 1, 2009, the monitoring methods in part (3)(d)1, subparagraph (3)(f), and parts (3)(g)2 and 3 of ~~Rule 1200-01-15-04~~ 0400-18-01-04 shall no longer meet the requirements of this rule; in addition, on or after January 1,

2010, the monitoring method in ~~rule 1200-01-15-04~~ subparagraph (3)(e) of Rule 0400-18-01-04 shall no longer meet the requirements of this rule; or

3. Another test method is used, provided that prior to use in the State of Tennessee that method is determined by the division to be no less protective of human health and the environment than those listed above in parts 1 and 2 of this subparagraph.
- (e) Within six (6) months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with parts (4)(c)2 and 3 of this rule to ensure that it is operating properly.
 - (f) UST system owners and/or operators shall maintain records of each repair that demonstrate compliance with the requirements of this paragraph for the remaining operating life of the UST system. Such records shall be transferred in accordance with ~~rule 1200-01-15-03~~ subparagraph (2)(d) of Rule 0400-18-01-03 at the time of ownership transfer.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-03~~ 0400-18-01-03 Notification, Reporting and Record Keeping.

(1) Notification requirements.

- (a) Any owner who intends to bring or brings a new underground storage tank system into use shall notify the division as follows:

1. Pre-installation notification form.

Notification shall be made fifteen (15) days prior to commencement of installation of such underground storage tank systems by submitting a pre-installation notification form to the division. The pre-installation notification form shall include, but not be limited to, the following information: the property address; the business name; the tank owner's name and address; and the number of compartments in each tank. This information shall be submitted in a format established by the division and the pre-installation notification form shall be completed in accordance with instructions provided by the division.

2. Notification form for newly installed tanks.

The owner of a newly installed tank shall submit notification of the underground storage tank system installation to the division within fifteen (15) days in accordance with subparagraphs (b) through (d) of this paragraph. The owner shall use the notification form designated by the division.

- (b) Owners shall complete the notification form accurately and in its entirety for each tank, tank compartment, and the piping connected thereto, for which notice is required in accordance with part (a)2 of this paragraph. The form shall be completed in accordance with the instructions provided by the ~~Division~~ division.
- (c) Owners required to submit notification under part (a)2 of this paragraph shall provide notification to the division for each tank and tank compartment they own. Owners may provide notification for several tanks using one notification form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.
- (d) All owners of UST systems installed after December 22, 1988 shall certify in the notification form compliance with the following requirements:
 1. Installation of tanks and piping has been certified using one of the following methods:
 - (i) The installer has been certified by the tank and piping manufacturers;

- (ii) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation;
 - (iii) The installation has been inspected and approved by the Division division;
 - (iv) All work listed in the manufacturer's installation checklist has been completed; or
 - (v) The owner has complied with another method for ensuring compliance with rule 1200-01-15-02 paragraph (1) of Rule 0400-18-01-02 that has been determined by the Division division prior to installation to be no less protective of human health and the environment.
- (e) All owners of UST systems installed after December 22, 1988 shall ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements in rule 1200-01-15-02 paragraph (1) of Rule 0400-18-01-02.
 - (f) Any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser at the time of sale of such tank of the owner's obligations for notification prior to installation under subparagraph (a) of this paragraph. The seller shall place the statement contained in Appendix 1200-01-15-03 0400-18-01-03-A on all invoices and shipping tickets.
 - (g) Any change in the status of the tanks at a petroleum UST facility shall be reported within thirty (30) days of said change. This includes but is not limited to changes of ownership, upgrading or replacement of tanks, changes in mailing address, permanent closure of a tank compartment, and changes in service. Such reports shall be made using an amended notification form. In the case of a sale of tanks, the seller shall submit the notification form designated by the division, completed in accordance with instructions provided by the division, and shall also inform the buyer of the notification requirement.
 - (h) Any change in Class A, or Class B Operators shall be reported to the Division division within thirty (30) days of said change in the Division division's web based training database.
- (2) Reporting and record keeping.

Owners, operators, and/or other responsible parties of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the Division division, as well as requests for document submission, testing, and monitoring by the owner, operator, and/or other responsible parties in accordance with the Tennessee Petroleum Underground Storage Tank Act T.C.A. §68-215-101 et seq.

(a) Reporting.

Owners, operators, and/or other responsible parties shall submit the following information to the division:

1. Notification for all UST systems (rule 1200-01-15-03 paragraph (1) of this rule, which includes certification of installation for new UST systems (rule 1200-01-15-03 subparagraphs (1)(d) and (e) of this rule);
2. Reports of all releases including suspected releases (rule 1200-01-15-05 paragraph (1) of Rule 0400-18-01-05), spills and overfills (rule 1200-01-15-05 paragraph (4) of Rule 0400-18-01-05), and confirmed releases (Rule 1200-01-15-06 0400-18-01-06);
3. Corrective actions planned or taken including, but not limited to, initial response measures (rule 1200-01-15-06 paragraph (3) of Rule 0400-18-01-06), hazard management measures (rule 1200-01-15-06 paragraph (4) of Rule 0400-18-01-06), initial site characterization and exposure assessment (rule 1200-01-15-06 paragraph (5) of Rule 0400-18-01-06), corrective action plan (rule 1200-01-15-06 paragraph (10) of Rule 0400-18-01-06), and as otherwise directed by the division;

4. A notification before permanent closure or change-in-service (~~rule 1200-01-15-07 paragraphs (3) and (4) of Rule 0400-18-01-07~~); and
5. Tank closure activities including site assessment results (~~rule 1200-01-15-07 paragraph (5) of Rule 0400-18-01-07~~).

(b) Record keeping.

Owners, operators, and/or other responsible parties shall maintain the following information:

1. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (~~rule 1200-01-15-02 part (4)(a)5 of Rule 0400-18-01-02; rule 1200-01-15-02 part (4)(b)3 of Rule 0400-18-01-02~~);
2. Documentation of operation of corrosion protection equipment (~~rule 1200-01-15-02 subparagraph (4)(c) of Rule 0400-18-01-02~~);
3. Documentation of UST system repairs (~~rule 1200-01-15-02 subparagraph (7)(f) of Rule 0400-18-01-02~~);
4. Recent compliance with release detection requirements (~~rule 1200-01-15-04 paragraph (5) of Rule 0400-18-01-04~~); and
5. Results of the site investigation conducted at permanent closure (~~rule 1200-01-15-07 paragraph (5) of Rule 0400-18-01-07~~).

(c) Availability and maintenance of records.

1. Owners, operators, and/or other responsible parties shall keep the records required either:
 - (i) At the UST site and immediately available for inspection by the division; 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 paragraph (7) of Rule 0400-18-01-07~~, owners, operators, and/or other responsible parties are also provided with the additional alternative of mailing closure records to the division 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 0400-18-01-03-A~~

Statement for shipping tickets and invoices.

Note: A federal law (the Resource Conservation and Recovery Act (RCRA), as amended (Pub. L. 98-616)) requires owners of certain underground storage tanks to notify designated state or local agencies by May 8, 1986, of the existence of their tanks. The Tennessee Petroleum Underground Storage Tanks Act (T.C.A. § 68-215-101 et seq.) also contains notification requirements. Notifications for tanks brought into

use after July 1, 1989 shall be made fifteen (15) days in advance of installation. Consult EPA's regulations, issued on November 8, 1985 (40 CFR Part 280), state law (T.C.A. §68-215-101 et seq.) and state regulations (Chapter 1200-01-15) to determine if you are affected by these laws and regulations.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-04~~ ~~0400-18-01-04~~ Release Detection.

(1) General requirements for release detection.

- (a) Owners and/or operators of UST systems shall provide a method, or combination of methods, of release detection that:
1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains petroleum;
 2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
 3. Meets the performance requirements of paragraph (3) or (4) of this rule, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that date, shall be capable of detecting the leak rate or quantity specified for that method in subparagraphs (3)(b), (c), and (d) or (4)(a) and (b) of this rule with a probability of detection of 0.95 and a probability of false alarm of 0.05.
- (b) When a release detection method operated in accordance with the performance standards in paragraphs (3) and (4) of this rule indicates a release may have occurred, owners and/or operators shall notify the division in accordance with Rule ~~1200-01-15-05~~ ~~0400-18-01-05~~. If more than one method of release detection is operated on a UST system, a suspected release shall be reported to the division in accordance with Rule ~~1200-01-15-05~~ ~~0400-18-01-05~~ if any one of the release detection methods indicates a release may have occurred.
- (c) Owners and/or operators of newly installed USTs shall comply with the release detection requirements of this rule immediately upon installation.
- (d) If a method of release detection that complies with the requirements of this rule cannot be applied to and/or operated for any UST system, the owner and/or operator of that UST system shall complete the closure procedures in Rule ~~1200-01-15-07~~ ~~0400-18-01-07~~.
- (e) If a release detection method selected by the owner and/or operator cannot meet the performance standards in paragraph (3) and (4) of this rule to the satisfaction of the division, then the owner and/or operator shall select another method of release detection.
- (f) The dispenser cover shall be opened and a visual inspection for petroleum releases, including seeps and drips, shall be performed at least quarterly, that is, at least once every three (3) months. A log of these inspections showing at a minimum the last twelve (12) months shall be maintained by the owner and/or operator.
- (g) Under-dispenser containment sumps for motor fuel dispensers required by rule ~~1200-01-15-02~~ ~~subparagraph (1)(c)~~ or ~~paragraph (6)~~ of Rule ~~0400-18-01-02~~ to be secondarily contained in accordance with rule ~~1200-01-15-02~~ ~~subparagraph (2)(c)~~ of Rule ~~0400-18-01-02~~ shall be visually inspected at least quarterly, that is, at least once every three (3) months. A log of these inspections, showing at a minimum the last twelve (12) months, shall be maintained by the owner and/or operator. The visual inspection shall check for the presence of petroleum and/or water in the sumps. If liquid is observed in the dispenser sump, the liquid shall be removed from the sump in such a manner as to prevent the release of petroleum into the environment.

(2) Requirements for petroleum UST systems.

Owners and/or operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

(a) Tanks.

Tanks shall be monitored at least monthly for releases using one of the methods listed in subparagraphs (3)(d) through (i) of this rule, except that:

1. UST systems that meet the performance standards in Rule ~~4200-01-15-02~~ 0400-18-01-02, and the manual tank gauging requirements in subparagraph (3)(b) of this rule, may use tank tightness testing (conducted in accordance with subparagraph (3)(c) of this rule) at least every five (5) years until ten (10) years after the tank was installed or upgraded in compliance with the performance standards in Rule ~~4200-01-15-02~~ 0400-18-01-02. UST systems installed before July 24, 2007 that meet the performance standards in Rule ~~4200-01-15-02~~ 0400-18-01-02, and the monthly inventory control requirements in subparagraphs (3)(a) of this rule, may use tank tightness testing (conducted in accordance with subparagraph (3)(c) of this rule), until December 31, 2008. However, tanks which were over ten (10) years old when the cathodic protection system was added in accordance with rule ~~4200-01-15-02~~ item (4)(a)2(v)(III) of Rule 0400-18-01-02 shall use a monthly monitoring method of release detection in accordance with subparagraphs (3)(d) through (i) of this rule.
2. Tanks which meet the volume, diameter and test duration requirements as set forth in subpart (3)(b)1(i) of this rule may use manual tank gauging (conducted in accordance with subparagraph (3)(b) of this rule).
3. On or after January 1, 2009, the monitoring methods in part (3)(d)1 of this rule, subparagraph (3)(f) of this rule, and parts (3)(g)2 and 3 of this rule shall no longer meet the requirements of this rule.
4. On or after January 1, 2010, the monitoring method in part (3)(e) of this rule shall no longer meet the requirements of this rule.

(b) Piping.

Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:

1. Pressurized piping.

Underground piping that conveys petroleum under pressure shall:

- (i) Be equipped with an automatic line leak detector conducted in accordance with subparagraph (4)(a) of this rule; and
- (ii) Have an annual line tightness test conducted in accordance with subparagraph (4)(b) of this rule or have monthly monitoring conducted in accordance with subparagraph (4)(c) of this rule.

2. Suction piping.

Underground piping that conveys petroleum under suction shall either have a line tightness test conducted at least every three (3) years and in accordance with subparagraph (4)(b) of this rule, or use a monthly monitoring method conducted in accordance with subparagraph (4)(c) of this rule. No release detection is required for suction piping that is designed and constructed to meet the following standards:

- (i) The below-grade piping operates at less than atmospheric pressure;
- (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (iii) Only one check valve is included in each suction line;
- (iv) The check valve is located directly below and as close as practical to the suction pump; and
- (v) A method is provided that allows compliance with subparts (b)2(ii) through (iv) of this part to be readily determined.

(3) Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

(a) Inventory control. Inventory control shall meet the following requirements:

- 1. Inventory volume measurements for petroleum inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
- 2. The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;
- 3. Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch;
- 4. The petroleum inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
- 5. Deliveries are made through a drop tube that extends to within one (1) foot of the tank bottom;
- 6. Product level measurements which are taken using a gauge stick shall be taken through a drop tube;
- 7. Petroleum dispensing is metered and recorded to within the local standards for meter calibration or an accuracy of six (6) cubic inches for every five (5) gallons of petroleum withdrawn, and the meters are calibrated at least annually;
- 8. The measurement of any water level in the bottom of the tank is made and recorded to the nearest one-eighth of an inch at least once a month; and
- 9. A release is suspected and subject to the requirements of Rule ~~4200-01-15-05~~ ~~0400-18-01-05~~ if the monthly total of either daily overages or shortages is greater than one percent (1.0%) of the total monthly flow-through plus one hundred thirty (130) gallons.

(b) Manual tank gauging.

- 1. Manual tank gauging shall only be applicable to tanks as set forth below:
 - (i) Tanks which meet the volume, diameter and test duration requirements as set forth below may use manual tank gauging as the sole method of release detection;

Nominal Capacity	Tank Diameter	Minimum Duration Of Test
up to 550 gallons	*	36 hours
551 – 1000 gallons	64 inches	44 hours
551 – 1000 gallons	48 inches	58 hours

*Any diameter of tank up to 550 gallons may use manual tank gauging as the sole method of release detection if the duration of the test is at least 36 hours.

- (ii) Manual tank gauging shall not be used as the sole method of release detection for tanks of 551 to 1000 gallons nominal capacity which cannot meet the diameter or test duration requirements as set forth in subpart (1) of this part or for tanks of 1001 to 2000 gallon nominal capacity. These tanks shall use manual tank gauging in combination with tank tightness testing in accordance with subparagraph (2)(a) of this rule.
- (iii) Tanks of greater than 2000 gallons nominal capacity using this method shall not meet the requirements of this rule.

2. Manual tank gauging shall meet the following requirements:

- (i) Tank liquid level measurements are taken at the beginning and ending of a period of at least thirty-six (36) hours during which no liquid is added to or removed from the tank;
- (ii) Level measurements are based on an average of two (2) consecutive stick readings at both the beginning and ending of the required period;
- (iii) The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;
- (iv) Petroleum levels are measured and recorded to an accuracy of at least the nearest one-eighth of an inch;
- (v) A release is suspected and subject to the requirements of Rule ~~4200-01-15-05~~ 0400-18-01-05 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Capacity	Tank Diameter	Minimum Duration Of Test	Weekly Standard (One Test)	Monthly Standard (Average Of 4 Tests)
Up to 550 gallons		36 hours	10 gallons	5 gallons
551 – 1000 gallons		36 hours	13 gallons	7 gallons
551 – 1000 gallons	64 inches	44 hours	9 gallons	4 gallons
551 – 1000 gallons	48 inches	58 hours	12 gallons	6 gallons
1001 – 2000 gallons		36 hours	26 gallons	13 gallons

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(c) Tank tightness testing.

1. Tank tightness testing shall be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains petroleum while accounting for the effects of thermal expansion or contraction of the petroleum, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
2. Tank tightness testing devices, automatic tank gauging devices or other equipment may be used provided that the testing meets the performance criteria set forth in part 1 of this subparagraph.
3. The information relating to the tank tightness test shall be reported in a format established by the division. The tank tightness test report shall include, but is not necessarily limited to the following information:
 - (i) Information which identifies the tank and the facility;
 - (ii) Information which identifies the test method and test conditions established by the manufacturer's specifications and/or required by the third party certification of the method;
 - (iii) Information which identifies the person and/or company performing the test;
 - (iv) Data gathered during the performance of the test; and
 - (v) Results expressed as follows:
 - (I) Leak rate in gallons per hour and as "Pass" or "Fail" for volumetric test methods; or
 - (II) "Pass" or "Fail" for non-volumetric test methods.
4. A release is suspected and subject to the requirements of Rule ~~4200-01-15-05~~ 0400-18-01-05 if the method detects a release rate greater than the performance standard for the method as established by the manufacturer's specifications and/or third party certification.

(d) Automatic tank gauging.

Equipment for automatic tank gauging shall be permanently installed in the tank and shall meet one of the following requirements:

1. For automatic tank gauging devices which were installed prior to December 22, 1990, and which do not meet the requirements of parts 2 or 3 of this subparagraph:
 - (i) Inventory control (or another test of equivalent performance) shall be conducted in accordance with the requirements of subparagraph (3)(a) of this rule; and
 - (ii) A release is suspected and subject to the requirements of Rule ~~4200-01-15-05~~ 0400-18-01-05 if the monthly total of either daily overages or shortages is greater than 1.0 percent of the total monthly flow-through plus one hundred thirty (130) gallons.
2. For automatic tank gauging devices capable of detecting at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains petroleum:
 - (i) The monitor shall be placed in the leak test mode at least once per month; and

(ii) A release is suspected and subject to the requirements of Rule ~~4200-01-15-05~~ 0400-18-01-05 if the monitoring results indicate that the underground storage tank has had a release above the established threshold of the automatic tank gauging device as determined through third party certification.

3. For automatic tank gauging systems which are capable of continuous statistical release detection:

(i) The automatic tank gauging system shall be placed in the leak test mode at least once per month if a test cannot be obtained during any one month period, except for those systems which also use statistical inventory reconciliation in accordance with subparagraph (3)(h) of this rule; and

(ii) A release is suspected and subject to the requirements of Rule ~~4200-01-15-05~~ 0400-18-01-05 if the monitoring results indicate that the underground storage tank has had a release above the established threshold of the automatic tank gauging device as determined through third party certification, except that those systems also using statistical inventory reconciliation shall report suspected releases in accordance with subparagraph (3)(h) of this rule.

(e) Vapor monitoring.

Testing or monitoring for vapors within the soil gas of the excavation zone shall meet the following requirements:

1. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

2. The stored petroleum, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

3. The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than thirty (30) days;

4. The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

5. The vapor monitors are designed and operated to detect any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

6. In the UST excavation zone, the site is assessed to ensure compliance with the requirements in parts 1 through 4 of this subparagraph and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains petroleum;

7. Monitoring wells are:

(i) Clearly marked and secured to avoid unauthorized access and tampering;

(ii) Maintained in a manner that reduces risk of environmental contamination; and

(iii) Properly abandoned in accordance with Division ~~division~~ guidance when the monitoring wells are no longer used for release detection, unless:

- (I) The wells are located in the tank pit and are used as observation wells; or
 - (II) The wells are located outside the tank pit and can reasonably be utilized for initial response in accordance with ~~rule 1200-01-15-06~~ subparagraph (3)(d) of Rule 0400-18-01-06 and/or hazard management in accordance with ~~rule 1200-01-15-06~~ part (4)(b)3 of Rule 0400-18-01-06 in the event of a release petroleum from the UST system; and
8. A release is suspected and subject to the requirements of Rule ~~1200-01-15-06~~ 0400-18-01-06 if:
- (i) An automatic and/or continuous monitoring device signals an alarm; or
 - (ii) Any liquid product is observed during manual monitoring; or
 - (iii) Any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance or a tracer compound placed in the tank system is detected by a monitoring device.

(f) Groundwater monitoring.

Testing or monitoring for liquids on the ground water shall meet the following requirements:

1. Ground water monitoring shall not be allowed in areas where the tank excavation zone has encountered bedrock;
2. The petroleum stored is immiscible in water and has a specific gravity of less than one (1);
3. Ground water is never more than twenty (20) feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (for example, the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);
4. The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of petroleum on the water table into the well under both high and low ground water conditions;
5. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;
6. Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
7. The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;
8. Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in parts 1 through 6 of this subparagraph and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains petroleum;
9. Monitoring wells are:
 - (i) Clearly marked and secured to avoid unauthorized access and tampering;
 - (ii) Maintained in a manner that reduces risk of environmental contamination; and

(iii) Properly abandoned in accordance with ~~Division~~ division guidance when the monitoring wells are no longer used for release detection, unless:

(i) The wells are located in the tank pit and are used as observation wells; or

(ii) The wells are located outside the tank pit and can reasonably be utilized for initial response in accordance with ~~rule 1200-01-15-06~~ subparagraph (3)(d) of Rule 0400-18-01-06 and/or hazard management in accordance with ~~rule 1200-01-15-06~~ part (4)(b)3 of Rule 0400-18-01-06 in the event of a release petroleum from the UST system; and

10. A release is suspected and subject to the requirements of Rule ~~1200-01-15-06~~ 0400-18-01-06 if:

(i) An automatic and/or continuous monitoring device signals an alarm; or

(ii) Any liquid product is observed on top of the groundwater in the monitoring well during manual monitoring.

(g) Interstitial monitoring.

Interstitial monitoring between the UST system and a secondary barrier immediately around it may be used, but only if the system is designed, constructed and installed to detect a release from any portion of the tank that routinely contains petroleum and also meets one of the following requirements:

1. For double-walled UST systems, the monitoring method shall:

(i) Be able to detect a release through the inner wall in any portion of the UST system that routinely contains petroleum;

(ii) Provide continuous monitoring; and

(iii) Be installed, maintained and operated in accordance with guidance provided by the ~~Division~~ division.

2. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier; provided that the following conditions are met:

(i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the petroleum stored) to direct a release to the monitoring point and permit its detection;

(ii) The barrier is compatible with the petroleum stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

(iii) For cathodically protected tanks, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;

(iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than thirty (30) days;

- (v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a twenty-five (25) year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,
 - (vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
3. For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

(h) Statistical inventory reconciliation.

Statistical analysis of inventory, delivery and dispensing data collected over a period of time shall meet the following requirements:

1. Inventory control shall be conducted in accordance with the requirements of parts (3)(a)1 through 8 of this rule;
2. A report shall be generated monthly, within ten (10) days after the end of the data collection for that time period. The report shall include, but is not limited to the following:
 - (i) The inventory records used, that is, the raw data; and
 - (ii) The statistical inventory reconciliation determination;
3. For quantitative statistical inventory reconciliation methods, the numerical leak rate shall be reported unless the statistical inventory reconciliation determination results in an "Inconclusive" under the provisions of subpart 4(iii) of this subparagraph;
4. The statistical inventory reconciliation determination shall be reported using the term "Pass", "Fail" or "Inconclusive". For quantitative statistical inventory reconciliation methods the applicable term shall be used in accordance with subparts (i) through (iii) of this part:
 - (i) If the calculated leak rate does not exceed 0.10 gallons per hour, the results shall be reported as a "Pass";
 - (ii) If the calculated leak rate exceeds 0.10 gallons per hour, the results shall be reported as a "Fail";
 - (iii) If the leak rate cannot be calculated using the available data, the results shall be reported as an "Inconclusive";
5. If the statistical inventory reconciliation method used requires more than one (1) month of data for initial evaluation, another method of release detection shall be conducted during that initial data collection period;
6. If there are too few operational days for statistical inventory reconciliation to successfully analyze during any month, then another method of release detection shall be utilized during that month; and
7. The owner and/or operator shall report a suspected release in accordance with Rule ~~4200-01-15-05~~ 0400-18-01-05:
 - (i) When the statistical inventory reconciliation determination is reported as a "Fail"; or

- (ii) When two consecutive "Inconclusive" statistical inventory reconciliation determinations are reported.
- (i) Other methods of release detection.
1. Prior to use by the tank owner and/or operator, Division division approval shall be obtained in writing for any other type of release detection method, or combination of methods.
 - (i) The written approval shall be kept on file at the facility or at the place of business of the tank owner and/or operator while the method is being utilized for release detection and for at least twelve (12) months thereafter. If the owner and/or operator is unable to maintain the approval document due to closure of the facility, the approval document shall be submitted to the Division division with the closure records submitted in accordance with rule ~~4200-04-15-07~~ subparagraph (7)(c) of Rule 0400-18-01-07.
 - (ii) The written approval shall be valid for two (2) years. The written approval must be renewed every two (2) years thereafter.
 2. The Division division may approve another method if that method has been third party certified to effectively and consistently detect releases. In reviewing methods for Division division approval, the Division division shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected as set forth in the third party certification.
 3. If the method has been approved in writing by the Division division, the owner and/or operator shall comply with any conditions imposed by the Division division on its use to ensure the protection of human health and the environment.

(4) Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of paragraph (2) of this rule shall be conducted in accordance with the following:

(a) Automatic line leak detectors.

Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or triggering an audible or visual alarm may be used only if they detect leaks of three (3) gallons per hour at ten (10) pounds per square inch line pressure within one (1) hour. An annual test of the operation of the leak detector shall be conducted in accordance with guidance provided by the Division division.

(b) Line tightness testing.

A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.

(c) Applicable tank methods.

Any of the methods in subparagraphs (3)(e) through (i) of this rule may be used if they are designed to detect a release from any portion of the underground piping that routinely contains petroleum, except that the method in subparagraph (3)(f) and in part (3)(g) of subparagraph (3)(g) of this rule shall not satisfy the requirements of this rule on or after January 1, 2009 and the method in subparagraph (3)(e) shall not satisfy the requirements of this rule on or after January 1, 2010.

(5) Release detection record keeping.

All UST system owners and/or operators shall maintain records in accordance with rule ~~1200-01-15-03~~ paragraph (2) of Rule 0400-18-01-03 demonstrating compliance with all applicable requirements of this rule. Release detection information shall be recorded in a format established by the division and in accordance with instructions provided by the division. These records shall include the following:

- (a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for five (5) years from the date of installation or until such time as the release detection method to which the performance claim pertains is no longer used at the facility, whichever is later; for a release detection method that has been approved by the ~~Division~~ division under the provisions of subparagraph (3)(i) of this rule, the ~~Division~~ division's written approval shall be maintained by the tank owner and/or operator while the method is being utilized for release detection and for at least twelve (12) months thereafter;
- (b) The results of any sampling, testing, or monitoring shall be maintained for at least one (1) year except that the results of tank or line tightness testing conducted in accordance with subparagraphs (3)(c) or (4)(b) of this rule shall be retained until the next test is conducted; and
- (c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least one (1) year after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for five (5) years from the date of installation or until such time as the release detection method to which the schedule of required calibration and maintenance pertains is no longer used at the facility, whichever is later.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-05~~ 0400-18-01-05 Release Reporting, Investigation and Confirmation.

(1) Reporting Of Suspected Releases.

- (a) Owners and/or operators of UST systems shall report to the ~~Division~~ division within seventy-two (72) hours and follow the procedures in rule ~~1200-01-15-05~~ paragraph (3) of Rule 0400-18-01-05 for any of the following conditions:
 - 1. The discovery by owners and/or operators or others of released petroleum at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).
 - 2. Unusual operating conditions observed by owners and/or operators (such as the erratic behavior of petroleum dispensing equipment, the sudden loss of petroleum from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and
 - 3. Monitoring results from a release detection method required under rule ~~1200-01-15-04~~ paragraph (2) of Rule 0400-18-01-04 that indicate a release may have occurred unless:
 - (i) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring within thirty (30) days does not confirm the initial result; or
 - (ii) In the case of inventory control, a second consecutive month of data does not confirm the initial result.
- (b) In order for the tank owner, tank operator or petroleum site owner to receive reimbursement from the fund, an Application for Fund Eligibility shall be filed within ninety (90) days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with this rule.

- (c) To satisfy the requirements for fund coverage in ~~rule 1200-01-15-09~~ subparagraph (10)(c) of Rule 0400-18-01-09, an owner and/or operator shall submit release detection records as well as documentation to demonstrate compliance with corrosion protection and spill and overflow and secondary containment requirements within thirty (30) days of the discovery of a suspected release.

(2) Investigation due to environmental impacts.

When required by the division, owners and/or operators of UST systems shall follow the procedures in paragraph (3) of this rule to determine if the UST system is the source of environmental impacts. These impacts include the discovery of petroleum escaping from the UST system, associated containment devices, or any component of a tank, line, dispenser, meter, or line leak detector, not designed for the purpose of dispensing petroleum as well as the discovery of petroleum in the environment (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the division or brought to its attention by another party.

(3) Release Investigation and Confirmation Steps.

Unless corrective action is initiated in accordance with ~~Rule 1200-01-15-06~~ 0400-18-01-06, owners and/or operators shall immediately investigate and confirm all suspected releases of petroleum requiring reporting under ~~rule 1200-01-15-05~~ paragraph (1) of this rule within thirty (30) days in accordance with this paragraph.

(a) System test.

Owners and/or operators shall conduct tests (according to the requirements for tightness testing in ~~rule 1200-01-15-04~~ subparagraphs (3)(c) and rule 1200-01-15-04 (4)(b) of Rule 0400-18-01-04) that determine whether a leak exists in that portion of the tank that routinely contains petroleum, or the attached delivery piping, or both.

1. Owners and/or operators shall repair, replace or upgrade the UST system, and begin corrective action in accordance with ~~Rule 1200-01-15-06~~ 0400-18-01-06 if the test results for the system, tank, or delivery piping indicate that a leak exists.
2. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.
3. Owners and/or operators shall conduct a site check as described in subparagraph (b) of this paragraph if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.

(b) Site check.

Owners and/or operators shall measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and/or operators must consider the nature of the stored petroleum, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.

1. If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and/or operators must begin corrective action in accordance with ~~Rule 1200-01-15-06~~ 0400-18-01-06.
2. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.

(c) Field activities and environmental data.

During the course of the release investigation and confirmation activities in subparagraphs (a) and (b) of this paragraph, a tank owner and/or operator shall comply with the following:

1. Tank owners and/or operators shall notify the Division division at least one (1) working day in advance of systems test or site check activities.
2. Soil borings and/or monitoring wells shall be drilled, converted to monitoring wells and/or abandoned in accordance with guidance provided by the Division division.
3. Environmental samples.
 - (i) Samples shall be collected, labeled, handled, and transported in accordance with guidance and instructions provided by the Division division. Samples shall satisfy any requirements specific to the required laboratory method that is used to analyze the samples.
 - (ii) Samples shall be analyzed using a method recognized by the United States Environmental Protection Agency or another method that has been approved by the Division division prior to the analysis.
 - (iii) Sample analysis reports submitted to the Division division shall be original documents unless otherwise specified by the Division division. Such reports shall include, but not be limited to, the following information:
 - (i) The facility identification number assigned to the UST facility by the Division division;
 - (ii) The sampling point, including depth and the unique combination of letters or numbers assigned to the boring or monitoring well at the time that boring or well was installed;
 - (iii) The sample collection date;
 - (iv) The date the sample analysis was completed;
 - (v) The analytical method, including the detection limit for the method, utilized to analyze the sample;
 - (vi) The dilution factor used on the sample; and
 - (vii) The analytical results expressed as a concentration of the chemical(s) of concern.
- (4) Reporting And Cleanup Of Spills And Overfills.
 - (a) Owners and/or operators of UST systems shall contain and immediately clean up a spill or overfill and report to the Division division within seventy-two (72) hours and begin corrective action if a spill or overfill of petroleum results in a release to the environment that exceeds twenty-five (25) gallons or that causes a sheen on nearby surface water; or
 - (b) Owners and operators of UST systems shall contain and immediately clean up a spill or overfill of petroleum that is less than twenty-five (25) gallons. If cleanup cannot be accomplished within seventy-two (72) hours owners and/or operators must immediately notify the Division division.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~4200-01-15-06~~ 0400-18-01-06 Petroleum Release Response, Remediation and Risk Management.

(1) General requirements.

SS-7039 (July 2010)

- (a) Owners and/or operators of petroleum UST systems shall, in response to a confirmed release from a UST system, comply with the requirements of this rule. A petroleum site owner who elects to perform release response activities shall comply with the requirements of this rule to receive authorized disbursements from the fund in accordance with ~~rule 1200-01-15-00~~ subparagraph (5)(a) of Rule 0400-18-01-09.
- (b) Field activities and environmental data.

During the course of responding to the release, conducting remediation, and/or managing risk, a tank owner and/or operator shall comply with the following:

1. Notice of Field Activities.
 - (i) Tank owners and/or operators shall notify the division at least one (1) working day in advance of any routine field activity. Routine field activities include, but are not limited to, placement of soil borings, construction of monitoring wells, sample collection events, field surveys, such as water use surveys or land use surveys, installation and/or start-up of treatment systems.
 - (ii) Tank owners and/or operators shall notify the division by no later than one (1) working day after any non-routine field activity, such as emergency response activities.
2. Soil borings and/or monitoring wells shall be drilled, converted to monitoring wells and/or abandoned in accordance with guidance provided by the division.
3. Environmental samples.
 - (i) Samples shall be collected, labeled, handled, and transported in accordance with guidance and instructions provided by the division. Samples shall satisfy any requirements specific to the required laboratory method that is used to analyze the samples.
 - (ii) Samples shall be analyzed using a method recognized by the United States Environmental Protection Agency or another method that has been approved by the division prior to the analysis.
 - (iii) Sample analysis reports submitted to the division shall be original documents unless otherwise specified by the division. Such reports shall include, but not be limited to, the following information:
 - (I) The facility identification number assigned to the UST facility by the division;
 - (II) The sampling point, including depth and the unique combination of letters or numbers assigned to the boring or monitoring well at the time that boring or well was installed;
 - (III) The sample collection date;
 - (IV) The date the sample analysis was completed;
 - (V) The analytical method, including the detection limit for the method, utilized to analyze the sample;
 - (VI) The dilution factor used on the sample; and

(VII) The analytical results expressed as a concentration of the chemical(s) of concern.

(2) Applicability.

- (a) This rule shall apply to all newly reported and/or discovered releases from petroleum underground storage tanks.
- (b) Unless directed otherwise by the division, this rule shall apply to all previously reported releases from petroleum underground storage tanks.
 - 1. Data which has previously been gathered shall be utilized by the tank owner and/or operator to comply with this rule, provided that such data is valid and is representative of the site. The fund shall not reimburse the tank owner and/or operator for the cost of generating duplicate data.
 - 2. Any requirements of this rule that have not previously been satisfied, shall be satisfied by the tank owner and/or operator unless directed otherwise by the division.

(3) Initial Response.

Upon confirmation of a release in accordance with ~~rule 1200-01-15-05~~ paragraph (3) of Rule 0400-18-01-05 or after a release from a UST system is identified in any other manner, owners and/or operators shall, unless directed to do otherwise by the ~~Division~~ division, perform the following initial response actions:

- (a) Report the release to the ~~Division~~ division within seventy-two (72) hours (for example, by telephone, facsimile machine or electronic mail);
- (b) Take immediate actions to prevent any further release of the petroleum into the environment including, but not limited to:
 - 1. If the source of the release has not been determined and a systems test has not been performed under the authority of ~~rule 1200-01-15-05~~ subparagraph (3)(a) of Rule 0400-18-01-05, a systems test may be required by the division; if required, the test shall be conducted in accordance with ~~rule 1200-01-15-04~~ subparagraphs (3)(c) and ~~rule 1200-01-15-04~~ (4)(b) of Rule 0400-18-01-04;
 - 2. Removing as much of the petroleum from the UST system as is necessary to prevent any further release;
 - 3. Taking the UST system out of service until piping or ancillary equipment associated with the release are replaced or repaired; and/or
 - 4. Preventing the placing of petroleum product into the leaking UST system;
- (c) Take immediate action to identify fire, explosion, and/or vapor hazards. Report and manage any hazards identified in accordance with paragraph (4) of this rule;
- (d) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the petroleum into surrounding soils and/or ground water;
- (e) Perform a water use survey in accordance with guidance provided by the ~~Division~~ division. All drinking water supplies, including both wells and springs, located within one-tenth (0.1) mile of the petroleum site shall be investigated and sampled for the presence of a release. The ~~Division~~ division may require additional investigation and sampling of drinking water supplies in the area, based on hydro-geological conditions or other physical characteristics in the area. Impacted drinking water shall be reported in accordance with subparagraph (4)(a) of this rule and addressed as required in part (4)(b)1 of this rule; and

(f) In order for the tank owner, tank operator or petroleum site owners to receive reimbursement from the fund, an Application for Fund Eligibility shall be filed:

1. Within ninety (90) days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with Rule ~~1200-01-15-05~~ 0400-18-01-05; or
2. Within sixty (60) days of a release which was identified in any manner other than the process for confirmation of a suspected release.

(4) Hazard Management.

When human health hazards, such as impacted drinking water, petroleum vapors, and/or free product are discovered in the vicinity of the petroleum site, the following actions shall be taken to manage such hazards:

(a) Notification.

Report the discovery of impacted drinking water, petroleum vapors, free product, and/or other hazards to the division within seventy-two (72) hours using a Hazard Notification Report form established by the division. The form shall be completed in accordance with guidance provided by the division. The form may be submitted by facsimile machine or electronic mail.

(b) Abatement Measures.

1. Impacted Drinking Water. Upon discovery and/or confirmation of impacted drinking water, immediately provide an alternate drinking water supply to replace the impacted drinking water unless directed to do otherwise by the division.

(i) A temporary source of drinking water may be used in the short term to satisfy the requirement of this part, such as providing bottled water or installing a water filtration system. However, a proposal for providing a permanent source of alternate drinking water shall be supplied as required in subpart (ii) of this part unless otherwise directed by the division.

(ii) A proposal for providing a permanent source of potable drinking water, including a cost proposal, shall be submitted to the division. The proposal shall be in a format established by the division and shall recommend that one of the following methods be utilized:

(I) Install a connection to a public water supply system;

(II) Install a drinking water well into a deeper, non-impacted aquifer;

(III) Restore the impacted aquifer utilizing active remediation measures; or

(IV) Utilize another means of supplying a permanent source of potable drinking water.

(iii) Upon approval by the division of a proposal for providing a permanent source of potable drinking water, the tank owner and/or operator shall take such actions as are necessary to implement the approved proposal for providing a permanent source of potable drinking water.

2. Vapor hazards.

Upon discovery and/or confirmation of vapor hazards in a basement, sewer, utility or other confined space, immediate actions shall be taken to eliminate the vapor hazard in that area unless directed to do otherwise by the division.

- (i) Vapor hazard control shall, at a minimum, prevent explosion and fire hazards as well as preventing the completion of a human health inhalation exposure pathway.
- (ii) After confirmation of a vapor hazard or potential hazard, vapor levels shall be monitored in accordance with guidance provided by the division and in accordance with a schedule established by the division.

3. Free Product.

- (i) Upon confirmation of free product, interim free product removal measures shall be taken immediately to control the migration of the free product associated with recent releases or for free product present in excavations, unless directed to do otherwise by the division.
- (ii) Free Product Investigation.

The Division division may require an investigation to be made in response to the discovery of free product at or in the vicinity of the petroleum site.

(I) Free Product Investigation Plan.

- I. If required by the Division division, the Free Product Investigation Plan shall be submitted to the Division division in a format and with guidance provided by the Division division. The Free Product Investigation Plan shall be submitted in accordance with a schedule established by the Division division. The plan shall include, but not be limited to:
 - A. A proposal for monitoring well installation and placement; and
 - B. A cost proposal.
- II. Upon Division division approval of the Free Product Investigation Plan, the tank owner and/or operator shall implement the approved plan in accordance with the provisions of the plan.

(II) Free Product Investigation Report.

A report shall be prepared and submitted to the Division division in a format and in accordance with a schedule established by the Division division. Unless directed otherwise by the Division division, the report shall include, but not be limited to the following:

- I. Site characteristics;
- II. The areal and vertical extent of free product;
- III. An estimation of the volume of free product; and
- IV. The feasibility of recovery of the free product.

- (iii) Based on the results of the Free Product Investigation Report required under the authority of subpart (ii) of this part, the division may require a tank owner and/or operator to submit a Free Product Removal Plan (FPRP) in a format and in accordance with a schedule established by the division. The FPRP shall be completed in accordance with guidance provided by the division. Unless directed

otherwise by the division, the FPRP shall include, but not be limited to, the following:

- (I) Both the long term and the short term objectives of free product recovery at this site, for example, hydraulic containment, limited draw-down with limited smearing, or other objectives, as well as performance measures;
 - (II) The design of the free product recovery system or systems, if two or more types of systems are to be used during the course of free product recovery, and a strategy for future integration of the free product recovery system(s) with any soil and/or ground water treatment determined to be necessary;
 - (III) An operation and maintenance schedule;
 - (IV) Schedules for monitoring and reporting;
 - (V) A list of actionable causes which would result in the re-evaluation of the continued need for and/or the redesign and/or termination of the free product recovery system;
 - (VI) A schedule and conditions for post termination monitoring; and
 - (VII) A cost proposal.
- (iv) Upon approval of the Free Product Removal Plan, the tank owner and/or operator shall implement the approved plan in accordance with the provisions of the plan.
 - (v) All reporting requirements contained in the plan shall be followed and the reports shall be submitted to the division in accordance with the schedule contained in the approved plan.
4. Take appropriate actions, approved in advance by the division, to abate any other identified hazards.

(c) Reporting.

Tank owners and/or operators shall submit a Hazard Management Report detailing the actions that have been taken to address the hazards discovered at or in the vicinity of the petroleum site. Hazard Management Reports shall be submitted in a format and in accordance with a schedule established by the Division and shall be completed in accordance with guidance provided by the Division. Such reports shall include, but not be limited to the following:

1. An Initial Response Hazard Management Report;
2. An Impacted Drinking Water Hazard Management Report;
3. A Vapor Hazard Management Report; or
4. A Free Product Hazard Management Report.

(5) Initial Site Characterization and Exposure Assessment.

Unless directed to do otherwise by the division, the owner and/or operator shall, in accordance with this paragraph, assess the characteristics of the site as well as the nature of the release and shall identify risk to human health, safety and the environment associated with the petroleum release.

(a) Site Assessment.

1. In accordance with guidance provided by the division, the owner/operator shall conduct an assessment of the petroleum site by installing four (4) soil borings completed as ground water monitoring wells. The soil and the ground water shall be sampled for laboratory evaluation to determine the presence and the levels of the chemicals of concern in each sample.
2. If the tank owner and/or operator concludes that more than four (4) soil borings and/or monitoring wells are necessary for site characterization and/or risk assessment, the tank owner and/or operator may submit a proposal. Such a proposal shall include a cost proposal and a justification statement for review and approval by the division. This may be done during the initial site characterization or at any time subsequent thereto.
3. The division may require the installation of more than four (4) soil borings and/or monitoring wells for site characterization and/or risk assessment. This may be done during the initial site characterization or at any time subsequent thereto.

(b) Initial Site Characterization Report.

A report shall be prepared and submitted to the division in a format and in accordance with a schedule established by the division. Data collection, risk analysis and report completion shall be done in accordance with guidance provided by the division. The Initial Site Characterization Report shall include but not be limited to the following:

1. A site history, including the types of petroleum products stored, used and/or dispensed on the site, set forth in a chronology of site events;
2. A release history, including any of the following that are known or can be obtained or determined:
 - (i) The source of the release;
 - (ii) The type(s) of petroleum product(s), including additives, released;
 - (iii) Records of release detection conducted at the site that, at a minimum, include the twelve (12) consecutive months immediately preceding the date of the release;
 - (iv) The date of the release;
 - (v) The volume of the release;
 - (vi) The cause of the release; and
 - (vii) Levels of chemicals of concern at or in the vicinity of the petroleum site;
3. Petroleum site conditions, including, but not limited to, the following:
 - (i) A site map;
 - (ii) Location of utilities;
 - (iii) Land conditions, including current land use, both inside and outside of the facility property boundaries;
 - (iv) Ground water conditions and use, both inside and outside of the facility property boundaries, including the water use survey conducted in accordance with subparagraph (3)(e) of this rule; and

(v) Surface water conditions, including current surface water use, both inside and outside of the facility property boundaries;

4. Risk factors including, but not necessarily limited to, the following:

(i) Current and reasonably anticipated receptors shall be identified and located on a site map. Receptors shall include, but not necessarily be limited to:

(I) Human receptors: adult, child, residential, commercial/industrial worker;

(II) Ecological; and/or

(III) Physical receptors, such as: drinking water wells and springs, buildings and basements, utilities, surface water; and

(ii) Current and reasonably anticipated exposure pathways between the source area(s) and the identified receptors shall be identified. The exposure pathways shall include ingestion and inhalation; and

5. A Risk Analysis Report (RAR) spreadsheet completed in accordance with guidance and instructions provided by the division and using computational software provided by the division. The RAR shall be used to determine cleanup levels, either Risk Based Cleanup Levels (RBCLs) or Site Specific Cleanup Levels (SSCLs), for the site based on risk to human health, safety and the environment.

(6) Contamination Case Closure or No Further Action.

If the maximum concentrations of the chemicals of concern at the site are at or below the RBCLs and/or the SSCLs for the site as determined in the Risk Analysis Report section of the Initial Site Characterization Report, then contamination case closure activities shall be completed in accordance with a schedule established by the division and in accordance with guidance provided by the division. Contamination case closure activities may include, but are not limited to, the following:

(a) Closure monitoring;

(b) Proper abandonment of monitoring wells; and/or

(c) Report submittal.

(7) Consideration of Additional Corrective and/or Risk Management Measures.

If the maximum concentrations of the chemicals of concern at the site are above the RBCLs and/or the SSCLs for the site as determined in the Risk Analysis Report section of the Initial Site Characterization Report, then it may be necessary to consider additional remediation and/or risk management measures such as those outlined in paragraphs (8) through (10) of this rule.

(a) If the tank owner and/or operator concludes that the use of specific additional measures will result in a more cost effective approach to case management and/or in faster contamination case closure, the tank owner may submit a proposal. Such a proposal shall include a cost proposal and a justification statement.

(b) If the division concludes that the use of specific additional measures will result in a more cost effective approach to case management and/or in faster contamination case closure, the tank owner shall, at the direction of the division, submit a proposal, including a cost proposal. However, a tank owner and/or operator who is not also the petroleum site owner shall not be required to establish institutional controls in accordance with subparagraph (8)(c) of this rule.

(c) The cost of additional measures taken prior to division approval of a proposal will not be reimbursed by the fund.

(8) Interim Remediation and/or Risk Management.

In accordance with the provisions of paragraph (7) of this rule the division may require or allow the tank owner and/or operator to take interim remediation and/or risk management measures. After taking any interim remediation action or risk management measure, the tank owner and/or operator shall reevaluate the risk in accordance with guidance provided by the division. Interim remediation or risk management may include, but is not limited to:

(a) Source removal.

1. Source removal activities shall not spread contamination into previously uncontaminated or less contaminated areas through improper storage, improper treatment, untreated discharges, or improper disposal.
2. Soil removal.

The excavated soil shall be handled in a manner that prevents human exposure to contaminated soil and that prevents soil exposure to precipitation that may cause surface runoff. The excavation pit shall be secured in a manner that prevents accidental or intentional entry by the public;

(b) Risk reduction.

Actions that eliminate or reduce risk include, but are not limited to, the following activities:

1. Supplying a permanent source of potable water to replace impacted drinking water; and/or
2. Re-routing utility lines or replacing vulnerable portions of utility lines with materials that can withstand the impacts of petroleum;

(c) Establishing institutional controls in accordance with the following:

1. A Notice of Land Use Restrictions, which satisfies the requirements of T.C.A. §68-212-225, shall be filed in the register of deeds office in the appropriate county.
2. The Notice of Land Use Restrictions may include, but is not limited to, restrictions on the current and future uses of the land, use of the property, current and future uses of ground water, building, filling, grading and/or excavating; and/or

(d) Employing engineering controls.

(9) Advanced Risk-Based Modeling.

In accordance with the provisions of paragraph (7) of this rule, the division may require or allow advanced risk based modeling:

- (a) The tank owner and/or operator shall submit predictive modeling information in a format and in accordance with a schedule established by the division and in accordance with guidance provided by the division.
- (b) The modeling information shall be accompanied by or include a conclusion as to the course of action which should be taken to address the petroleum contamination at the site provided that such course of action takes into account both adequate risk management and cost effectiveness.

(10) Corrective Action Plan.

In accordance with the provisions of paragraph (7) of this rule, the division may require or allow the tank owner and/or operator to submit a Corrective Action Plan (CAP).

- (a) The CAP shall be in a format established by the division and completed in accordance with guidance provided by the division. The corrective action plan shall be submitted in accordance with a schedule established by the division.
 - (b) The Corrective Action Plan shall include, but not be limited to, the following:
 - 1. General requirements applicable to all Corrective Action Plans, unless the division specifically instructs the tank owner and/or operator that certain requirements do not apply to the petroleum site. The general requirements shall include, but not be limited to, the following:
 - (i) Corrective action system tasks, repairs, maintenance, record keeping, and/or evaluations;
 - (ii) Performance measurement of site remediation;
 - (iii) Monitoring events, monitoring tasks and/or monitoring results reporting; and
 - (iv) Causes for modification and/or termination; and
 - 2. Site-specific requirements, which shall include, but not be limited to, the following:
 - (i) The applicable site specific clean-up level for each chemical of concern in soil and/or ground water;
 - (ii) The proposed corrective action(s) for soil and/or ground water remediation;
 - (iii) A schedule for planned operation and maintenance as well as a contingency plan for unscheduled operation and maintenance activities;
 - (iv) A cost proposal; and
 - (v) Performance measures.
 - (c) Upon approval of the Corrective Action Plan the tank owner and/or operator shall implement the approved plan in accordance with the provisions of the plan.
 - (d) All reporting requirements contained in the plan shall be followed and the reports shall be submitted to the division in accordance with the schedule contained in the approved plan.
- (11) Public participation.
- (a) For each confirmed release for which a Corrective Action Plan has been required or allowed, the tank owner and/or operator shall provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.
 - (b) The division shall ensure that site release information and decisions concerning the Corrective Action Plan are made available to the public for inspection upon request.
 - (c) Before approving a Corrective Action Plan, the division may hold a public meeting to consider comments on the proposed corrective action plan if there is sufficient public interest, or for any other reason.

- (d) The tank owner and/or operator shall, at the direction of the division, give public notice that complies with subparagraph (a) of this paragraph if implementation of an approved Corrective Action Plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the division.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-07~~ ~~0400-18-01-07~~ 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 paragraph (4) of Rule 0400-18-01-02~~, and any release detection in accordance with ~~Rule 1200-01-15-04 0400-18-01-04~~, ~~Rule 1200-01-15-05 0400-18-01-05~~ and ~~Rule 1200-01-15-06 0400-18-01-06~~ 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, operators, and/or other responsible parties shall also comply with the following requirements:
1. Leave vent lines open and functioning;
 2. Cap and secure all other lines, pumps, manways, and ancillary equipment; and
 3. File an amended notification form showing the tank system as temporarily out of use.

(2) Substandard UST systems.

Unless directed to do otherwise by the ~~Division~~ division, owners, operators, and/or other responsible parties of an UST system which does not meet the requirements in ~~rule 1200-01-15-02 paragraphs (3) and (4) of Rule 0400-18-01-02~~ shall permanently close the substandard UST system in accordance with paragraphs (4) and (5) of this rule, except that parts (4)(a)6 and 7 of this rule shall not apply to a substandard UST system. Owners, operators, and/or other responsible parties of a substandard UST system shall complete the permanent closure, including submittal of the Permanent Closure Report, within sixty (60) days of ~~Division~~ division approval of the Application for Permanent Closure of Underground Storage Tanks.

(3) Tank compartment closure.

For a tank that has more than one (1) tank compartment, one (1) or more of the tank compartments may be permanently closed in accordance with the provisions of this paragraph as well as paragraph (5) of this rule. If all the compartments in a tank are to be permanently closed, the requirements for permanent closure set forth in paragraphs (4) and (5) of this rule shall be followed by the tank owner, operator, and/or other responsible parties.

- (a) At least thirty (30) days before beginning tank compartment closure, owners, operators, and/or other responsible parties shall apply for tank compartment closure. Application for tank compartment closure shall meet the following requirements:
1. An Application for Closure of Tank Compartment(s) shall be submitted in a format established by the division. 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, 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, operator, and/or other responsible parties 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, operators, and/or other responsible parties shall empty and clean the compartment which is to be closed by removing all liquids and accumulated sludges. All tank compartments taken out of service permanently shall be filled with an inert solid material such as a cement compound, sand, gravel, etc. The inert solid material must have a specific gravity greater than one (1.0).
 - (d) Tank compartment closure activities shall not damage those portions of the underground storage tank system that are not being permanently closed.
 - (e) Tank compartment closure activities shall not cause or allow a release of petroleum from the underground storage tank system into the environment.
 - (f) Paragraphs (4) and (5) of this rule shall be followed when the final tank compartment is permanently closed.
- (4) Permanent closure and changes-in-service.
 - (a) At least thirty (30) days before beginning either permanent closure of any portion of an underground storage tank system or a change-in-service under subparagraphs (b) and (c) of this paragraph, owners, operators, and/or other responsible parties shall apply for permanent closure,

unless such action is in response to corrective action. Application for permanent closure or change in service shall meet the following requirements:

1. An Application for Permanent Closure of Underground Storage Tank Systems shall be submitted in a format established by the division. The application shall be completed according to the instructions provided by the division.
 2. The tank owner, operator and/or other responsible party shall obtain division approval of the Application for Permanent Closure prior to permanently closing the UST system or any portion thereof or effecting a change in service of the UST system, unless tank compartment closure is conducted in accordance with paragraphs (3) and (5) of this rule.
 3. The application shall constitute a plan for closure or change in service of the UST system, or any portion thereof.
 4. Change in service or closure activities shall be conducted in accordance with the plan contained in the approved Application for Permanent Closure. If alterations to the plan are required, an amended Application for Permanent Closure shall be submitted to the division for approval.
 5. The approved Application for Permanent Closure of Underground Storage Tank Systems shall be available for inspection upon request at the petroleum site at the time of closure.
 6. Division approval of the Application for Permanent Closure shall be valid for twelve (12) months following such approval. However, such approval shall not be transferable to another person during that twelve (12) month approval time.
 7. If permanent closure or change-in-service is not completed within twelve (12) months, the tank owner, operator, and/or other responsible parties shall submit a new Application for Permanent Closure to the division for approval at least thirty (30) days before beginning underground storage tank system closure.
- (b) To permanently close a tank, owners, operators, and/or other responsible parties shall empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently shall also be either removed from the ground or filled with an inert solid material such as a cement compound, sand, gravel, etc. The inert solid material shall have a specific gravity greater than 1.0.
- (c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners, operators, and/or other responsible parties shall empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with paragraph (5) of this rule.
- (d) Should an owner, operator, and/or other responsible parties elect to excavate and remove a tank from the site, such excavation and removal shall be done in accordance with Appendix ~~1200-01-15-07~~ 0400-18-01-07-A.
- (e) Once a tank has been excavated, it may be stored on-site or transported off-site for storage or disposal. Excavated tanks which have not been cut into sections for disposal shall be considered in storage and shall at all times, while in storage, be maintained in a vapor-free state and stored in accordance with Appendix ~~1200-01-15-07~~ 0400-18-01-07-A.
- (f) Tanks shall not be stored at a UST facility unless they are maintained in a vapor-free state, stored in accordance with Appendix ~~1200-01-15-07~~ 0400-18-01-07-A, and one of the following conditions are met:
1. (i) Tanks have been cleaned by removal of all liquids and accumulated sludges; and

- (ii) Tanks have been purged of vapors so that any explosive levels do not exceed twenty percent (20%) of the lower explosive limit for the regulated substance; and
 - (iii) Tanks have an opening or openings installed which comprise a minimum of ten percent (10%) of the total tank surface area. Such openings will not be considered openings if they are in contact or contiguous with the ground or surface on which the tank may be resting; or
2. Subparts 1(i) and (ii) of this subparagraph have been complied with and there are no remaining USTs either in use or in a temporarily closed condition at the facility; or
 3. Tanks which are removed from a UST facility and are intended for reuse at the same or another facility as USTs may be stored at a UST facility if the owner, operator, and/or other responsible parties meets the conditions described in subparts 1(i) and (ii) of this subparagraph, and either removes the tank off-site from a UST facility or puts it back into service within thirty (30) days of excavation.
- (g) Tanks shall be stored in a manner which does not pose safety hazards. Tanks shall be stored in a position with the tank's center of gravity closest to the ground. Tanks shall not be stacked. Tanks shall be secured so that they will not roll or slide across a level or sloping ground surface.

[NOTE: Transportation and disposal of tanks will be subject to all applicable Federal, 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, operators, and/or other responsible parties shall measure for the presence of a release where contamination is most likely to be present at the UST site. Sampling shall meet the following requirements:

1. In selecting sample types, sample locations, and measurement methods, owners, operators, and/or other responsible parties shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release.
2. At least one day before samples are taken, the owner, operator, and/or other responsible parties shall notify the division 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.

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- (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, operators, and/or other responsible parties shall begin release response and corrective action in accordance with ~~Rule 1200-01-15-06~~ 0400-18-01-06.
- (6) Applicability to previously closed UST systems.

When directed by the division, the owner, operator, and/or other responsible parties of an UST system permanently closed before December 22, 1988 shall assess the site and close the UST system in accordance with this rule if releases from the UST may, in the judgment of the division, pose a current or potential threat to human health and the environment.
- (7) Closure records.

Owners, operators, and/or other responsible parties shall maintain records in accordance with ~~rule 1200-01-15-03~~ paragraph (2) of Rule 0400-18-01-03 that are capable of demonstrating compliance with closure requirements under this rule. The results of the site assessment required in paragraph (5) of this rule shall be maintained for at least three (3) years after completion of permanent closure or change-in-service in one of the following ways:

 - (a) By the owners, operators, and/or other responsible parties who took the UST system out of service;
 - (b) By the current owners, operators, and/or other responsible parties of the UST system site; or
 - (c) By mailing these records to the division if they cannot be maintained at the closed facility.

APPENDIX ~~1200-01-15-07~~ 0400-18-01-07-A

REMOVAL OF UNDERGROUND TANKS.

- (1) Preparation.
 - (a) Drain product piping into the tank, being careful to avoid any spillage. Cap or remove product piping.

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- (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 (CO₂) or nitrogen (N₂). 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 CO₂ or N₂, 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 CO₂ fire extinguishers into tanks containing a flammable vapor-air mixture. CO₂ extinguishers shall not be used for inerting flammable atmospheres.

- (d) If the method described in subparagraph (c) of this paragraph is not practical, the vapors in the tank may be displaced by adding solid carbon dioxide (dry ice) to the tank in the amount of at least ~~1.5~~ one and one-half (1.5) pounds per one hundred (100) gallons of tank capacity. The dry ice should be crushed and distributed evenly over the greatest possible area in the tank to promote rapid evaporation. As the dry ice vaporizes, flammable vapors will flow out of the tank and may surround the area. Therefore, where practical, plug all tank openings except the vent after introducing the solid CO₂ 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.

~~4200-04-16-08~~ 0400-18-01-08 Financial Responsibility.

(1) Purpose.

A tank owner or operator is required to pay for corrective action and/or for compensating third parties for bodily injury or property damages caused by accidental releases arising from the operation of petroleum underground storage tank systems. Furthermore, a tank owner or operator is required to demonstrate financial responsibility or the ability to pay for corrective action and/or for compensating third parties for bodily injury or property damages caused by accidental releases arising from the operation of petroleum underground storage tank systems. The purpose of this rule is to authorize the use of certain financial assurance mechanisms to satisfy the requirement to demonstrate financial responsibility.

(2) Applicability.

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- (a) This rule applies to owners and/or operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this paragraph.
- (b) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are deemed to meet financial responsibility requirements without having to meet the requirements of this rule.
- (c) The requirements of this rule do not apply to owners and/or operators of any UST system described in ~~rule 1200-01-15-01~~ subparagraph (2)(b) of Rule 0400-18-01-01.
- (d) If the owner and the operator of a petroleum underground storage tank system are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in the event of noncompliance.

(3) Amount And Scope Of Required Financial Responsibility.

- (a) Per occurrence amounts.

Owners or operators of petroleum underground storage tank systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per occurrence amounts:

1. For owners or operators of petroleum underground storage tank systems that are located at petroleum marketing facilities, or that handle an average of more than ten thousand (10,000) gallons of petroleum per month based on annual throughput for the previous calendar year: one million dollars (\$1,000,000).
2. For all other owners or operators of petroleum underground storage tank systems: five hundred thousand dollars (\$500,000).

- (b) Annual aggregate amounts.

Owners or operators of petroleum underground storage tank systems shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems in at least the following annual aggregate amounts:

1. For owners or operators of one (1) to one hundred (100) petroleum underground storage tank compartments: one million dollars (\$1,000,000).
2. For owner or operators of one hundred one (101) or more petroleum underground storage tank compartments: two million dollars (\$2,000,000).

- (c) The amounts of financial assurance required under this paragraph exclude legal defense costs.

- (d) The required per occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.

(4) Allowable Financial Assurance Mechanisms and Combinations of Mechanisms.

- (a) A tank owner or operator may use one of following financial assurance mechanisms to satisfy the requirements of paragraph (3) of this rule:

1. Tennessee Petroleum Underground Storage Tank Fund in accordance with paragraph (5) of this rule and ~~Rule 1200-01-15-09~~ 0400-18-01-09.
2. Financial Test of Self-Assurance in accordance with paragraph (6) of this rule.

3. Corporate Parent Financial Test Guarantee in accordance with paragraph (7) of this rule;
4. Liability Insurance in accordance with paragraph (8) of this rule;
5. Surety Bond or Performance Bond in accordance with paragraph (9) of this rule;
6. Irrevocable Standby Letter of Credit in accordance with paragraph (10) of this rule;
7. Personal Bond Supported by Certificate of Deposit in accordance with paragraph (11) of this rule;
8. Trust Fund and Agreement in accordance with paragraph (12) of this rule;
9. Local Government Bond Rating Test in accordance with paragraph (13) of this rule; or
10. Local Government Financial Test in accordance with paragraph (14) of this rule.

(b) Standby Trust Fund.

1. If a tank owner or operator uses one of the financial assurance mechanisms listed in this part to meet the requirements of paragraph (3) of this rule, a Standby Trust Fund and Agreement shall be established in accordance with paragraph (15) of this rule at the time the mechanism is established.
 - (i) Liability Insurance in accordance with paragraph (8) of this rule;
 - (ii) Surety Bond or Performance Bond in accordance with paragraph (9) of this rule; or
 - (iii) Irrevocable Standby Letter of Credit in accordance with paragraph (10) of this rule.
2. If a tank owner or operator uses one of the financial assurance mechanisms listed in this part to meet the requirements of paragraph (3) of this rule, a Standby Trust Fund and Agreement shall be established in accordance with paragraph (15) of this rule if the requirements of the financial test can no longer be met and the owner or operator fails to provide an alternative financial assurance mechanism that meets the requirements of this rule.
 - (i) Financial Test of Self-Assurance in accordance with paragraph (6) of this rule;
 - (ii) Corporate Parent Financial Test Guarantee in accordance with paragraph (7) of this rule;
 - (iii) Local Government Bond Rating Test in accordance with paragraph (13) of this rule; or
 - (iv) Local Government Financial Test in accordance with paragraph (14) of this rule.

(c) Use of combinations of financial assurance mechanisms.

1. The following financial assurance mechanisms may be used in combination by a tank owner or operator to satisfy the requirements of subparagraphs (3)(a) and (b) of this rule:
 - (i) Tennessee Petroleum Underground Storage Tank Fund in accordance with paragraph (5) of this rule and Rule ~~1200-01-15-09~~ 0400-18-01-09;
 - (ii) Liability insurance in accordance with paragraph (8) of this rule;

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- (iii) Surety Bond or Performance Bond in accordance with paragraph (9) of this rule;
 - (iv) Irrevocable Standby Letter of Credit in accordance with paragraph (10) of this rule;
 - (v) Personal Bond Supported by Certificate of Deposit in accordance with paragraph (11) of this rule; and
 - (vi) Trust Fund and Agreement in accordance with paragraph (12) of this rule.
2. The following financial assurance mechanisms shall not be used in combination by a tank owner or operator to satisfy the requirements of subparagraphs (3)(a) and (b) of this rule:
- (i) Financial Test of Self-Assurance in accordance with paragraph (6) of this rule;
 - (ii) Corporate Parent Financial Test Guarantee in accordance with paragraph (7) of this rule;
 - (iii) Local Government Bond Rating Test in accordance with paragraph (13) of this rule; or
 - (iv) Local Government Financial Test in accordance with paragraph (14) of this rule.
- (d) The amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in subparagraphs (a) and (b) of paragraph (3) of this rule if the owner or operator uses separate mechanisms or separate combinations of mechanisms in accordance with subparagraph (c) of this paragraph to demonstrate financial responsibility for:
1. Taking corrective action in accordance with Rule ~~1200-01-15-06~~ 0400-18-01-06; or
 2. Compensating third parties for bodily injury and property damage caused by accidental releases.
- (e) The tank owner or operator using a financial assurance mechanism other than the Tennessee Petroleum Underground Storage Tank Fund shall not be considered to have satisfied the financial assurance requirements of this rule until the financial assurance mechanism has been received and approved by the Commissioner.
- (f) These financial assurance mechanisms are established for use by the ~~Division~~ division for taking corrective action or for paying third party claims in the event the owner or operator fails to take corrective actions or pay third party claims. The financial assurance mechanisms in this rule shall not be used by the owner or operator to satisfy the requirements of corrective action or third party liability claims with the exception of the Tennessee Petroleum Underground Storage Tank Fund authorized by paragraph (5) of this rule.
- (5) Tennessee Petroleum Underground Storage Tank Fund.
- Tank owners or operators may satisfy the requirements of paragraphs (3) of this rule by establishing fund eligibility in accordance with ~~rule 1200-01-15-09~~ paragraph (3) of Rule 0400-18-01-09 and with the provisions of this paragraph.
- (a) Corrective action costs.
- Tank owners or operators who are eligible for reimbursement from the fund shall demonstrate that they have incurred the amount of the applicable fund entry level or deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the ~~Division~~ division in accordance with ~~rule 1200-01-15-09~~ subparagraph (3)(c) of Rule 0400-18-01-09.

1. If a fund eligible tank owner or operator claims financial inability to pay the corrective action entry level or deductible set forth in ~~rule 1200-01-15-09~~ paragraph (6) of Rule 0400-18-01-09 at the time an Application for Fund Eligibility is submitted to the Division division, the fund may be utilized to pay the deductible for taking corrective action.
 - (i) The tank owner or operator shall supply documentation of inability to pay the fund entry level or deductible for taking corrective action to the Commissioner upon request.
 - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action.

2. If a fund eligible tank owner or operator fails, without sufficient cause, to perform the release response, remediation and/or risk management actions required in Rule ~~1200-01-15-09~~ 0400-18-01-09 on order of the Commissioner and fails, without sufficient cause to pay the amount of the applicable fund entry level or deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the Division division, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action. In addition, pursuant to T.C.A. § 68-215-116, the Commissioner may seek a penalty in the amount of one hundred fifty percent (150%) of the costs expended by the fund as the result of the failure to take proper action.

3. If a fund eligible tank owner or operator has been denied fund coverage of corrective action costs under the provisions of ~~rule 1200-01-15-09~~ subparagraph (10)(c) of Rule 0400-18-01-09 and the owner or operator claims financial inability to pay for part or all of the necessary corrective action, the fund may be utilized to pay for taking corrective action.
 - (i) The tank owner or operator shall supply documentation of inability to pay for corrective action to the Division division upon request.
 - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount paid by the fund for taking corrective action.

(b) Third party claims.

Owners or operators who are eligible for reimbursement from the fund shall demonstrate that they have incurred the amount of the applicable fund entry level or deductible amount for third party claims set forth in ~~rule 1200-01-15-09~~ paragraph (6) of Rule 0400-18-01-09 at the time the Division division receives an application for payment accompanied by the original or a certified copy of a final judgment in accordance with ~~rule 1200-01-15-09~~ subparagraph (12)(h) of Rule 0400-18-01-09.

1. If a fund eligible tank owner or operator cannot pay the amount of the applicable fund entry level or deductible amount for third party claims at the time an application for payment accompanied by the original or a certified copy of a final judgment is submitted to the Division division in accordance with ~~rule 1200-01-15-09~~ subparagraph (12)(h) of Rule 0400-18-01-09, the fund may be utilized to pay the deductible for satisfying the third party claim.
 - (i) The tank owner or operator shall supply documentation of their inability to pay the fund entry level or deductible for third party claims to the Division division upon request.

(ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for satisfying the third party claim.

2. If a fund eligible tank owner or operator fails, without sufficient cause, to pay the amount of the applicable fund entry level or deductible amount for a third party claim, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for third party damages.

(6) Financial Test Of Self-Assurance.

A tank owner or operator may satisfy the requirements of paragraph (3) of this rule by passing a Financial Test of Self-Assurance in accordance with the provisions of this paragraph.

(a) A Financial Test of Self-Assurance shall not be used in combination with other financial assurance mechanisms, and shall not be used in cases where an owner or operator has a parent company or any other entity holding majority control of its voting stock.

(b) The financial statements of the owner or operator shall be prepared in accordance with generally accepted accounting principles applicable to the United States, and an independent certified public accountant (CPA) shall verify the accuracy of the financial test data relative to the financial statements.

(c) In order to demonstrate that the owner or operator meets the requirements of the Financial Test of Self-Assurance as set forth in this paragraph, the Chief Executive Officer or the Chief Financial Officer of the business firm of the owner or operator shall complete and submit a notarized letter, including a Financial Test of Self-Assurance as required in subparagraph (d) of this paragraph, both initially and within ninety (90) days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Executive Officer or the Chief Financial Officer of the business firm of the owner or operator shall be in accordance with guidance provided by the Division division. The letter shall be in a format established by the Division division.

(d) Both initially and annually, within ninety (90) days after the close of each succeeding fiscal year, the owner or operator shall demonstrate that the owner or operator has adequate financial strength to provide the guarantee required by subparagraphs (h) and (i) of this paragraph by passing the applicable financial test, that is, either Financial Test of Self-Assurance - Alternative I, completed in accordance with subparagraph (f) of this paragraph, or Financial Test of Self-Assurance - Alternative II, completed in accordance with subparagraph (g) of this paragraph.

(e) The financial test alternatives, a comparison of business performance ratios, financial strength ratios, credit ratings, net worth, assets, operating revenues, and bond ratings relative to fixed criteria, shall be in a format established by the Division division and completed in accordance with guidance provided by the Division division.

(f) To use the Financial Test of Self-Assurance - Alternative I as a financial assurance mechanism, the tank owner or operator shall meet the following conditions:

1. The tank owner or operator shall have a tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test.
2. The tank owner or operator shall have a tangible net worth at least six (6) times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six (6) times the sum of all other amounts covered by a financial test of the owner or operator for all other environmental programs or agencies in the State of Tennessee, other states, and federal agencies.

3. The tank owner or operator shall have assets located in the United States which shall amount to at least ninety percent (90%) of the total assets of the owner or operator or at least six (6) times the current amounts of financial assurance covered by the owner or operator through the use of the Financial Test of Self-Assurance - Alternative I.
4. The tank owner or operator shall satisfy at least two (2) of the three (3) ratio standards in subparts (i) through (iii) of this part:
 - (i) The ratio of total liabilities to net worth shall equate to less than 1.5;
 - (ii) The ratio of the sum of net income plus depreciation, depletion, and amortization minus ten million dollars (\$10,000,000) to the total liabilities shall equate to greater than 0.10; and/or
 - (iii) The ratio of current assets to current liabilities shall equate to greater than 1.5.
5. The tank owner or operator shall report the firm's financial position to Dun and Bradstreet annually and have a financial strength rating of 4A or 5A and a composite credit appraisal of 1 by Dun and Bradstreet.
6. The tank owner or operator shall comply with one of the following:
 - (i) The owner or operator shall file financial statements with the U.S. Securities and Exchange Commission annually; or
 - (ii) The owner or operator shall file complete financial statements with the Energy Information Administration annually.
7. The fiscal year-end financial statements of the owner or operator:
 - (i) Shall be examined by an independent certified public accountant (CPA);
 - (ii) Shall be accompanied by the CPA's report of the examination; and
 - (iii) Shall not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
8. Annually the owner or operator shall submit a special report prepared by a CPA. The report shall include statements by the CPA that:
 - (i) The CPA has reviewed the data, specified as having been derived from the latest year-end financial statements of the owner or operator, in the Letter from the Chief Executive Officer or the Chief Financial Officer required by subparagraph (c) of this paragraph;
 - (ii) The CPA has compared the data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements; and
 - (iii) The CPA's comparison of data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements revealed nothing to cause the CPA to believe that the data in the Letter from the Chief Executive Officer or the Chief Financial Officer should be adjusted.
- (g) To use the Financial Test of Self Assurance - Alternative II as a financial assurance mechanism, the tank owner or operator shall meet each of the following conditions:

1. The tank owner or operator shall have a tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test.
 2. The tank owner or operator shall have a tangible net worth of at least six (6) times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six (6) times the sum of all other amounts covered by a financial test of the owner or operator for other environmental programs or agencies of the State of Tennessee, other states, and/or federal agencies.
 3. Assets of the tank owner or operator located in the United States shall amount to at least ninety percent (90%) of the total assets of the owner or operator or at least six (6) times the current amounts of financial assurance covered by the owner or operator through the use of this Financial Test of Self-Assurance – Alternative II.
 4. The tank owner or operator shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.
 5. For purposes of the Financial Test of Self Assurance – Alternative II, bond ratings shall apply to outstanding, rated bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, and that have been issued directly by the owner or operator. Ratings on revenue bonds shall not be used in the financial test. In order to pass the Financial Test of Self-Assurance - Alternative II, the owner or operator shall have at least one class of equity securities registered under the Securities Exchange Act of 1934.
 6. The owner or operator shall file financial statements annually with the U.S. Securities and Exchange Commission.
 7. The fiscal year-end financial statements of the owner or operator shall be examined by an independent certified public accountant (CPA) and shall be accompanied by the CPA's report of the examination. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
 8. The owner or operator shall obtain and submit to the Commissioner a special report by a CPA stating that:
 - (i) The CPA has compared the data that the Letter from the Chief Executive Officer or the Chief Financial Officer specifies as having been derived from the latest year-end financial statements of the owner or operator with the amounts in such financial statements; and
 - (ii) In connection with the comparison in subpart (i) of this part, no matters came to the attention of the CPA which caused the CPA to believe that the specified data should be adjusted.
- (h) In accordance with subparagraph (i) of this paragraph an owner or operator shall guarantee that the owner or operator can pay for and carry out corrective actions and/or compensate third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
- (i) Annually, the owner or operator shall complete and submit a notarized written guarantee stating that the said owner or operator shall comply with all of the terms set forth in this paragraph as requirements governing the use of the Financial Test of Self-Assurance. Such Financial Test of Self-Assurance Guarantee Agreement shall:

1. Be in a format established by the Commissioner and completed in accordance with guidance provided by the Commissioner;
2. Commit the owner or operator to carrying out the required corrective actions and/or compensation to third parties in response to a judgment enforceable in Tennessee;
3. Commit the owner or operator to setting up and funding a standby trust in the amount required in an order issued by the Commissioner, up to the amount set forth in paragraph (3) of this rule;
4. Commit the owner or operator to notifying the Commissioner within ten (10) days following a filing to seek bankruptcy protection from creditors under Title 11 U.S. Code; and
5. Commit the owner or operator to notifying the Commissioner within seventy-two (72) hours following of any reasonable determination that the owner or operator can no longer satisfy the requirement of the Financial Test of Self-Assurance, whether Alternative I or Alternative II; and
6. Commit the owner or operator to complying with one of the following within thirty (30) days of determination that the owner or operator no longer meets the requirement of the Financial Test of Self-Assurance, whether Alternative I or Alternative II:
 - (i) Submittal to the Department of an alternative financial assurance mechanism; or
 - (ii) Establishment of and funding of an irrevocable standby trust in accordance with paragraph (15) of this rule to assure the performance of corrective action and/or compensation of third parties for bodily injury and property damage due to accidental releases arising from the operation of petroleum underground storage tank.

(7) Corporate Parent Financial Test Guarantee.

An owner or operator may satisfy the requirements of paragraph (3) of this rule if a direct or higher tier corporate parent of that owner or operator, through a Corporate Parent Financial Test Guarantee, which complies with the requirements of this paragraph, assumes the responsibility of the owner or operator to fund and carry out corrective action and compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

- (a) A Corporate Parent Financial Test Guarantee shall not be used in combination with other financial assurance mechanisms, and shall not be used in cases where a corporate parent itself has a higher parent corporation holding majority control of its voting stock.
- (b) The financial statements of the corporate parent of the owner or operator shall be prepared in accordance with generally accepted accounting principles applicable to the United States, and an independent certified public accountant shall verify the accuracy of the financial test data relative to the financial statements.
- (c) In order to demonstrate that the corporate parent of the owner or operator meets the requirements of the Corporate Parent Financial Test Guarantee as set forth in this paragraph, the Chief Executive Officer or the Chief Financial Officer of the parent company of the owner or operator shall complete and submit a notarized letter, including a Corporate Parent Financial Test as required in subparagraph (d) of this paragraph, to the Department both initially and within ninety (90) days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Executive Officer or the Chief Financial Officer shall be in accordance with guidance provided by the Division division and in a format established by the Division division.

- (d) Both initially and annually, within ninety (90) days after the close of each succeeding fiscal year, the corporate parent of the owner or operator shall demonstrate that the corporate parent guarantor has adequate financial strength to provide the guarantee required by subparagraph (i) of this paragraph by passing the applicable financial test, either the Corporate Parent Financial Test - Alternative I, completed in accordance with subparagraph (f) of this paragraph, or Corporate Parent Financial Test - Alternative II, completed in accordance with subparagraph (g) of this paragraph.
- (e) The financial test alternatives, a comparison of accounting ratios, net worth, assets, operating revenues, and bond ratings relative to fixed criteria, shall be in a format established by the Division and completed in accordance with guidance provided by the division.
- (f) To use the Corporate Parent Financial Test - Alternative I as a financial assurance mechanism, the corporate parent guarantor shall meet the following conditions:
1. The corporate parent guarantor shall have a tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test.
 2. The corporate parent guarantor shall have a tangible net worth at least six (6) times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six (6) times the sum of all other amounts covered by a financial test of the corporate parent guarantor for all other environmental programs or agencies in the State of Tennessee, other states, and/or federal agencies.
 3. The corporate parent guarantor shall have assets located in the United States which shall amount to at least ninety percent (90%) of the total assets of the corporate parent or at least six (6) times the current amounts of financial assurance covered by the corporate parent guarantor through the use of the Corporate Parent Financial Test - Alternative I.
 4. The corporate parent guarantor shall satisfy at least two (2) of the three (3) ratio standards in subparts (i) through (iii) of this part:
 - (i) The ratio of total liabilities to net worth shall equate to less than 1.5;
 - (ii) The ratio of the sum of net income plus depreciation, depletion, and amortization minus ten million dollars (\$10,000,000) to the total liabilities shall equate to greater than 0.10; and/or
 - (iii) The ratio of current assets to current liabilities shall equate to greater than 1.5.
 5. The corporate parent guarantor shall report the firm's financial position to Dun and Bradstreet annually and have a financial strength rating of 4A or 5A and a composite credit appraisal of 1 by Dun and Bradstreet.
 6. The corporate parent guarantor shall comply with one of the following:
 - (i) The corporate parent guarantor shall file financial statements with the U.S. Securities and Exchange Commission annually; or
 - (ii) The corporate parent guarantor shall file complete financial statements with the Energy Information Administration annually.
 7. The fiscal year-end financial statements of the corporate parent guarantor:
 - (i) Shall be examined by an independent certified public accountant (CPA);
 - (ii) Shall be accompanied by the CPA's report of the examination; and

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- (iii) Shall not include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
8. Annually, the corporate parent guarantor shall submit a special report prepared by a CPA. The report shall include statements by the CPA that:
- (i) The CPA has reviewed the data, specified as having been derived from the latest year-end financial statements of the corporate parent guarantor, in the Letter from the Chief Executive Officer or the Chief Financial Officer;
 - (ii) The CPA has compared the data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements; and
 - (iii) The CPA's comparison of data in the Letter from the Chief Executive Officer or the Chief Financial Officer with the amounts in the latest year-end financial statements revealed nothing to cause the CPA to believe that the data in the Letter from the Chief Executive Officer or the Chief Financial Officer should be adjusted.
- (g) To use the Corporate Parent Financial Test - Alternative II as a financial assurance mechanism, the corporate parent guarantor shall meet each of the following conditions:
1. The corporate parent guarantor shall have a tangible net worth of at least ten million dollars (\$10,000,000) plus the dollar amount of all financial assurance covered by a financial test.
 2. The corporate parent guarantor shall have a tangible net worth of at least six (6) times the required annual aggregate amount for corrective action and compensation of third parties for bodily injury and property damage assured by this financial test and at least six (6) times the sum of all other amounts covered by a financial test of the corporate parent guarantor for other environmental programs or agencies of the State of Tennessee, other states, and/or Federal agencies.
 3. Assets of the corporate parent guarantor located in the United States shall amount to at least ninety percent (90%) of the total assets of the corporate parent guarantor or at least six (6) times the current amounts of financial assurance covered by the corporate parent guarantor through the use of this Corporate Parent Financial Test - Alternative II.
 4. The corporate parent guarantor shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.
 5. For purposes of the Corporate Parent Financial Test, bond ratings shall apply to outstanding, rated bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, and that have been issued directly by the corporate parent guarantor. Ratings on revenue bonds shall not be used in the financial test. In order to pass this Corporate Parent Financial Test - Alternative II, the corporate parent guarantor shall have at least one class of equity securities registered under the Securities Exchange Act of 1934.
 6. The corporate parent guarantor shall file financial statements annually with the U.S. Securities and Exchange Commission.
 7. The fiscal year-end financial statements of the corporate parent guarantor shall be examined by an independent certified public accountant (CPA) and shall be accompanied by the CPA's report of the examination. The firm's year-end financial statements cannot

include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.

8. The corporate parent guarantor shall obtain and submit to the Commissioner a special report by a CPA stating that:

(i) The CPA has compared the data that the Letter from the Chief Executive Officer or the Chief Financial Officer specifies as having been derived from the latest year-end financial statements of the corporate parent guarantor with the amounts in such financial statements; and

(ii) In connection with the comparison in subpart (i) of this part, no matters came to the attention of the CPA which caused the CPA to believe that the specified data should be adjusted.

(h) In accordance with subparagraph (i) of this paragraph the corporate parent guarantor shall commit to paying for and carrying out the required corrective action and compensation to third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.

(i) Annually, the corporate parent shall complete and submit a notarized written guarantee stating that the corporate parent will comply with all of the terms set forth in this paragraph as requirements governing the use of the Corporate Parent Financial Test Guarantee. Such Corporate Parent Financial Test Guarantee Agreement shall:

1. Be in a format established by the Division division and in accordance with guidance provided by the Division division;

2. Commit the corporate parent guarantor to carrying out the required corrective actions and/or compensation of third parties in response to a judgment enforceable in Tennessee;

3. Commit the corporate parent guarantor to setting up and funding a standby trust in the amount required in an order issued by the Commissioner, up to the amount set forth in paragraph (3) of this rule;

4. Commit the corporate parent guarantor to notifying the Commissioner within ten (10) days following the filing to seek bankruptcy protection from creditors under Title 11 U.S. Code; and

5. Commit the corporate parent guarantor to notifying the Commissioner within seventy-two (72) hours following of any reasonable determination that the corporate parent guarantor can no longer satisfy the requirement of the Corporate Parent Financial Test of Self-Assurance, whether Alternative I or Alternative II; and

6. Commit the corporate parent guarantor to complying with one of the following within thirty (30) days of determination that the corporate parent guarantor no longer meets the requirement of the Corporate Parent Financial Test of Self-Assurance, whether Alternative I or Alternative II:

(i) Submittal to the Division division of an alternative financial assurance mechanism; or

(ii) Establishment of and funding of an irrevocable standby trust in accordance with paragraph (15) of this rule to assure the performance of corrective action and/or compensation of third parties for bodily injury and property damage due to accidental releases arising from the operation of petroleum underground storage tank systems in the amount required in an order issued by the Commissioner; up to the amount set forth in paragraph (3) of this rule.

(8) Liability Insurance.

A tank owner or operator may satisfy the requirement of paragraph (3) of this rule by obtaining liability insurance that meets the requirements of this paragraph.

(a) Standby Trust Fund.

1. A tank owner or operator who uses an insurance policy as financial assurance to meet the requirements of paragraph (3) of this rule for taking corrective action and/or compensating third parties for bodily injury and/or property damage due to accidental releases arising from the operation of petroleum underground storage tank systems shall establish a standby trust fund when the policy is issued.
2. The trust agreement governing the trust fund shall satisfy the requirements of paragraph (15) of this rule. The trust agreement shall be in a format established by the Division and worded in accordance with guidance provided by the Division.

(b) Qualified Insurer.

The tank owner or operator shall obtain insurance from a qualified insurer:

1. The insurer shall be licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the State of Tennessee and have an A.M. Best rating of at least "A."
2. The insurer shall not be a "captive insurance company" as defined in T.C.A. § 56-13-102.

(c) Insurance Policies, UST Certificates of Insurance and UST Insurance Endorsements.

1. Liability insurance may be in the form of an endorsement to an existing insurance policy or a separate insurance policy.
2. An original UST Certificate of Insurance or UST Insurance Endorsement shall be submitted to the Commissioner.
 - (i) The UST Certificate of Insurance shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
 - (ii) The UST Insurance Endorsement shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
3. A duplicate original of the insurance policy shall be provided to the Commissioner within thirty (30) days of the issuance of a UST Certificate of Insurance or a UST Insurance Endorsement. The insurance policy is subject to review and approval by the Commissioner prior to final acceptance of insurance as financial assurance for the tank owner or operator as required by paragraph (3) of this rule.
4. Each policy shall contain a provision allowing the assignment of the policy to a successor tank owner or operator. Such assignment may be conditional upon the consent of the insurer, provided such consent is not unreasonably withheld.
5. The tank owner or operator shall maintain the insurance policy in full force and effect until the Commissioner releases the tank owner or operator from the requirements for financial assurance as specified in paragraph (21) of this rule or until the owner or operator has substituted an acceptable alternate financial assurance mechanism in accordance with paragraphs (4) and (17) of this rule.

6. The insurance policy shall be issued for a face amount at least equal to the amount required by paragraph (3) of this rule. Actual payment by the insurer shall not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.
7. The insurance policy shall guarantee that funds shall be available for taking corrective action in accordance with Rule ~~4200-01-15-06~~ 0400-18-01-06 and/or for compensating third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
8. The insurance policy shall guarantee that the Commissioner is authorized to draw on the policy through claim or forfeiture up to the limits of liability or face value of the policy in the event the insured fails to take corrective action and/or compensate third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
9. Under the terms of the policy, all amounts forfeited by the insurance company, as ordered by the Commissioner, shall be paid to the ~~Division~~ division in accordance with subparagraph (20)(e) of this rules or shall be paid directly into the standby trust fund.
10. The policy shall provide that the insurer shall comply with any Order of Forfeiture issued by the Commissioner as a result of the occurrence of any of the events or conditions itemized in items 11(v)(l) through (IV) of ~~subpart (11)(v)~~ of this subparagraph.
11. Cancellation, Termination or Failure to Renew by the Insurer.
 - (i) The policy shall provide that the insurer shall not cancel, terminate, or fail to renew the policy except for failure to pay the premium in which case the policy is still subject to forfeiture pursuant to subparts (v) and (vi) of this part.
 - (ii) If there is a failure to pay the premium, the insurer may elect to cancel, terminate, or fail to renew the policy. If the insurer so elects, the insurer shall send notice by certified mail to the insured tank owner or operator and to the Commissioner.
 - (iii) Cancellation, termination, or failure to renew shall not occur until at least one hundred eighty (180) days after the date of receipt of the notice by the tank owner or operator, as evidenced by the certified mail return receipt.
 - (iv) Cancellation, termination or failure to renew shall not occur until the Commissioner has received notice as evidenced by certified mail return receipt.
 - (v) Cancellation, termination, or failure to renew shall not occur during the period of coverage of the policy nor at the end of the one hundred eighty (180) days reference in subpart (iii) of this part and the policy shall remain in force and effect in the event that on or before the date of expiration:
 - (I) The Commissioner deems the facility abandoned; or
 - (II) Closure of the facility is ordered by the Commissioner, the board, or a court of competent jurisdiction; or
 - (III) The tank owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code; or
 - (IV) The premium due is paid; or
 - (V) The Commissioner issues an Order of Forfeiture as a result of the occurrence of conditions itemized in items (I) through (III) of this subpart.

- (vi) Cancellation of the policy for any reason, without the insured's substitution of alternate financial assurance as specified in paragraph (17) of this rule may result in a demand by the Commissioner to the insurer to pay the face value of the policy into a standby trust fund at the end of the one hundred eighty (180) day period of cancellation notification. If the policy is not renewed or replaced by an approved alternative financial assurance mechanism within one (1) year of the funding of the trust, the funds of the standby trust shall be forfeited to the Division in accordance with subparagraph (20)(e) of this rule due to the failure of the insured to maintain financial assurance.

(9) Surety Bond or Performance Bond.

A tank owner or operator may satisfy the requirement of paragraph (3) of this rule by obtaining a surety bond that meets the requirements of this paragraph.

(a) Standby Trust Fund.

1. A tank owner or operator who uses a surety bond or performance bond as financial assurance to meet the requirements of paragraph (3) of this rule for taking corrective action and/or compensating third parties for bodily injury and/or property damage due to accidental releases arising from the operation of petroleum underground storage tank systems shall establish a standby trust fund when the surety bond is acquired.
2. The trust agreement governing the trust fund shall satisfy the requirements of paragraph (15) of this rule. The trust agreement shall be in a format established by the Division and worded in accordance with guidance provided by the Division.

(b) Qualified Surety Company.

The tank owner or operator shall obtain the surety bond or performance bond from a qualified surety company:

1. The surety company issuing the bond shall be licensed to do business as a surety in the State of Tennessee; and
2. The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest Circular 570 of the U.S. Department of the Treasury.

(c) Surety Bond or Performance Bond.

1. The surety bond or performance bond shall be in a format established by the Division and worded in accordance with guidance provided by the Division.
2. The original of the bond shall be submitted to the Commissioner.
3. The bond shall guarantee that the tank owner or operator shall assume financial responsibility for taking corrective action and/or compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
4. The bond shall set forth the per occurrence amount and the annual aggregate amount for taking corrective action, and the per occurrence amount and the annual aggregate amount for third party claims.
5. The penal sum of the bond shall be in an amount at least equal to the amount required for the tank owner or operator as determined by paragraph (3) of this rule.

6. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond. Following a final determination by the Commissioner that the owner or operator has failed to so perform, under the terms of the bond, the surety shall perform corrective action in accordance with Rule ~~4200-01-15-06~~ ~~0400-18-01-06~~ and/or provide third-party liability compensation or shall forfeit the amount of the penal sum as ordered by the Commissioner.
7. Under the terms of the bond, all amounts forfeited by the surety, as ordered by the Commissioner, shall be paid to the ~~Division~~ division in accordance with subparagraph (20)(e) of this rules or shall be paid directly into the standby trust fund.
8. Cancellation.
- (i) To effect cancellation under the terms of the bond, the surety shall issue notification of cancellation of the bond by sending the notice by certified mail to the owner or operator and to the Commissioner as evidenced by return receipt.
 - (ii) The notice of cancellation shall be received by the Commissioner by no later than one hundred eighty (180) days prior to the anniversary date of the bond. Cancellation of the bond shall not occur during the one hundred eighty (180) day period.
 - (iii) The tank owner or operator shall submit alternate financial assurance to the Commissioner as specified in paragraph (17) of this rule and obtain the Commissioner's written approval of the alternate financial assurance by no later than sixty-one (61) days prior to the date of cancellation of the bond.
 - (iv) Cancellation, termination, or failure to renew shall not occur at the end of the one hundred eighty (180) days specified in subpart (ii) of this part or at any other time during the period of coverage of the bond and the bond shall remain in force and effect in the event that on or before the date of expiration:
 - (i) The Commissioner deems the facility abandoned; or
 - (ii) Closure of the facility is ordered by the Commissioner, the board, or a court of competent jurisdiction; or
 - (iii) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code; or
 - (iv) The premium is paid; or
 - (v) The Commissioner issues an Order of Forfeiture as a result of the occurrence of one or more of the conditions set forth in subpart items (i) through (iii) of this part subpart.
 - (v) Upon notification by the Commissioner that the principal has failed to provide alternative financial assurance within one hundred twenty (120) days after the date of notice of cancellation is received by the principal, the surety(ies) shall at the direction of the Commissioner, by no later than the one hundred seventy ninth (179th) day following the date of the notice of cancellation, pay the amount of the penal sum of the bond into a standby trust fund. If the bond is not renewed or replaced by an alternative instrument within one (1) year of the funding of the trust, the funds of the standby trust will be forfeited to the Division division in accordance with subparagraph (20)(e) of this rule due to the failure of the tank owner or operator to maintain financial assurance.
 - (vii) The tank owner or operator may cancel the bond if the Commissioner has given prior written consent. The Commissioner will provide such written consent when:

- (I) The tank owner or operator substitutes alternative financial assurance as specified in paragraphs (4) and (17) of this rule; or
 - (II) The Commissioner releases the owner or operator from the requirements of this paragraph in accordance with paragraph (21) of this rule.
- (viii) The surety will not be liable for deficiencies in the performance of corrective action and/or third party liability compensation by the tank owner or operator after the Commissioner releases the tank owner or operator from the requirements of this paragraph in accordance with paragraph (21) of this rule.
- (10) Irrevocable Standby Letter of Credit.

A tank owner or operator may satisfy the requirements of paragraph (3) of this rule by obtaining an irrevocable standby letter of credit that meets the requirements of this paragraph.

(a) Standby Trust Fund

1. A tank owner or operator who uses an irrevocable letter of credit as financial assurance to meet the requirements of paragraph (3) of this rule for taking corrective action and/or compensating third parties for bodily injury and/or property damage due to accidental releases arising from the operation of petroleum underground storage tank systems shall establish a standby trust fund when the surety bond is acquired.
2. The trust agreement governing the trust fund shall satisfy the requirements of paragraph (15) of this rule. The trust agreement shall be in a format established by the Division division and worded in accordance with guidance provided by the Division division.

(b) The issuing institution shall be an entity that has the authority to issue letters of credit in the State of Tennessee and whose letter of credit operations are regulated and examined by the U.S. Federal Reserve or the Tennessee Department of Financial Institutions.

(c) Letter of Credit.

1. The letter of credit shall be in a format established by the Division division and worded in accordance with guidance provided by the Division division.
2. The original of the letter of credit shall be submitted to the Commissioner. The letter of credit shall be accompanied by a letter from the tank owner or operator to the Commissioner referring to the letter of credit by number, issuing institution, and date, and providing the following information:
 - (i) The facility identification number assigned by the Division division to each facility covered by the letter of credit;
 - (ii) The address of the location for each facility covered by the letter of credit; and
 - (iii) The specified amount of financial responsibility for taking corrective action and for third party liability compensation provided by the letter of credit.
3. The letter of credit shall be irrevocable.
4. The letter of credit shall be issued for a period of at least one (1) year and shall provide that the expiration date shall be automatically extended each year for a period of at least one (1) year unless, at least one hundred eighty (180) days before the expiration date of the current one (1) year period, the issuing institution notifies both the tank owner or operator and the Commissioner by certified mail of a decision not to extend the expiration date. Under the terms of the letter of credit, the one hundred eighty (180) days shall

begin on the date when the owner or operator has received the notice, as evidenced by the return receipt of certification of delivery. However, expiration shall not occur unless the Commissioner has received the notice, as evidenced by the return receipt of certification of delivery.

5. The letter of credit shall be issued in an amount at least equal to the amount specified in accordance with paragraph (3) of this rule.
 6. The letter of credit may be drawn on by the Commissioner in the event the tank owner or operator fails to take corrective action in accordance with Rule ~~4200-01-15-06~~ 0400-18-01-06 and/or compensate third parties for bodily injury and/or property damage caused by accidental releases arising from the operation of petroleum underground storage tank systems.
 7. The letter of credit may be drawn on by the Commissioner in the event of the occurrence of the following events:
 - (i) The Commissioner deems the facility abandoned;
 - (ii) Closure of the facility is ordered by the Commissioner, the board, or a court of competent jurisdiction; or
 - (iii) The owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code.
 8. The Commissioner may draw on the letter of credit upon forfeiture as provided in paragraph (20) of this rule if the tank owner or operator does not establish alternate financial responsibility as specified in paragraphs (4) and (17) of this rule and obtain written approval of such alternate financial responsibility from the Commissioner within one hundred twenty (120) days after receipt by the tank owner or operator of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the expiration date of the current one (1) year period. The Commissioner may delay the drawing if the issuing institution grants a one (1) year extension of the terms of the credit by no later than one hundred twenty (120) days prior to the stated cancellation date. During the last sixty (60) days of any such extension, the Commissioner may draw on the letter of credit if the owner or operator has failed to provide alternate financial responsibility as specified in paragraphs (4) and (17) of this rule and obtain written approval of such financial responsibility from the Commissioner.
 9. Under the terms of the letter of credit, all amounts forfeited by the financial institution issuing the letter of credit shall be paid directly to the Division in accordance with subparagraph (20)(e) of this rule.
 10. The Commissioner will return the letter of credit to the issuing institution for termination when:
 - (i) A tank owner or operator substitutes alternative financial assurance as specified in paragraphs (4) and (17) of this rule; or
 - (ii) The Commissioner releases the owner or operator from the requirements of this paragraph in accordance with paragraph (21) of this rule.
- (11) **Personal Bond Supported by Certificate of Deposit.**
- A tank owner or operator may satisfy the requirements of paragraph (3) of this rule by obtaining a personal bond supported by a certificate of deposit that meets the requirements of this paragraph.

- (a) The financial institution holding the funds shall be a commercial financial institution governed by the Federal Reserve and the U.S. Comptroller of the Currency or regulated by the Tennessee Department of Financial Institutions.
- (b) Statement of Personal Bond.
1. The owner or operator shall submit the Statement of Personal Bond Supported by Certificate of Deposit to the Department concurrent with the issuance of the certificate of deposit.
 2. The Statement of Personal Bond Supported by Certification of Deposit shall be in a format established by the Division division and worded in accordance with guidance provided by the Division division.
- (c) Certificate of Deposit.
1. The funds of the account shall be pledged irrevocable to the Tennessee Department of Environment and Conservation.
 2. The ownership of the certificate of deposit shall be registered as follows:
 - (i) The name of the tank owner or operator and the Tennessee Department of Environment and Conservation; or
 - (ii) The Tennessee Department of Environment and Conservation.
 3. The certificate of deposit shall be automatically renewed annually with the earned interest maintained with the principal.
 4. The original certificate of deposit or safekeeping receipt shall be submitted to and held by the Department.
- (d) Accompanying the original certificate of deposit or safekeeping receipt shall be a letter from an officer of the issuing financial institution which attests to the following:
1. No liens or assignments exist on the deposited funds;
 2. The certificate of deposit shall be automatically renewed each year;
 3. The initial funds of the deposit plus the accrued interest are irrevocably assigned to the Department;
 4. The funds shall not be released to the owner or operator without the written consent of the Commissioner or his/her designee; and
 5. The issuing financial institution shall honor the right of the Department to unilaterally redeem the certificate(s) of deposit for cash in the event the Commissioner executes an Order of Forfeiture due to the failure of the owner or operator to take corrective action in accordance with Rule ~~1200-01-15-06~~ 0400-18-01-06 and/or to compensate third-parties for bodily injury and property damage.
- (12) Trust Fund and Agreement.
- A tank owner or operator may satisfy the requirement of paragraph (3) of this rule by establishing a trust fund and an associated trust agreement that meets the requirements of this paragraph.

(a) Trust Fund.

1. Trustee.

- (i) The trustee shall be an entity that has the authority to act as a trustee.
 - (ii) The operations of the trustee shall be regulated and examined by the State of Tennessee or a federal agency.
 - (iii) The trustee shall invest and reinvest the principal and income of the trust fund, keeping the trust fund as a single fund.
2. Funding.
- (i) The trust fund shall be fully funded on its effective date.
 - (ii) If at any point in time the value of the fund drops below the financial assurance amount covered by this mechanism, the grantor (the tank owner or operator) shall make a payment into the fund to return the value of the trust fund to the required amount.
 - (iii) If at any point in time the value of the fund increases above the financial assurance amount covered by this mechanism, the grantor may submit a written request to the Commissioner for release of the excess funds.
 - (iv) Within sixty (60) days of receipt of a written request for release of excess funds submitted in accordance with subpart (iii) of this part, the Commissioner shall review the request and shall decide whether such release of funds is appropriate at the time of the request.
 - (I) If the Commissioner determines that a release of funds in the amount requested by the grantor or in a lesser amount is appropriate, the Commissioner shall instruct the trustee to release the funds.
 - (II) If the Commissioner determines that a release of the funds is not appropriate, the Commissioner shall notify the grantor and the trustee of that decision.
3. The Division of Underground Storage Tanks of the Department of Environment and Conservation shall be designated as the beneficiary of the trust fund.
4. The trust fund shall not be used for any of the following:
- (i) Any obligation of the grantor (the tank owner or operator) under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
 - (ii) Bodily injury to an employee of the grantor arising from and/or in the course of employment by the grantor;
 - (iii) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
 - (iv) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the grantor that is not the direct result of a release from a petroleum underground storage tank system; or
 - (v) Bodily injury or property damage for which the grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of paragraph (3) of this rule.

5. The trust fund shall be irrevocable and shall continue until terminated at the written direction of both the grantor (the tank owner or operator) and the trustee with the written approval of the Commissioner or by the trustee acting upon written direction by the Commissioner.

(b) The trust agreement shall be in a format established by the Division division and worded in accordance with guidance provided by the Division division.

(13) Local Government Bond Rating Test.

A local government tank owner or operator and/or a guarantor may satisfy the requirements of paragraph (3) of this rule by having a currently outstanding issue(s) of bonds that meets the requirements of this paragraph.

(a) A local government bond rating test shall not be used in combination with other financial assurance mechanisms.

(b) A general purpose local government owner or operator and/or a local government serving as a guarantor shall have a currently outstanding issue(s) of general obligation bonds of one million dollars (\$1,000,000.00) or more, excluding refunded obligations.

1. The local government shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.

2. Where the local government has multiple outstanding issues, or where the local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility.

3. Bonds that are backed by credit enhancements other than municipal bond insurance shall not be considered in determining the amount of applicable bonds outstanding.

(c) A local government owner or operator and/or a local government serving as a guarantor that is not a general purpose government and does not have the legal authority to issue general purpose bonds shall have a currently outstanding issue(s) of revenue bonds of one million dollars (\$1,000,000.00) or more, excluding refunded issues.

1. The local government shall have a current rating by a bond rating agency for its most recent bond issuance that meets or exceeds the level determined by the Commissioner to indicate a sound financial position. The Commissioner shall make this determination in writing.

2. Where the local government has multiple outstanding issues, or where the local government's bonds are rated by both Moody's and Standard and Poor's, the lowest rating shall be used to determine eligibility.

3. Bonds that are backed by credit enhancements shall not be considered in determining the amount of applicable bonds outstanding.

(d) The local government owner or operator and/or guarantor shall submit to the Department an original or certified copy of its most recent bond rating published within the last twelve (12) months by Moody's or Standard and Poor's.

(e) The local government owner or operator and/or guarantor, using the local government bond rating test, shall annually report to the Commissioner the applicable bond ratings within ninety (90) days following the end of the fiscal year of the owner or operator and/or guarantor.

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- (f) To demonstrate that the local government tank owner or operator and/or guarantor meets the local government bond rating test, the chief financial officer of the local government owner or operator and/or guarantor shall complete and submit a notarized letter, both initially and within ninety (90) days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Financial Officer, whether for a general purpose local government or for a non-general purpose government, shall be in accordance with guidance provided by the Division division. The letter shall be in format established by the Division division.
- (g) If a local government owner or operator and/or guarantor, using the bond rating test to provide financial assurance, finds that it no longer meets the requirements of the financial bond rating test, it shall obtain and submit to the Commissioner alternate financial assurance within thirty (30) days of its determination that it no longer meets the requirements.
- (h) If the Commissioner has reason to believe that the local government owner or operator and/or guarantor no longer meets the requirements of the local government bond rating test, the Commissioner may require the local government tank owner or operator and/or guarantor to submit reports of its financial condition. The local government owner or operator and/or guarantor shall submit the required financial reports to the Department in accordance with the schedule established by the Commissioner.
- (i) Upon determination by the Commissioner that the local government owner or operator and/or guarantor no longer meets the local government bond rating test requirements, the local government owner or operator and/or guarantor shall either:
 1. Obtain and submit an alternate financial assurance mechanism in accordance with paragraphs (4) and (17) of this rule within thirty (30) days after notification of such a determination by the Commissioner; or
 2. Fund a standby trust in accordance with paragraph (15) of this rule in the amount required by paragraph (3) of this rule for corrective action and for compensating third parties for bodily injury and property damage. The trust shall be funded by no later than thirty (30) days after notification of such a determination by the Commissioner.

(14) Local Government Financial Test.

A local government tank owner or operator may satisfy the requirements of paragraph (3) of this rule by passing a financial test that meets the requirements of this paragraph.

- (a) A local government financial test shall not be used in combination with other financial assurance mechanisms.
- (b) The local government owner or operator shall have the ability and authority to assess and levy taxes or to freely establish fees and charges.
- (c) The local government owner or operator shall have the following information available, as shown in the year end financial statements for the latest completed fiscal year:
 1. Total revenues: consisting of the sum of general fund operating and non-operating revenues including net local taxes, licenses and permits, fines and forfeitures, revenues from use of money and property, charges for services, investment earnings, sales (property, publications, and others), intergovernmental revenues (restricted and unrestricted), and total revenues from all other governmental funds including enterprise, debt service, capital projects, and special revenues, but not excluding revenues to funds held in a trust or agency capacity. For purposes of this local government financial test, the calculation of total revenues shall exclude all transfers between funds under the direct control of the local government using this financial test (interfund transfers), liquidation of investments, and issuance of debt.

2. Total expenditures: consisting of the sum of general fund operating and non-operating expenditures including public safety, public utilities, transportation, public works, environmental protection, cultural and recreational, community development, revenue sharing, employee benefits and compensation, office management, planning and zoning, capital projects, interest payments on debt, payments for retirement of debt principal, and total expenditures from all other governmental funds including enterprise, debt service, capital projects, and special revenues. For purposes of this local government financial test, the calculation of total expenditures shall exclude all transfers between funds under the direct control of the local government using the financial test (interfund transfers).
 3. Local revenues: consisting of total revenues, as set forth in part 1 of this subparagraph, minus the sum of all transfers from other governmental entities, including all monies received from federal, state, or local government sources.
 4. Debt service: consisting of the sum of all interest and principal payments on all long-term credit obligations and all interest-bearing short-term credit obligations. Debt service includes interest and principal payments on general obligation bonds, revenue bonds, notes, mortgages, judgments, and interest bearing warrants. Debt service excludes payments on non-interest bearing short term obligations, interfund obligations, amounts owed in a trust or agency capacity, and advances and contingent loans from other governments.
 5. Total funds: consisting of the sum of cash and investment securities from all funds, including general, enterprise, debt service, capital projects, and special revenue funds, but excluding employee retirement funds, at the end of the local government's financial reporting year. Total funds includes federal securities, federal agency securities, state and local government securities, and other securities such as bonds, notes and mortgages. For purposes of this local government financial test, the calculation of total funds shall exclude agency funds, private trust funds, accounts receivable, value of real property, and other non-security assets.
 6. Population: consisting of the number of people in the area served by the local government.
- (d) The local government's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion or a disclaimer of opinion. The local government cannot have outstanding issues of general obligation bonds that are rated at less than investment grade.
 - (e) To demonstrate that it meets the local government financial test, the local government owner or operator shall complete and submit a notarized letter, both initially and within one hundred twenty (120) days following the date of the close of each successive financial reporting year. Wording in the Letter of the Chief Financial Officer shall be in accordance with guidance provided by the Division division. The letter shall be in format established by the Division division.
 - (f) If a local government owner or operator, using the local government financial test to provide financial assurance, finds that it no longer meets the requirements of the financial test, it shall obtain and submit to the Commissioner alternate financial assurance within thirty (30) days of its determination that it no longer meets the requirements.
 - (g) If the Commissioner has reason to believe that the local government owner or operator no longer meets the requirements of the local government financial test, the Commissioner may require the local government tank owner or operator to submit reports of its financial condition. The local government owner or operator shall submit the required financial reports to the Department in accordance with the schedule established by the Commissioner.
 - (h) Upon the Commissioner's determination that the local government owner or operator no longer meets the local government financial test requirements, the local government owner or operator shall either:

1. Obtain and submit an alternate financial assurance mechanism in accordance with paragraphs (4) and (17) of this rule within thirty (30) days after notification of such a determination by the Commissioner; or
2. Fund a standby trust in accordance with paragraph (15) of this rule in the amount required by paragraph (3) of this rule for corrective action and for compensating third parties for bodily injury and property damage. The trust shall be funded by no later than thirty (30) days after notification of such a determination by the Commissioner.

(15) Standby Trust Fund.

- (a) A tank owner or operator using the financial assurance mechanisms set forth in paragraphs (8), (9) and (10) of this rule shall establish a Standby Trust Fund and Agreement in accordance with this paragraph.
- (b) A tank owner or operator using the financial assurance mechanisms set forth in paragraphs (6), (7), (13) and (14) of this rule shall establish a Standby Trust Fund and Agreement in accordance with this paragraph if the requirements of the financial test can no longer be met and the owner or operator or guarantor fails to provide an alternative financial assurance mechanism that meets the requirements of this rule.
- (c) Trustee.
 1. The trustee shall be an entity that has the authority to act as a trustee.
 2. The operations of the trustee shall be regulated and examined by the State of Tennessee or a federal agency.
 3. The trustee shall invest and reinvest the principal and income of the trust fund, keeping the trust fund as a single fund.
- (d) The Division of Underground Storage Tanks of the Department of Environment and Conservation shall be designated as the beneficiary of the trust fund.
- (e) The trust fund shall not be used for any of the following:
 1. Any obligation of the grantor (the tank owner or operator) under a workers compensation, disability benefits, or unemployment compensation law or other similar law;
 2. Bodily injury to an employee of the grantor arising from and/or in the course of employment by the grantor;
 3. Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
 4. Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by the grantor that is not the direct result of a release from a petroleum underground storage tank system; or
 5. Bodily injury or property damage for which the grantor is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of paragraph (3) of this rule.
- (f) The trust fund shall be irrevocable and shall continue until terminated at the written direction of both the grantor (the tank owner or operator) and the trustee with the written approval of the Commissioner or by the trustee acting upon written direction by the Commissioner.
- (g) The trust agreement shall be in a format established by the Division division and worded in accordance with guidance provided by the Division division.

(16) Record Keeping.

A tank owner or operator shall maintain, on site at each facility or at the place of business of the owner or operator, a copy of all financial assurance documents submitted to the Department demonstrating compliance with this rule. This documentation shall be maintained until the owner or operator is released from the financial responsibility requirements by the Commissioner in accordance with paragraph (21) of this rule.

(17) Substitution of Financial Assurance Mechanisms by the Owner or Operator.

In satisfying the requirements of paragraph (3) of this rule, an owner or operator may substitute an alternative financial assurance mechanism for the financial mechanism already on file with the Department. The alternate financial assurance mechanism shall satisfy the requirements of this rule. The financial assurance mechanism already on file with the Department shall not be released and shall be maintained in force until the alternative financial mechanism has been received and approved by the Commissioner. By no later than ten (10) business days following the date of the approval of the alternate financial assurance mechanism by the Commissioner, the prior financial assurance mechanism shall be released to the tank owner or operator.

(18) Changes of Ownership or Operational Control of UST Facilities.

Changes in or the replacement of an existing financial assurance mechanism due to changes of ownership or operational control of a UST facility shall be submitted to the Commissioner concurrent with the change of ownership or operational control of the facility. All submittals shall comply with the requirements of this rule.

(19) Bankruptcy or Other Incapacity of the Owner or Operator or the Issuer of the Financial Assurance Mechanism.

(a) Within ten (10) days after the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy) U.S. Code, naming a tank owner or operator as debtor, the owner or operator shall notify the Commissioner by certified mail of such commencement.

(b) An owner or operator who obtains financial assurance by a mechanism other than the Financial Test of Self-Assurance as set forth in paragraph (6) of this rule will be deemed to be without the financial responsibility required by this rule in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of its financial assurance to issue a guarantee, an insurance policy, a surety bond, or a letter of credit. Within ten (10) business days of receiving notice of such bankruptcy or incapacity, the tank owner or operator shall notify the Commissioner, by certified mail, of the same. By no later than thirty (30) days subsequent to the date of receiving notice of such bankruptcy or incapacity, the tank owner or operator shall obtain alternate financial assurance and shall submit the original financial assurance documents comprising or associated with the alternate financial assurance mechanism to the Commissioner in accordance with the provisions of this rule.

(20) Procedures Governing the Forfeiture of the Financial Assurance of UST Owners and Operators.

(a) Upon the Commissioner's determination that a tank owner or operator has failed to pay for taking corrective action in accordance with Rule ~~1200-04-15-06~~ ~~0400-18-01-06~~ and/or compensate third parties for bodily injury and property damage caused by an accidental release arising from the operation of a petroleum underground storage tank system, the Commissioner may provide notice of such non-compliance, to be served on the tank owner or operator by hand delivery or by certified mail. The Notice of Non-Compliance shall establish a schedule for coming into compliance with the regulatory requirements.

(b) If the Commissioner determines that the owner or operator has failed to perform as specified in the Notice of Non-Compliance, or as specified in any subsequent compliance agreement which may have been reached by the owner or operator and the Commissioner, the Commissioner may

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cause a Notice of Show Cause Meeting to be served upon the owner or operator. The Notice of Show Cause Meeting shall establish the date, the time, and the location of a meeting scheduled to provide the owner or operator with the opportunity to "show cause" why the Commissioner should not pursue forfeiture of the financial assurance filed to guarantee such performance.

- (c) If no mutual compliance agreement is reached at a show cause meeting, or upon the Commissioner's determination that the owner or operator failed to perform as specified in an agreement that was reached, or in lieu of a show cause meeting, the Commissioner may order forfeiture of the financial assurance filed to guarantee such performance. Upon the Commissioner's determination that the procedures of this paragraph have been followed, the Commissioner, at his or her discretion may issue such an order of forfeiture. Upon issuance, a copy of the Order of Forfeiture shall be hand delivered or forwarded by certified mail to the owner or operator and to the issuer of the financial assurance mechanism or guarantor of financial assurance. Any such order issued by the Commissioner shall become effective thirty (30) days after the receipt by the owner or operator unless it is appealed to the Board as provided in Rule ~~1200-01-15-11~~ 0400-18-01-11.
- (d) If necessary, upon the effective date of the Order of Forfeiture, the Commissioner may give notice to the Attorney General of the State of Tennessee who shall collect the forfeiture.
- (e) Funds from forfeitures shall be deposited in the Tennessee Petroleum Underground Storage Tank Fund. The forfeited funds shall be earmarked for use in the performance of corrective action or the compensation of third parties due to bodily injury or property damage in connection with the operation of the underground storage tank systems of the owner or operator forfeiting the financial assurance.

(21) Release of Financial Assurance Mechanisms.

The original financial assurance mechanism document(s) shall be held by the Commissioner until replaced by an alternate instrument or until the owner or operator is released by the Commissioner. The Commissioner shall release the financial assurance mechanism to the tank owner or operator or to the issuing financial institution after one of the following has occurred:

- (a) The underground storage tank systems have been closed to the satisfaction of the ~~Division~~ division pursuant to rule ~~1200-01-15-07~~ paragraphs (4) and (5) of Rule ~~0400-18-01-07~~ or
- (b) An alternative financial assurance mechanism has been received and approved by the Commissioner in accordance with paragraph (17) of this rule.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-09~~ 0400-18-01-09 Petroleum Underground Storage Tank Fund.

(1) Purpose.

This rule establishes the manner in which disbursements are made from the Tennessee Petroleum Underground Storage Tank Fund and implements the purposes and objectives of the Tennessee Petroleum Underground Storage Tank Act.

(2) Applicability.

- (a) Requirements of this rule apply to all owners and/or operators of an underground storage tank system as defined in rule ~~1200-01-15-04~~ paragraph (4) of Rule ~~0400-18-01-01~~ except as otherwise provided for in rule ~~1200-01-15-04~~ subparagraph (2)(b) of Rule ~~0400-18-01-01~~. However, the requirements of this rule do not apply to those tanks owned by state and federal entities whose debts and liabilities are the debts and liabilities of a state or the United States.
- (b) Petroleum site owners eligible for fund reimbursement shall only be reimbursed for those fund eligible and reasonable costs which accrued on or after July 1, 2002.

(3) Fund Eligibility Requirements.

- (a) Establishment of fund eligibility for release occurrences prior to July 1, 2008. Owners and/or operators satisfying the requirements of this subparagraph will have established fund eligibility for release occurrences prior to July 1, 2008.
1. Registration of each petroleum underground storage tank:
 - (i) For tanks installed on or after July 1, 1988, within thirty (30) days of the installation of that tank; or
 - (ii) For tanks installed prior to July 1, 1988, by June 30, 1989.
 2. Payment of the annual fee for the tank and/or tank compartments for the first year for which fees were required in accordance with Rule ~~1200-01-15-10~~ 0400-18-01-10.
- (b) Establishment of fund eligibility for release occurrences on or after July 1, 2008. Releases on or after July 1, 2008 will be fund eligible if the division has received notification registering the tank prior to the release occurrence.
- (c) Except as provided for in subparagraph (5)(d) of this rule, before the owner and/or operator or petroleum site owner will receive fund benefit, the applicable entry level amount to the fund shall be expended as approved costs by the owner and/or operator or petroleum site owner. The applicable entry level is the entry level in effect on the date of the release as set forth in subparagraph (6)(b) of this rule.
- (d) An Application for Fund Eligibility shall be timely submitted to the Division division before the applicable deadline set forth in T.C.A. § 68-215-111(f)(6) and in subparagraph (4)(d) of this rule. Failure to comply with the applicable deadline shall make the release ineligible for reimbursement from the fund.

(4) Fund Ineligibility

- (a) If at the time of discovery of a release, the Division division determines that an owner and/or operator has failed to establish fund eligibility in accordance with subparagraph (3)(a) or (b) of this rule, corrective action costs and/or third party damages associated with that release are not eligible for coverage by the fund.
- (b) An owner and/or operator who has failed to establish fund eligibility in accordance with the provisions of subparagraph (3)(a) or (b) of this rule shall comply with the following in order to establish fund eligibility:
1. Pay all annual tank fees and late payment penalties owed;
 2. Pay all civil penalties owed;
 3. Perform and pass a systems tightness test in accordance with rule ~~1200-01-15-04~~ subparagraphs (3)(c) and (4)(b) of Rule 0400-18-01-04 for each UST system in operation at the site;
 4. Demonstrate through a Division division approved site check, conducted in accordance with Division division guidance, there have been no releases from the UST system(s) at this site or that prior releases at the site would not interfere with the discovery of a new release at the site; and
 5. The Division division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division division, any noted deficiencies or violations discovered by the

~~Division~~ ~~division~~ personnel during this inspection within forty-five (45) days, or such other time period as the ~~Division~~ ~~division~~ may allow, of the date of the notice of such deficiencies to the owner and/or operator.

(c) Within thirty (30) days of meeting the requirements to establish fund eligibility in accordance with subparagraph (b) of this paragraph, the ~~Division~~ ~~division~~ will notify the owner and/or operator of the date that fund eligibility was established. The fund will not cover either investigative or corrective action costs or third party liability claims associated with a release which occurred during the time of fund ineligibility.

(d) If there is evidence of a suspected release or a confirmed release on or after July 1, 2004, that release shall be ineligible for reimbursement from the fund if an Application for Fund Eligibility is not timely filed in accordance with the following:

1. An Application for Fund Eligibility shall be filed with the ~~Division~~ ~~division~~ within ninety (90) days of the discovery of evidence of a suspected release which is subsequently confirmed in accordance with Rules ~~1200-01-15-04~~ ~~0400-18-01-04~~ and/or ~~1200-01-15-05~~ ~~0400-18-01-05~~. The ninety (90) days shall start on the day the evidence of the suspected release is discovered.

2. An Application for Fund Eligibility shall be filed with the ~~Division~~ ~~division~~ within sixty (60) days of a release which was identified in any manner other than the process for confirmation of a suspected release in accordance with Rules ~~1200-01-15-04~~ ~~0400-18-01-04~~ and/or ~~1200-01-15-05~~ ~~0400-18-01-05~~, for example, during closure activities performed in accordance with Rule ~~1200-01-15-07~~ ~~0400-18-01-07~~.

(5) Authorized disbursements from the fund.

(a) Whenever, in the commissioner's determination, an eligible owner and/or operator or petroleum site owner has a release of petroleum from an underground storage tank and the owner and/or operator or petroleum site owner has been found to qualify for fund coverage in accordance with paragraphs (10) and (11) of this rule, the ~~Division~~ ~~division~~ shall, subject to the provisions of this rule, disburse monies available in the fund to provide for:

1. Emergency response activities, investigation, and assessment of sites contaminated by a release of petroleum in accordance with the requirements of Rules ~~1200-01-15-05~~ ~~0400-18-01-05~~ through ~~1200-01-15-06~~ ~~0400-18-01-06~~.

2. The rehabilitation of sites contaminated by a release of petroleum, which may consist of clean-up of affected soil and groundwater, using cost effective alternatives that are technologically feasible and reliable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage, in accordance with release response, remediation and risk management requirements of Rule ~~1200-01-15-06~~ ~~0400-18-01-06~~.

3. The interim replacement and permanent restoration of potable water supplies.

(b) Monies held in the fund may be disbursed for making payments to third parties who bring suit relative to an UST release against an eligible owner and/or operator of an UST or petroleum site owner who is qualified for fund coverage when such third party obtains a final judgment in that action enforceable in Tennessee.

(c) Costs incurred by the division in the administration of the provisions of this rule or authorized under T.C.A. §68-215-101 et seq. shall be charged to the fund.

(d) The fund shall be available to the board and the Commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance of petroleum sites and for third party claims within the state as

provided in T.C.A. §68-215-101 et seq., in this rule and in ~~rule 1200-01-15-08~~ paragraph (5) of Rule 0400-18-01-08.

1. If a fund eligible tank owner or operator claims financial inability to pay the corrective action entry level or deductible set forth in ~~rule 1200-01-15-08~~ paragraph (6) of Rule 0400-18-01-08 at the time an Application for Fund Eligibility is submitted to the ~~Division~~ division, the fund may be utilized to pay the deductible for taking corrective action.
 - (i) The tank owner or operator shall supply documentation of inability to pay the fund entry level or deductible for taking corrective action to the ~~Division~~ division upon request.
 - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action.
2. If a fund eligible tank owner or operator fails, without sufficient cause, to perform the release response, remediation and/or risk management actions required in ~~Rule 1200-01-15-08~~ 0400-18-01-08 on order of the Commissioner and fails, without sufficient cause to pay the amount of the applicable fund entry level or deductible amount for taking corrective action at the time an Application for Fund Eligibility is submitted to the ~~Division~~ division, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for taking corrective action. In addition, pursuant to T.C.A. § 68-215-116, the Commissioner may seek a penalty in the amount of one hundred fifty percent (150%) of the costs expended by the fund as the result of the failure to take proper action.
3. If a fund eligible tank owner or operator has been denied fund coverage of corrective action costs under the provisions of subparagraph (10)(c) of this rule and the owner or operator claims financial inability to pay for part or all of the necessary corrective action, the fund may be utilized to pay for taking corrective action.
 - (i) The tank owner or operator shall supply documentation of inability to pay for corrective action to the ~~Division~~ division upon request.
 - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount paid by the fund for taking corrective action.
4. If a fund eligible tank owner or operator cannot pay the amount of the applicable fund entry level or deductible amount for third party claims at the time an application for payment accompanied by the original or a certified copy of a final judgment is submitted to the ~~Division~~ division in accordance with ~~rule 1200-01-15-08~~ subparagraph (12)(h) of Rule 0400-18-01-08, the fund may be utilized to pay the deductible for satisfying the third party claim.
 - (i) The tank owner or operator shall supply documentation of their inability to pay the fund entry level or deductible for third party claims to the ~~Division~~ division upon request.
 - (ii) Pursuant to T.C.A. § 68-215-115, the Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for satisfying the third party claim.
5. If a fund eligible tank owner or operator fails, without sufficient cause, to pay the amount of the applicable fund entry level or deductible amount for a third party claim, the fund may be utilized to pay the deductible. Pursuant to T.C.A. § 68-215-115, the

Commissioner may seek cost recovery against the tank owner or tank operator for the amount of the entry level or deductible paid by the fund for third party damages.

- (e) The commissioner may enter into contracts and use the fund for those purposes directly associated with identification, investigation, containment, and cleanup, including monitoring and maintenance prescribed above including:
1. Hiring consultants and personnel;
 2. Purchase, lease or rental of necessary equipment; and
 3. Other necessary expenses.
- (f) The commissioner will pay each approved claim of the fund in chronological order based upon the date the claim is submitted for payment.
- (g) The commissioner will not authorize any disbursement from the fund for costs for which the owner and/or operator or petroleum site owner receives payment from another insurance carrier or other source. Further, the division shall acquire by subrogation the right of the owner and/or operator or petroleum site owner to recover the amount of damages paid to the third party from any person, other than the owner and/or operator of the underground storage tank system from which the release occurred or the petroleum site owner, responsible or liable for the release.
- (h) If fund dollars have been expended in accordance with the provisions of subparagraph (d) and/or (e) of this paragraph for the fund deductible for corrective action or third party claims for a fund eligible release occurrence or for the entire cost for non-fund eligible release occurrence, the Commissioner may seek cost recovery and/or assess a penalty in accordance with the provisions of paragraphs (16) and (17) of this rule and paragraph (5) of Rule ~~1200-04-15-08~~ 0400-18-01-08.
- (6) Scope of fund reimbursement.
- (a) The fund will reimburse eligible owners and/or operators or petroleum site owners for the cost of investigation and corrective action resulting from the accidental release of petroleum from an UST storing petroleum in accordance with the provisions of this rule.
- (b) Owners and/or operators of USTs or petroleum site owners who qualify for fund reimbursement shall meet the per site per occurrence fund entry level or deductible requirements specified in parts 1 through 6 and illustrated in Table 3.
1. If the date of the release was after January 1, 1974 and before July 1, 1988, and the release was reported to the Department before April 11, 1990, and eligible expenditures for assessment or remediation were incurred before April 11, 1990, the deductible requirements for eligible UST owners and/or operators or petroleum site owners for taking corrective action will be seventy-five thousand dollars (\$75,000) and compensation of third parties will be one hundred fifty thousand dollars (\$150,000).
 2. If the date of release was between July 1, 1988 and June 30, 1989, the deductible requirements for eligible UST owners and/or operators or petroleum site owners for taking corrective action will be seventy-five thousand dollars (\$75,000) and compensation of third parties will be one hundred fifty thousand dollars (\$150,000).
 3. If the date of release was between July 1, 1989 and April 30, 1990, the deductible requirements for eligible UST owners and/or operators or petroleum site owners for taking corrective action will be fifty thousand dollars (\$50,000) and compensation of third parties will be one hundred fifty thousand dollars (\$150,000).
 4. If the date of release was between May 1, 1990 and April 4, 1995, the deductible requirements for eligible UST owners and/or operators or petroleum site owners for

corrective action and for compensation for third party claims will be as follows based on the number of tanks owned or operated:

- (i) 1 to 12 tanks, ten thousand dollars (\$10,000) for taking corrective actions and ten thousand dollars (\$10,000) for compensation of third parties;
- (ii) 13 to 999 tanks, twenty thousand dollars (\$20,000) for taking corrective actions and thirty-seven thousand five hundred dollars (\$37,500) for compensation of third parties; or
- (iii) 1,000 or more tanks, fifty thousand dollars (\$50,000) for taking corrective actions and two hundred twenty-five thousand dollars (\$225,000) for compensation of third parties.

5. If the date of release was between April 5, 1995 and July 1, 2005, the deductible requirements for eligible UST owners and/or operators or petroleum site owners shall be as follows based on the number of tanks owned or operated by the tank owner at the time of the release:

- (i) For corrective action costs:
 - (I) 1 to 12 tanks, ten percent (10%) of the total corrective action costs expended in an amount not to exceed ten thousand dollars (\$10,000);
 - (II) 13 to 999 tanks, twenty percent (20%) of the total corrective action costs expended in an amount not to exceed twenty thousand dollars (\$20,000); or
 - (III) 1,000 or more tanks, fifty thousand dollars (\$50,000);

- (ii) For compensation of third party claims:
 - (I) 1 to 12 tanks, ten thousand dollars (\$10,000) for compensation of third parties;
 - (II) 13 to 999 tanks, thirty-seven thousand five hundred dollars (\$37,500) for compensation of third parties; or
 - (III) 1,000 or more tanks, two hundred twenty-five thousand dollars (\$225,000) for compensation of third parties.

6. If the date of the release was on or after July 1, 2005, the deductible for eligible UST owners and/or operators or petroleum site owners for taking corrective action will be twenty thousand dollars (\$20,000) and compensation of third parties will be twenty thousand dollars (\$20,000).

Table 3

Owner And/Or Operator Or Petroleum Site Owner Deductible Per Site Per Occurrence

Date Of Release	Number Of Tanks		
	1 - 12 Tanks	13 - 999 Tanks	1000+ Tanks
After January 1, 1974 and Before July 1, 1988 *	\$75,000 Clean-up/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party

Date Of Release	Number Of Tanks		
	1 - 12 Tanks	13 - 999 Tanks	1000+ Tanks
Between July 1, 1988 and June 30, 1989	\$75,000 Clean-up/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party
Between July 1, 1989 and April 30, 1990	\$50,000 Clean-up/ \$150,000 third party	\$50,000 Clean-up/ \$150,000 third party	\$50,000 Clean-up/ \$150,000 third party
Between May 1, 1990 And April 4, 1995	\$10,000 Clean-up/ \$10,000 third party	\$20,000 Clean-up/ \$37,500 third party	\$50,000 Clean-up/ \$225,000 third party
Between April 5, 1995 And June 30, 2005	10% of Clean-up Cost not to exceed \$10,000/ \$10,000 third party	20% of Clean-up cost not to exceed \$20,000/ \$37,500 third party	\$50,000 Clean-up/ \$225,000 third party
On or after July 1, 2005	\$20,000 Clean-up/ \$20,000 third party	\$20,000 Clean-up/ \$20,000 third party	\$20,000 Clean-up/ \$20,000 third party

* Releases which occurred during this time period are only eligible for reimbursement if, prior to April 11, 1990, the release was reported to the Division division and the owner and/or operator incurred eligible expenses for assessment or remediation.

- (c) The fund shall be responsible to eligible UST owners and/or operators or petroleum site owners for eligible corrective action costs above the entry level to the fund in an amount not to exceed one million dollars (\$1,000,000) per site per occurrence. Likewise, the fund shall be responsible to eligible UST owners and/or operators or petroleum site owners for court awards involving third party claims above the entry level into the fund in an amount not to exceed one million dollars (\$1,000,000) per site per occurrence.
- (d) If the date of the release is on or after September 1, 2005, the owner and/or operator may apply for a reduction of the deductible requirement for corrective action set forth in part (b)6 of this paragraph. Application shall be made using a format established by the Division division and in accordance with instructions provided by the Division division.
1. The tank owner and/or operator shall demonstrate to the satisfaction of the Division division that each UST system at the facility meets or exceeds the criteria for reduction of the deductible set forth in the table in this subparagraph. Such demonstration may include, but not be limited to:
 - (i) Submittal of verifying documentation to the Division division; and/or
 - (ii) On-site verification by the Division division.
 2. For each criterion met there shall be an associated reduction in the deductible. However, the maximum percentage reduction in the deductible per occurrence shall not exceed fifty percent (50%).

Criteria	Percentage Reduction
Double Wall Tank(s)	10 %
Secondary Containment Chase Piping Enclosing Fiberglass Primary Piping or Flexible Plastic Piping with Containment Sumps at Piping Joints	10 %

Containment Sumps at Submersible Turbine Pumps	10 %
Containment Sumps under Dispensers	10 %
Continuous In-Tank Leak Detection System	10 %

3. If a criterion is not applicable to one or more of the UST systems at the facility, then the conditions of part 1 of this subparagraph shall have been met if every UST systems at the facility for which the criterion is applicable meets that criterion. For example, the criterion for a containment sump under a dispenser is not applicable to a UST system used to store waste oil or used oil.
4. Upon confirmation by the Division division that a tank owner and/or operator has met one or more of the criteria for reduction of the deductible set forth in the table in this subparagraph, the tank owner and/or operator will be sent correspondence setting forth the new reduced deductible.
5. However, if one or more of the criteria in part 2 of this subparagraph was met on or after July 24, 2007, in accordance with the requirements of rule 1200-01-15-04 part (2)(c)2 or 3 of Rule 0400-18-01-01 or rule 1200-01-15-02 paragraph (2) or (6) of Rule 0400-18-01-02, there shall be no reduction in the deductible.

(7) Removal, Replacement or Repair of Property Improvements.

(a) In accordance with rule 1200-01-15-06 paragraph (7) of Rule 0400-18-01-06, a recommendation of an option for removal and either disposal, replacement or repair of a property improvement may be made as a part of site remediation using fund dollars.

1. Division approval to pursue this option shall be obtained prior to taking the action in part 2 of this subparagraph.
2. Two cost proposals shall be submitted to the Division division. The two cost proposals shall be prepared in accordance with guidance provided by the Division division and submitted in a format established by the Division division.
 - (i) One proposal shall be for the cost of remediation without the removal, disposal, replacement or repair of the property improvement.
 - (ii) One proposal shall be for the cost of the removal and either the disposal, replacement or repair of the property improvement plus the cost of remediation without the impediment of the property improvement.
3. A recommendation that includes replacement or repair shall be consistent with the requirements of Rule 1200-01-15-02 0400-18-01-02.

(b) If the Division division evaluation of the cost proposals submitted in accordance with part (a)2 of subparagraph (a) of this paragraph as well as any other pertinent information, that the expenditure of fund dollars for removal and either disposal, replacement or repair of property improvements would result in a substantial reduction of the total cost of cleanup activities at the petroleum site, the Division division may approve reimbursement from the fund for removal and either disposal, replacement or repair of property improvements.

(c) Prior to removal of a property improvement approved for removal in accordance with the provisions of subparagraph (b) of this paragraph, documentation of the condition and location of the property improvement, including, but not limited to, photographs and a scaled site map, shall be provided to the Division division in a format and in accordance with guidance provided by the Division division.

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- (d) Prior to reimbursement by the fund for replacement or repair of a property improvement approved by the Division division in accordance with subparagraph (b) of this paragraph, documentation of the condition and location of the property improvement, including, but not limited to, photographs, shall be provided to the Division division.
 - (e) Unless Division division approval has been granted in accordance with subparagraph (b) of this paragraph, the fund shall not reimburse tank owners, tank operators or petroleum site owners for the cost of property improvements.
- (8) Fund ineligible costs.
- (a) Costs of maintenance and/or retrofitting of affected tanks and associated piping and any costs not integral to site rehabilitation shall not be eligible for payment or reimbursement by the fund.
 - (b) The cost of equipment purchases other than routinely required supplies which are expended at a given site or equipment which shall be installed at a site to implement a Corrective Action Plan shall not be charged as a lump sum to the cost of rehabilitating any given site at which funds are being claimed for containment, investigative, or corrective action costs. Examples of equipment which could not be charged to a specific site would include: drilling rigs, earth moving equipment, ground water sampling pumps, and photoionization detectors. Examples of equipment which could be charged to a specific site would include: bailers, sample containers, etc. Hourly charges for equipment may be established in the cost proposal submitted for each major phase of work. These hourly rates shall be competitive with similar charges by other approved contractors, or they may be rejected by the division if they are determined to represent unreasonable costs.
 - (c) The owner and/or operator or petroleum site owner fund deductible amounts as specified in subparagraph (6)(b) of this rule are not eligible for reimbursement from the fund. Proof of payment of these initial amounts is required prior to reimbursement of any costs. The owner and/or operator or petroleum site owner fund deductible for taking corrective action cannot include any cost defined as fund ineligible in subparagraphs (a) and (b) of this paragraph.
 - (d) Costs of removing underground storage tanks, other than those costs approved in accordance with the provisions of paragraph (7) of this rule, including any expenditure associated with the proper closure of a tank in compliance with Rule ~~4200-04-15-07~~ 0400-18-01-07 shall not be eligible for fund payment or reimbursement.
 - (e) Corrective action costs associated with a release of petroleum caused by overt actions taken by the tank owner or his employee(s) will not be eligible for reimbursement from the fund, for example, an overfill release caused by the disabling of an overfill prevention device.
- (9) Fund obligations.
- (a) Contingent upon availability of funds, the commissioner will make obligations from the fund when:
 1. A cost proposal for containment, investigative, or corrective actions, submitted in accordance with paragraph (10) of this rule, is approved by the division;
 2. A judgment for a third party claim is submitted for payment in accordance with paragraphs (6), (11) and (12) of this rule;
 3. A payment application is received for containment, investigative, or corrective action work performed from July 1, 1988 until April 15, 1990, subject to a determination of reasonable costs by the division. Fund eligibility from July 1, 1988 until April 15, 1990 shall be determined by fee payment as required by the Tennessee Petroleum Underground Storage Tank Act;
 4. A payment application is received for initial release response, abatement measures, and initial free product removal under the terms of subparagraph (10)(d) of this rule;

5. A payment application is received and approved by the division for costs associated with providing an alternate water supply to a person whose water supply has been contaminated by a release of petroleum; or
 6. The commissioner or board determines it is necessary to provide for containment, investigation, identification, reasonable and safe cleanup, and as otherwise provided in the Tennessee Petroleum Underground Storage Tank Act.
- (b) If the unobligated balance of the fund is less than the total amount associated with payment applications, cost proposals, and third party judgments which have been accepted by the commissioner, to the extent allowed by available funds, funds will be obligated in the chronological order in which the claims were submitted, except for the provisions of subparagraph (c) of this paragraph.
 - (c) Obligations of funds required for satisfying fund eligible payment applications for work performed under part (a)3 of this paragraph or judgments for third party claims which were rendered prior to April 15, 1990, for releases discovered from July 1, 1988 until April 15, 1990, will be given priority over payment applications and cost proposals for releases which occur after April 15, 1990.
 - (d) All claims against the fund are clearly obligations only of the fund and not of the State, and any amounts required to be paid under this part are subject to the availability of sufficient monies in the fund. The full faith and credit of the State shall not in any way be pledged or considered to be available to guarantee payment from such fund.
- (10) Requirements for fund coverage of corrective action costs.

An eligible owner and/or operator or petroleum site owner conducting UST corrective actions is entitled to coverage of reasonable costs from the fund, subject to the provisions set forth in this paragraph. The division shall acquire by subrogation the right of the owner and/or operator or petroleum site owner to recover from any person responsible or liable for the release, other than the owner and/or operator of the underground storage tank system from which the release occurred, the amount paid by the fund to the owner and/or operator or petroleum site owner.

- (a) Upon confirmation of a release in accordance with ~~rule 1200-01-15-05~~ paragraph (3) of Rule 0400-18-01-05 or after a release from the UST system is identified in any other manner, owners and/or operators or petroleum site owners shall comply with the requirements of Rule ~~1200-01-15-06~~ 0400-18-01-06 as necessary to investigate the release, characterize the site and control any hazards posed by the release in order to stabilize the site, prevent significant risk to human health and safety, and/or continuing damage to the environment.
- (b) Upon confirmation and reporting of a release in accordance with the requirements of paragraphs (1) through (3) of Rule ~~1200-01-15-05~~ 0400-18-01-05 or after a release from the UST system is identified in any other manner, the owner and/or operator or petroleum site owner shall select a contractor from the ~~Division~~ division's list of approved contractors if the owner and/or operator or petroleum site owner expects to apply for fund benefits. The ~~Division~~ division shall be notified in writing of such a selection within thirty (30) days or other time frame specified by the ~~Division~~ division. A contractual agreement shall be established between the owner and/or operator or petroleum site owner and the contractor in accordance with the requirements of T.C.A. § 68-215-129. The ~~Division~~ division shall be provided a copy of the contractual agreement.
- (c) Upon confirmation and reporting of a release in accordance with the requirements of paragraphs (1) through (3) of Rule ~~1200-01-15-05~~ 0400-18-01-05 or after a release from the UST system is identified in any other manner,
 1. Effective December 22, 1998, the owner and/or operator shall submit documentation to the ~~Division~~ division verifying that the tanks are in compliance with the upgrading and performance standards set forth in ~~rule 1200-01-15-02~~ paragraphs (3) and (4) of Rule 0400-18-01-02;

2. On or after April 20, 1998, the owner and/or operator shall submit documentation to the Division division verifying the performance of release detection as required by Rule ~~4200-04-16-04~~ 0400-18-01-04 at the time of the release; and
3. On or after the effective date of these rules, the owner or operator shall submit documentation to the Division division verifying compliance with applicable secondary containment requirements as set forth in parts (1)(c)2 and 3 of Rule ~~4200-04-15-04~~ 0400-18-01-01, subparagraph (1)(c) of Rule ~~4200-04-15-02~~ 0400-18-01-02 and paragraphs (2) and (6) of Rule ~~4200-04-15-02~~ 0400-18-01-02.

The owner and/or operator shall submit this documentation to the Division division within thirty (30) days of the date the release is confirmed.

- (d) If initial response or hazard control measures conducted in accordance with paragraphs (3) and (4) of Rule ~~4200-04-15-06~~ 0400-18-01-06 are required to properly stabilize a site and prevent significant continuing damage to the environment or risk to human health, and the cost of such required measures is expected to exceed ten thousand dollars (\$10,000), then the owner and/or operator or petroleum site owner or the approved corrective action contractor may contact the Division division to obtain verbal or written approval to allow additional expenditures prior to the submittal of a cost proposal. Additional expenditures may be authorized by the Commissioner which may be reimbursable from the fund to achieve site stabilization and immediate protection of human health or the environment. Such approval may be given following the actual expenditures if immediate actions were necessary to protect human health or the environment and Division division personnel were unavailable. In such a case, the Commissioner shall be notified of the actions taken by no later than one (1) working day after any such actions.
- (e) Following completion of necessary site stabilization actions as described in subparagraph (d) of this paragraph, subsequent investigation, risk evaluation, and remediation shall be performed by approved contractors and in accordance with the requirements of Rule ~~4200-04-15-06~~ 0400-18-01-06. Unless directed to do otherwise by the division, prior to initiating any subsequent investigation, risk evaluation or remediation, the owner and/or operator or the petroleum site owner shall, through the assistance of the selected approved contractor, prepare and submit to the division a cost proposal for conducting the proposed investigation, risk evaluation or remediation. Cost proposals shall be prepared in accordance with guidance provided by the division and in a format established by the division.
- (f) Upon review of a cost proposal submitted in accordance with subparagraph (e) of this paragraph the division may:
 1. Accept the cost proposal and authorize work to be initiated; or
 2. Request a modification to or clarification of the cost proposal if projected costs are determined not to be reasonable.
- (g) Unless directed to do otherwise by the division, in addition to the requirements of subparagraphs (d) and (e) of this paragraph, the owner and/or operator or petroleum site owner shall upon submittal of a cost proposal for a site investigation, also submit an estimate of the total cost of remediation for the site in a format required by the division, which shall be used solely for the purpose of the board and the division in projecting future funding requirements for the fund. The total estimated cost of remediation for a site shall be updated by the owner and/or operator or petroleum site owner in accordance with a schedule required by the division and as more complete information regarding a site becomes available.
- (h) Upon acceptance of a cost proposal by the division, sufficient monies will be obligated from the fund for completion of the particular phase of work for which the cost proposal was submitted and authorization will be provided for the initiation of the proposed action. Obligation of funds shall be subject to the availability of funds at the time of acceptance of the cost proposal.

- (j) Corrective actions performed prior to acceptance of an associated cost proposal may not be eligible for reimbursement.
- (k) If the cost of completing any of the corrective actions of subparagraph (e) of this paragraph is expected to exceed the amount of an accepted cost proposal, an amended cost proposal shall be submitted and accepted to allow additional funds to be obligated.
- (l) Any corrective action which is carried out in response to any discharge, release, or threatened release of petroleum from an UST shall be conducted in accordance with the requirements of Rules ~~4200-04-45-06~~ 0400-18-01-06 and subparagraphs (a) through (e) of this paragraph.
- (m) The owner and/or operator or petroleum site owner or the selected corrective action contractor shall keep and preserve detailed records demonstrating compliance with approved investigative and corrective action plans and all invoices and financial records associated with costs for which reimbursement will be requested. These records shall be kept for at least three (3) years after corrective action has been completed for a site.
- (n) Any approved corrective action shall be implemented in a manner acceptable to the division in accordance with an approved corrective action plan, if applicable, in order for the owner and/or operator or petroleum site owner to be eligible for the reimbursement of costs.
- (o) An eligible owner and/or operator conducting UST response actions from July 1, 1988 until April 15, 1990, relative to any discharge, release or threatened release of petroleum from an UST, is entitled to reimbursement of reasonable costs above entry level from the fund but is exempted from the requirements of subparagraphs (b) through (j) of this paragraph, provided that corrective actions were carried out in accordance with a plan approved by the division.
- (p) If corrective actions which were initiated during the time period referenced in subparagraph (n) of this paragraph are still continuing on April 15, 1990, the division may require submittal of cost proposals for any remaining phases of work and for the total projected cost of the remediation.
- (q) If the contractor performing corrective actions as described in subparagraph (o) of this paragraph is not an approved contractor, the division may authorize the continued use of that contractor.
- (r) If a contractor is performing corrective action at a site prior to development of an approved contractor list, the division may authorize the continued use of that contractor.
- (s) The tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall gather and maintain documentation and records necessary to verify the necessity for any implemented corrective action and any claim for reimbursement from the fund. Further, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall fully cooperate with any audit which the commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the department for reimbursement from the fund. Therefore, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall produce any records, data, documents, information, and personnel for interviews as necessary in the commissioner's determination to fully and completely conduct an audit.
- (t) To avoid a conflict of interest, if the tank owner and/or operator or the petroleum site owner expects to be reimbursed from the fund for the cost of laboratory analysis of environmental samples, the approved CAC hired by the tank owner and/or operator or petroleum site owner shall not be in control of or controlled by the laboratory performing analysis of environmental samples nor controlled by the same parent company.
- (11) Requirements for fund coverage of third party claims.
An eligible owner and/or operator or petroleum site owner is entitled to fund coverage for third party damages caused by the release of petroleum from an underground storage tank system, subject to the requirements set forth in this paragraph. The division shall acquire by subrogation the right of the owner

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and/or operator or petroleum site owner to recover the amount of damages paid to any third party from any person responsible or liable for the release, other than the owner and/or operator of the underground storage tank system from which the release occurred.

To assert a claim for payment or reimbursement of a third party claim, an eligible owner and/or operator or petroleum site owner shall comply with each of the following:

- (a) Notify the division in writing within twenty-one (21) days upon the receipt of written notice of the third party liability suit. Thereafter, the owner and/or operator or petroleum site owner shall submit to the division a report which accurately reflects the status of the lawsuit every four (4) months, until the litigation is resolved. The owner and/or operator or petroleum site owner shall also notify the division in writing fourteen (14) days in advance of any settlement conference or settlement agreement;
- (b) The owner and/or operator is fund eligible at the time the release occurred;
- (c) Copies of all available documents used to support the claim(s) of property damage(s) or bodily injury(ies), including, but not limited to, invoices, cost estimates or bid proposals, appraisals, medical evaluations, and medical bills.
- (d) The third party obtains a final judgment enforceable in Tennessee or pursuant to a settlement reviewed and approved by the division. The underground storage tank system owner and/or operator or petroleum site owner shall file a motion with the court requesting that the final judgment specify the type and amount of all damages awarded to the third party(ies);
- (e) The final judgment is for an amount greater than the fund entry level in effect on the date of release.
- (f) The tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall gather and maintain documentation and records necessary to verify any claim for reimbursement from the fund. Further, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall fully cooperate with any audit which the commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the ~~Division~~ division for reimbursement from the fund. Therefore, the tank owner and/or operator or petroleum site owner, and his/her representative or corrective action contractor, shall produce any records, data, documents, information and personnel for interviews as necessary in the commissioner's determination to fully and completely conduct an audit.

(12) Applications for payment.

- (a) Applications for reimbursement for costs of corrective actions shall be submitted on a form established by the division which shall include an itemization of all charges according to labor hours and rates, analytical charges, equipment charges, and other categories which may be identified by the division, or which the applicant may wish to provide.
- (b) The following statement shall be signed in accordance with the requirements of either part 1 or 2 of this subparagraph:

"I certify to the best of my knowledge and belief: that the costs presented therein represent actual costs incurred in the performance of response actions at this site during the period of time indicated on this application; that an accidental release has occurred from a petroleum underground storage tank system at this site; and that no charges are presented as part of this application that do not directly relate to the performance of corrective actions related to the release of petroleum at this site."

1. The owner and/or operator or petroleum site owner and the approved ~~corrective action contractor (CAC)~~ CAC or an authorized representative of the approved CAC shall sign the application for payment containing the statement in this subparagraph if authorized

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- payments from the fund will be made in accordance with the provisions of subparagraph (14)(a) of this rule.
2. The owner and/or operator or petroleum site owner shall sign the application for payment containing the statement in this subparagraph if authorized payments from the fund will be made in accordance with the provisions of subparagraph (14)(b) of this rule.
- (c) Applications for payments may be submitted following acceptance by the division of completed corrective actions. Such corrective actions may include but are not limited to the following:
1. Completion of hazard management activities, which were authorized by the division, including, but not limited to, provision of an alternate water supply;
 2. Completion and submittal of a Hazard Management Report;
 3. Development and submittal of an Initial Site Characterization Report;
 4. Development and submittal of a Risk Analysis Report;
 5. Implementation of interim remediation and/or risk management activities which were authorized by the division;
 6. Advanced risk-based modeling development which was authorized by the division; and/or
 7. Development and/or implementation of a Corrective Action Plan which was authorized by the division.
- (d) Applications for payments for the implementation of corrective action may be submitted sixty (60) days following initiation of work to implement the Corrective Action Plan and at sixty (60) day intervals thereafter until completion of the authorized activities. Upon request, the division may approve interim payments at more frequent intervals.
- (e) All payments shall be subject to approval by the division. Should a site inspection or other information available to the division reveal a discrepancy between the work performed and the work addressed by a payment application, the division may deny payment or may require the fund to be reimbursed.
- (f) All applications for payment of costs of cleanup shall be received by the division within one (1) year of performance of the task or tasks covered by that application in order to be eligible for payment from the fund.
- (g) Except for the situations provided for in subparagraph (10)(a) of this rule, payment shall not be made for corrective actions performed at a site until the division has reviewed and accepted a cost proposal for that work and until funds have been obligated from the fund for completion of that particular stage of work.
- (h) For payment of third party claims, the UST owner and/or operator or petroleum site owner shall submit an application to the Division ~~division~~, using the approved form, attaching the original or a certified copy of a final judgment (enforceable in Tennessee) with proof of payment of the applicable fund deductible for compensation of third parties as specified in subparagraph (6)(b) of this rule. The UST owner and/or operator or petroleum site owner shall submit proof that a motion was submitted to the court on their behalf requesting that the type and amounts of all damages awarded to the third party(ies) in the final judgment be specifically listed. This application shall be received by the Division ~~division~~ no later than thirty (30) days after notification of judgment.
1. The division may require additional information to determine the eligibility of a cost for payment.

2. If the application is determined to be incomplete, the division shall notify the applicant of the deficiencies. The applicant shall submit supplemental information to correct the deficiencies within forty-five (45) days of receipt of notice. The applicant may submit a written request for an extension of time for submittal of information to the division. The applicant shall state and the division shall approve the conditions which warrant an extension of submittal time.

3. Only the following costs shall be eligible for payment or reimbursement from the fund:

- (i) Awards for property damage to third parties made by a court of suitable jurisdiction in Tennessee; and
- (ii) Awards for bodily injury to third parties made by a court of suitable jurisdiction in Tennessee.

(13) Settlement of third party claims.

(a) No settlement of a third party claim shall be made by an owner and/or operator or petroleum site owner without the prior approval of the division. The fund shall not be obligated to pay any claim for reimbursement if the owner and/or operator or petroleum site owner enters into a settlement without the prior approval of the division.

(b) The fund shall not be obligated to pay any final and enforceable third party judgment or reimburse an owner and/or operator or petroleum site owner for payment of the judgment in any amount exceeding a settlement offer rejected by the owner and/or operator or petroleum site owner which was submitted to the division, reviewed and approved by the division for payment.

(14) Fund payment procedures.

(a) Where the owner and/or operator or petroleum site owner has submitted an acceptable application for payment for corrective actions or third party claims, but has not paid for these activities or claims, payments will be made by a check written to both the eligible owner and/or operator or petroleum site owner and the provider of the corrective action services or third party.

(b) Payments from the fund will be made directly to the eligible owner and/or operator or petroleum site owner in cases where the owner and/or operator or petroleum site owner submits documentation verifying the owner and/or operator or petroleum site owner has paid in excess of the applicable fund deductible for taking corrective actions as specified in subparagraph (6)(b) of this rule.

(c) The owner and/or operator or petroleum site owner is responsible for final payment to the contractor who performed the corrective actions and for payment of judgments to third parties.

(d) Contingent upon availability of funds, the department shall process all applications for payment as soon as possible upon receipt of application. If all costs are considered to be reasonable and eligible for reimbursement, payment will be issued within ninety (90) days once costs have been determined to be reasonable and eligible for reimbursement. If certain costs are considered as not being reasonable or eligible for reimbursement, the division may issue a check for the amount of the application not in question and provide a forty-five (45) day period in which the owner and/or operator or petroleum site owner or contractor may present such information as is necessary to justify the disallowed costs. Following review of such information, the division may agree to pay the previously disallowed costs, or any portion thereof, or may again disallow the costs for payment. If the division disallows costs upon a second review, the owner and/or operator or petroleum site owner may petition the board for a hearing on the disallowance pursuant to Rule ~~1200-04-15-11~~ 0400-18-01-11.

(15) Approval of corrective action contractors.

(a) ~~The corrective action contractor ("CAC")~~ CAC is the person responsible for conducting and overseeing the corrective action at a petroleum underground storage tank site. There shall be only one CAC for each site.

1. The CAC shall be either:

- (i) A properly licensed contractor, licensed engineer, registered geologist, or other licensed environmental professional; or
- (ii) An owner and/or operator of the petroleum underground storage tank(s) which caused the release of petroleum to the environment or petroleum site owner, provided that each contractor/subcontractor working for the owner and/or operator or petroleum site owner shall be a properly licensed contractor pursuant to T.C.A. § 62-6-101 et seq.

(b) CACs will be approved to perform fund eligible work upon satisfaction of the following:

1. The CAC files a written application to become an approved corrective action contractor with the ~~Division~~ division via certified mail or personal service.

(i) The application shall be updated by April 1 of each year; and

(ii) The application shall include the following information:

- (I) The name of the CAC;
- (II) The principal(s) of CAC;
- (III) The name of a contact person for the CAC;
- (IV) Address(es) of CAC's office;
- (V) Office phone number(s) of CAC;
- (VI) Office facsimile number;
- (VII) Electronic mail address; and
- (VIII) Other information requested by the ~~Division~~ division.

2. The CAC submits a sworn statement with the written application in part 1 of this subparagraph, including the following provisions:

(i) The CAC shall abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-03-03, Personal Services and Consultant Professional and Consulting Services Contracts. ~~The CAC will abide by rule 0620-03-03-03(f)(g)(h)(i)(j)(m), rule 0620-03-03-04(a)(b)1,5,6; rule 0620-03-03-04(c)2; and rule 0620-03-03-06(a)(b)(c)(d)(e)(g)(h)(i)(m).~~

(ii) The CAC shall have written contract(s) with all contractors/subcontractors, and contract(s) shall contain provisions that contractors/subcontractors will abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-03-03, Personal Professional and Consulting Services Contracts. ~~rule 0620-03-03-03(f)(g)(h)(i)(j)(m), rule 0620-03-03-04(a)(b)1,5,6; rule 0620-03-03-04(c)2; and rule 0620-03-03-06(a)(b)(c)(d)(e)(g)(h)(i)(m).~~ Personal Services and Consulting Services Contracts. Contract(s) between the CAC and contractors/subcontractors shall also contain provisions that all site workers working under authority of

contractors/subcontractors shall have applicable health and safety training when required by the Tennessee Department of Labor;

- (iii) Site workers working under authority of the CAC shall have the applicable health and safety training when required by the Tennessee Department of Labor;
- (iv) The CAC understands that reimbursement from the fund shall be in accordance with the reasonable rate schedule as established by the division;
- (v) If the CAC is not the owner and/or operator of the tank that caused the release or petroleum site owner, the CAC shall have a written contract with the UST owner and/or operator or petroleum site owner, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The corrective action contractor will/will not (mark one) use the division's reasonable rate schedule when invoicing the owner and/or operator or petroleum site owner for the expenses incurred in the investigation and cleanup of this site.

- (vi) If the CAC is the owner and/or operator of the tank which caused the release or petroleum site owner, the CAC shall have a written contract with all contractors/subcontractors, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The contractor/subcontractor (mark one) will/will not (mark one) use the division's reasonable rate schedule when invoicing the owner and/or operator or petroleum site owner for the expenses incurred in the investigation and cleanup of this site;

- (vii) The CACs services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of their profession practicing in the State of Tennessee, under similar conditions, and at the time the services were rendered. The CAC shall not knowingly or willfully cause the spread of contamination nor inhibit corrective action at the site;

- (viii) The CAC shall gather and maintain documentation and records necessary for filing a claim with the Tennessee Petroleum Underground Storage Tank Fund;

- (ix) The CAC shall, at a minimum, follow Quality Assurance/Quality Control Standard Operating Procedures supplied by the division, unless alternate Quality Assurance/Quality Control is approved in writing in advance by the division;

- (x) The CAC shall assure that the CAC and/or any person the CAC employs or contracts with to engage in the practice of engineering shall be appropriately licensed/registered under the Tennessee Architects, Engineers, Landscape Architects and Interior Designers Law and Rules T.C.A. § 62-2-101 et seq.;

- (xi) The CAC shall assure that any and all work defined as contracting in Tennessee Contractor's License Law (T.C.A. § 62-6-101 et seq.) shall be performed by a licensed contractor(s) with appropriate classification and monetary limitation;

- (xii) The CAC shall assure that the CAC and/or any person the CAC employs or contracts with to perform professional geologic work shall be appropriately registered under the Tennessee Geologists Act (T.C.A. § 62-36-101 et seq.); and

- (xiii) The CAC shall assure that all work done by the CAC had the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance, and the work was done as specified in this ~~rule~~ Chapter, that Chapter ~~4200-01-15~~ 0400-18-01, and/or according to a plan approved by the ~~Division~~ division. The CAC shall assure that all plans and reports submitted

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the Division division were prepared and signed by the Registered Professional Engineer or Professional Geologist who prepared or is responsible for the plan or report. The CAC shall further assure that a Registered Professional Engineer or Professional Geologist shall make periodic site visits to verify whether or not the work performed was as specified by the Registered Professional Engineer or Professional Geologist, and as specified in this rule Chapter, and/or according to a plan approved by the Division division. The CAC shall require a Registered Professional Engineer or Professional Geologist to submit a signed certification based on their personal observation and review of job site records stating whether or not the work was performed as directed by the Registered Professional Engineer or Professional Geologist, and whether or not the work has been performed in accordance with this rule Chapter, and/or a plan approved by the Division division. If the work was not performed according to the above specifications, the certification shall include a listing of how the work which was performed varies from this rule Chapter, the approved plan, and/or the authorization of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation. The certification shall be submitted according to a schedule and format determined by the Division division.

(xiv) The CAC shall fully and completely cooperate with the Commissioner during any audit by the Commissioner or his authorized representative, and comply with subparagraphs (10)(r) and (11)(f) of this rule.

3. The CAC has any applicable license(s) and registration(s) required in the State of Tennessee; and

(i) If the CAC is a licensed contractor, the contractor shall be properly licensed with an S-Underground Tank Installers, Removal, and Remediation of Pollutants or other applicable classification with a monetary limitation as required under rule 0680-01-13 and established by the board for Licensing Contractors of the Tennessee Department of Commerce and Insurance in the amount of at least three hundred fifty thousand dollars (\$350,000). Date of license expiration shall be included. The CAC shall submit requirements of this part with the application required in part 1 of this subparagraph and shall submit documentation of any changes, renewals, renovations, etc. of the CAC's Tennessee license. (There shall be no fund reimbursement for those expenses which exceed the contractor's monetary limitation.)

(ii) All contractors and their subcontractors and employees shall have other applicable license(s) and registration(s).

4. The CAC shall maintain liability insurance coverage of the types and in the amounts described in the Table below, or the equivalent, and shall provide certification, with the division listed as a certificate holder, to the division of such coverage with the application described in part 1 of this subparagraph and on April 1 of each year thereafter, or more frequently if necessary, to keep the division updated as to the CAC's current insurance coverage.

<u>TYPE OF POLICY</u>	<u>Limits of Liability</u>	<u>Description</u>
Worker's Compensation	Statutory	All states
Employer's Liability	\$500,000	
Automobile Liability	\$1,000,000 combined single limit (bodily injury and property damages)	All owned, non-owned, and hired vehicles
General Liability	\$1,000,000 combined single limit	Broad Form Comprehensive General Liability

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5. The CAC shall submit a list of the CAC's employees which will be utilized by the CAC as a part of the assessment and remediation of UST sites in the State of Tennessee.
- (i) For each employee the list shall include, but not necessarily be limited to, the following information for each employee on the list:
 - (I) Job description;
 - (II) Job title;
 - (III) Level of education, including any college degrees, and date(s) of graduation;
 - (IV) Professional registration(s) and license number(s);
 - (V) Office location; and
 - (VI) Telephone number(s).
 - (ii) The list of employees shall be submitted with the application described in part 1 of this subparagraph and annually with a due date of April 1 of each year thereafter.
 - (iii) When a new employee begins working for a CAC, within fifteen (15) days of the first day of employment or as soon as their work time will be submitted to the ~~Division~~ division for reimbursement, the CAC shall submit the employee information required in subpart (i) of this part to the ~~Division~~ division.
- (c) For those CACs not approved by the ~~Division~~ division for placement on the list of Approved CACs:
1. CACs who submitted applications but did not meet the requirements of parts (b)1 through 5 of this paragraph may submit a subsequent application for review at such time they feel that the requirements of (b)1 through 5 of this paragraph may have been met.
 2. If the ~~Division~~ division does not approve a CAC and does not place the CAC on the list of Approved CACs, the decision of the review committee may be appealed to the board in accordance with Rule ~~1200-01-15-11~~ 0400-18-01-11.
- (d) At any time other than when the division compiles the new year's approved CAC list after the submission of information each April 1, a CAC will be removed from the division's approved CAC list when it has been determined that the CAC has failed to satisfactorily maintain the requirements of subparagraph (b) of this paragraph or has committed one or more of the violations listed in subparagraph (e) of this paragraph.
1. The removal process shall be initiated when a complaint is referred to the division's review committee;
 2. The review committee shall inform the CAC via certified mail of receipt of a complaint;
 3. The division's review committee may request the CAC to appear at a meeting to show cause why the department should not remove the CAC from the list of approved CACs;
 4. The CAC may request a meeting with the review committee;
 5. The review committee shall notify the CAC of its decision via certified mail within sixty (60) days of dispatch of the certified letter referenced in part 2 of this subparagraph;

6. If the review committee decides to remove the CAC from the list of approved CACs, removal shall be effective thirty (30) days after dispatch to the last known address on file with the division unless:
- (i) The CAC corrects the non-compliance to the satisfaction of the review committee during the thirty (30) day period; or
 - (ii) The CAC files a written appeal with the division within the thirty (30) day period requesting a hearing to appeal the decision of the review committee to the board.
7. If the division removes a CAC from the list of approved CAC's the CAC may petition the board for a hearing on its removal pursuant to Rule ~~1200-01-15-11~~ ~~0400-18-01-11~~. The filing of an appeal will postpone actions to remove a CAC from the list of approved CACs until the appeal is heard by the board;
8. Once the review committee has dispatched a Notice of Removal to a CAC via certified mail, the division will approve no additional plans, scopes of work, or cost proposals if such approval will cause division personnel to violate T.C.A. § 62-6-120(c)(1);
9. If an appeal is not filed during the sixty (60) day period, the decision of the review committee will be final;
10. A CAC removed from the approved CAC list may reapply for approval as provided for in subparts (i) or (ii) of this part:
- (i) A CAC who was removed from the approved CAC list due to failure to satisfactorily maintain the requirements of subparagraph (b) of this paragraph may reapply under subparagraphs (b) and (c) of this paragraph once the requirements of subparagraph (b) of this paragraph have been met;
 - (ii) A CAC who was removed from the approved CAC list due to one or more of the violations listed in (e) below may reapply after one (1) year. The CAC shall submit evidence showing the reasons why the CAC should be reinstated for evaluation by the review committee. The CAC shall reapply under the provisions of subparagraphs (15)(b) and (c) of this rule.
- (e) A CAC may be removed from the list of Approved Corrective Action Contractors if it is determined by a review committee consisting of division staff members that the CAC has done any of the following:
1. The CAC charged the state or owner and/or operator for unnecessary or unapproved work or work which was not performed;
 2. The CAC filed false information with the department;
 3. The CAC has been found guilty of violating any of the following or a comparable law in another jurisdiction:
 - (i) T.C.A. § 39-16-503 Tampering with or fabricating evidence;
 - (ii) T.C.A. § 39-16-504 Destruction of and tampering with governmental records;
 - (iii) T.C.A. § 39-14-130 Destruction of valuable papers with intent to defraud;
 - (iv) T.C.A. § 39-14-114 Forgery;
 - (v) T.C.A. § 39-14-104 Theft of services, or
 - (vi) T.C.A. § 39-14-103 Theft of property;

- (vii) T.C.A. § 68-211-101 et seq. Solid Waste Disposal Act;
- (viii) T.C.A. § 68-212-101 et seq. Hazardous Waste Management Act;
- (ix) T.C.A. § 69-3-101 et seq. Water Quality Control Act;
- (x) Other environmental regulatory legislation.

4. The CACs or an employee(s), principal(s), or officer(s) of the CAC is found to have engaged in the unauthorized practice of engineering, contracting, or geology under T.C.A. § 62-2-101 et seq., § 62-6-101 et seq., and § 62-36-101 et seq., or a comparable law in another jurisdiction by the appropriate regulatory agency or court.
5. Due to the quality of work performed by the CAC, the CAC has significantly delayed or inhibited progress in achieving appropriate corrective action at a site(s). This shall include, but shall not be limited to, the following:
 - (i) The CAC performs a non-approved action which spreads contamination in the environment;
 - (ii) The CAC files a plan, including, but not limited to, a Free Product Investigation Plan and/or a Corrective Action Plan, which is rejected by the Division ~~division~~ as deficient, followed by three subsequent revisions, each of which is rejected by the Division ~~division~~ as deficient; or
 - (iii) The CAC fails to supply recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions supported by the following:
 - (I) The physical and chemical characteristics of petroleum, including its toxicity, persistence, and potential for migration;
 - (II) The hydrogeologic characteristics of the petroleum site and the surrounding land;
 - (III) The proximity, quality, and current and future uses of groundwater;
 - (IV) An exposure assessment;
 - (V) The proximity, quality, and current and future uses of surface waters;
 - (VI) Applicable regulations in Chapter ~~1200-01-15 0400-18-01~~; and
 - (VII) The magnitude and extent of petroleum contamination at the petroleum site and the surrounding land.
 - (iv) The CAC supplies recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions not supported by items (i) through (VII) listed in subpart (iii) of this part.
6. The CAC filed plan(s) or report(s) which do not bear the appropriate signature and Tennessee license/registration number of a Registered Professional Engineer or Professional Geologist.
7. The CAC performed work which did not have the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance.

8. The CAC has deviated from an approved plan or scope of work without the approval of the division. This includes, but is not limited to, the following:
 - (i) Failure to follow Quality Assurance and Quality Control approved in the plan, or
 - (ii) Failure to follow the schedule for implementation approved in the plan.
 9. The CAC has failed to follow Quality Assurance/Quality Control (QA/QC) procedures supplied by the division without having alternate QA/QC approved in advance in writing by the division.
 10. The CAC has failed to follow UST regulations promulgated in Chapter ~~4200-01-15~~ 0400-18-01.
 11. The CAC failed to have a Registered Professional Engineer or Professional Geologist file a signed certification according to a schedule and format required by the ~~Division~~ division. Said certification shall be based on the Registered Professional Engineer's or Professional Geologist's personal observation and review of job site records. The certification shall state whether or not the work was performed as directed by a Registered Professional Engineer or Professional Geologist, and whether or not the work has been performed in accordance with this rule Chapter, and/or a plan approved by the ~~Division~~ division. The certification shall include a listing of how the work performed varies from this rule Chapter, the approved plan, and/or the work approved of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation.
- (f) A CAC that fails to comply with the requirements of parts (b)1, 4, or 5 of this paragraph on April 1 of any year will not be eligible to remain on the list of approved contractors.
1. The review committee shall inform the CAC via certified mail that removal shall be seven (7) days after dispatch to the last known address on file with the division unless the CAC corrects the non-compliance to the satisfaction of the review committee during the seven (7) day period.
 2. A CAC that fails to correct this noncompliance as provided in part 1 of this subparagraph, may reapply to be on the approved CAC list under subparagraphs (b) and (c) of this rule once it can meet all of those requirements.
- (g) No CAC shall be placed on the Approved Corrective Action Contractors list if the CAC is on a list of contractors banned from usage on federally funded projects. If a CAC on the Approved Corrective Action Contractors list is placed on the list of contractors banned from usage on federally funded projects, that CAC will be removed from the Approved Corrective Action Contractors list. When the CAC is removed from the list of contractors banned from usage on federally funded projects, the CAC may apply to be added to the Approved Corrective Action Contractors list according to procedures outlined in subparagraphs (b) and (c) of this paragraph. A CAC on a list of contractors banned from usage on federally funded projects cannot work as a subcontractor to an approved corrective action contractor.
- (h) The appearance of a CAC on the division's list of Approved Corrective Action Contractors shall in no way establish liability or responsibility on the part of the division, the fund, or the State of Tennessee in regards to the services provided by the CAC or circumstances which may occur as a result of such services.
- (i) An owner and/or operator may perform corrective actions for releases of petroleum from USTs he owns and/or operates provided that he submits an application with documentation as described in subparagraphs (b) and (c) of this paragraph and the application is approved by the division. The owner and/or operator may use qualifications of subcontractor(s) in addition to qualifications of the owner and/or operator in applying for approved corrective action contractor status. If an owner and/or operator uses a subcontractor(s) in qualifying for an approved corrective action contractor

classification and there is a change of a subcontractor whose qualifications were used in the application or documentation, then the owner and/or operator shall notify the division; the owner and/or operator shall be removed from approved corrective action contractor status. The owner and/or operator shall submit a new application with documentation and be approved as discussed in subparagraphs (b) and (c) of this paragraph to continue work as an approved corrective action contractor.

- (j) A CAC working as a subcontractor under contract to an approved CAC is not required to be classified as an approved CAC. The subcontractor shall maintain all applicable license(s) and/or registration(s) required in the State of Tennessee for work performed.

(16) Recovery of costs by state - apportionment of liability.

- (a) Making use of any and all appropriate existing state legal remedies, the Commissioner may commence court action to recover the amount expended by the state from any and all responsible parties for each site investigated, identified, contained or cleaned up, including up to the limits of the deductible for owners and/or operators of petroleum underground storage tanks covered by the fund and the entire amount from owners and/or operators of petroleum underground storage tanks not covered by the fund.
- (b) In any action under this rule, no responsible party shall be liable for more than that party's apportioned share of the amount expended by the state for such site. The responsible party has the burden of proving his apportioned share. Such apportioned share shall be based solely on the liable party's portion of the total volume of the petroleum at the petroleum site at the time of action under this chapter. Any expenditures required by the provisions of this chapter made by a responsible party (before or after suit) shall be credited toward any such apportioned share.
- (c) In no event shall the total moneys recovered from the responsible party or parties exceed the total expenditure by the state for each site.
- (d) Any party found liable for any costs or expenditures recoverable under this chapter who establishes by a preponderance of evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for such portion.
- (e) If the trier of the fact finds evidence insufficient to establish such party's portion of costs or expenditures in such a cost recovery, the court shall apportion such costs or expenditures among the defendants, to the extent practicable, according to equitable principles.

(17) Failure to take proper action.

Any responsible party who fails without sufficient cause to properly provide for removal of petroleum or remedial action upon order of the commissioner pursuant to this chapter may be liable to the state for a penalty in an amount equal to one hundred fifty percent (150%) of the amount of any costs incurred by the state as a result of such failure to take proper action. The commissioner may recover this penalty in an action commenced under T.C.A. § 68-215-115, paragraph (16) of this rule, or in a separate civil action, and such penalty shall be in addition to any costs recovered from such responsible party pursuant to this chapter.

(18) Severability.

If any paragraph, subparagraph, part, subpart, item or subitem, section or subsection of this rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this rule shall not be affected thereby.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~4200-01-15-10~~ 0400-18-01-10 Fee Collection.

(1) Purpose.
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The purpose of this rule is to establish a system and schedule for collection of underground storage tank fees.

(2) Applicability.

Requirements of this rule apply to the following persons:

(a) Owners and/or operators of petroleum underground storage tanks and/or tank compartments required to be reported under the requirements of T.C.A. § 68-215-101 et seq., as follows:

1. All petroleum underground storage tanks and/or tank compartments that are actively storing petroleum;
2. All petroleum underground storage tanks and/or tank compartments that are reported as in service at the start of the annual billing cycle (July 1 for underground storage tanks and/or tank compartments in East Tennessee, October 1 for underground storage tanks and/or tank compartments in Middle Tennessee, and January 1 for underground storage tanks and/or tank compartments in West Tennessee); and
3. All petroleum underground storage tanks and/or tank compartments taken temporarily out of service after June 30, 1988, and not properly closed in accordance with ~~rule 1200-01-15-07~~ paragraphs (3) through (5) of Rule 0400-18-01-07.

(b) Any person electing to pay annual fees on behalf of a tank owner and/or operator, including, but not limited to the owner of the petroleum site.

(3) Annual petroleum underground storage tank fees.

(a) The required fee shall be submitted in the specified amount, with checks made payable to the Tennessee State Treasurer.

(b) Any person who is an owner and/or operator of a petroleum underground storage tank subject to annual fees shall pay the required annual fee unless the fee is paid by another person on behalf of the tank owner and/or operator.

(c) The amount of the annual petroleum underground storage tanks fee shall be either:

1. Two hundred fifty dollars (\$250) per year for each non-compartmentalized tank; or
2. Two hundred fifty dollars (\$250) per year per compartment for each compartmentalized tank.

(d) The amount of the annual administrative service fee for agencies and functions of the U.S. Government having sovereign immunity shall be either:

1. Two hundred fifty dollars (\$250) per year for each non-compartmentalized tank; or
2. Two hundred fifty dollars (\$250) per year per compartment for each compartmentalized tank.

Agencies and functions of the U.S. Government are not eligible for benefit or financial assistance from the Tennessee Petroleum Underground Storage Tank Fund.

(e) If an annual fee is paid on an existing underground storage tank which is subsequently permanently closed in accordance with Rule ~~1200-01-15-07~~ 0400-18-01-07 and replaced by a new underground storage tank installed at the same site in accordance with rule ~~1200-01-15-02~~ paragraph (1) or (6) of Rule 0400-18-01-02 no additional annual fee will be required, provided that the replacement tank has the same number of tank compartments as the existing tank. If the

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replacement tank has more tank compartments than the existing tank, an additional annual fee of two hundred fifty dollars (\$250) per compartment shall be paid. If the replacement tank has fewer tank compartments than the existing tank, no refund of the annual fee or any portion thereof is due, as stated in subparagraph (f) of this paragraph.

- (f) Payment of the entire amount of the annual fee is required for underground storage tanks and/or tank compartments in service or temporarily out of service during any portion of the current billing year. Tanks and/or tank compartments placed into service after the current billing year begins or tanks and/or tank compartments which are permanently closed before the current billing year ends are not due a refund of the annual fee or any portion thereof.
- (4) Failure to pay the annual petroleum underground storage tank fee.
- (a) Any petroleum underground storage tank owner and/or operator of tanks for which the lawfully levied petroleum underground storage tank fee is owed will be assessed a monthly late payment penalty of five percent (5%) of the amount owed. Such penalty shall be assessed monthly until the fee and all associated penalties are paid; however, the total of the late payment penalties shall not exceed three (3) times the amount of the original fee. The tank owner and/or operator may file with the commissioner a written petition requesting a reduction in the penalties assessed under this subparagraph, setting forth in the petition the grounds and reasons for such a request. At the commissioner's sole discretion, the commissioner may reduce the penalties that otherwise accrue if, in the commissioner's opinion, the failure to pay fees was due to inadvertent error or excusable neglect. However, in no event shall the penalties be reduced to an amount less than ten percent (10%) per annum, plus statutory interest.
- (b) To refuse or fail to pay the annual fee per tank and/or tank compartment to the ~~Division~~ division is an unlawful action as described in T.C.A. § 68-215-104(3). The ~~Division~~ division may take one or more of the following actions to prohibit delivery to any facility at which there is a petroleum underground storage tank for which annual fees or penalties have not been paid:
1. Affix a tag or notice to the dispensers;
 2. Affix a tag to the fill ports; or
 3. Give notice on the department's web site.
- (c) If a lawfully levied fee has not been paid within a reasonable time allowed by the Commissioner, the commissioner may proceed in the Chancery Court of Davidson County to obtain judgment and seek execution of such judgment against the tank owner and/or operator.
- (5) Petroleum underground storage tank annual fee notices.
- (a) Prior to the due date of the annual underground storage tanks fee, the division shall issue fee notices to the owner or operator of the petroleum underground storage tanks. Fee notices and due dates shall be staggered using the three grand divisions of the State of Tennessee.
1. Tank fees for underground storage tanks and/or tank compartments in the following East Tennessee counties shall be due on July 31 of each year:

Johnson, Sullivan, Carter, Washington, Unicoi, Hancock, Hawkins, Greene, Claiborne, Grainger, Hamblen, Cocke, Scott, Campbell, Union, Anderson, Knox, Jefferson, Sevier, Morgan, Roane, Loudon, Blount, Bledsoe, Rhea, Meigs, McMinn, Monroe, Grundy, Sequatchie, Hamilton, Bradley, Polk, Franklin, and Marion.
 2. Tank fees for underground storage tanks and/or tank compartments in the following Middle Tennessee counties shall be due October 31 of each year:

Stewart, Montgomery, Robertson, Sumner, Macon, Clay, Pickett, Houston, Hickman, Cheatham, Davidson, Wilson, Trousdale, Smith, Jackson, Overton, Fentress, Putnam,

Cumberland, White, DeKalb, Van Buren, Warren, Cannon, Rutherford, Williamson, Dickson, Humphreys, Perry, Wayne, Lewis, Lawrence, Maury, Giles, Marshall, Lincoln, Moore, Bedford, and Coffee.

3. Tank fees for underground storage tanks and/or tank compartments in the following West Tennessee counties shall be due January 31 of each year:

Lake, Obion, Weakley, Henry, Dyer, Crockett, Gibson, Carroll, Benton, Lauderdale, Tipton, Shelby, Haywood, Fayette, Madison, Hardeman, Henderson, Chester, McNairy, Decatur, and Hardin.

(b) The annual fee shall be paid on or before the due date.

(c) For any underground storage tank system brought into use after the effective date of this rule, the current year's annual fee shall be submitted with the notice of existence of such tank system required in ~~rule 1200-01-15-02 part (1)(a)2 of Rule 0400-18-01-02~~.

(d) For any underground storage tank system not previously reported to the division, the current year's annual fee shall be submitted with the required notice of existence of such tank system.

(6) Unlawful Action.

(a) It shall be unlawful to put petroleum into underground storage tanks and/or tank compartments at a facility if the ~~Division~~ division has taken one or more of the following actions:

1. A tag or notice has been affixed to the dispensers;
2. A tag has been affixed to the fill ports; or
3. Notice has been given on the department's web site.

(b) Placing petroleum into a tank and/or tank compartment at a facility when the ~~Division~~ division has taken one or more of the actions listed in parts (a)1 through 3 of subparagraph (a) of this paragraph is a violation for the person putting petroleum into the underground storage tank and/or tank compartment as well as for the person having product put into the underground storage tank and/or tank compartment.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-11~~ 0400-18-01-11 Appeals.

(1) Any responsible party, tank owner, tank operator, ~~Corrective Action Contractor (CAC)~~ CAC or person who has a right to appeal a determination of the Commissioner by these Rules shall comply with the procedure set forth in this part to perfect an appeal. Such responsible party, tank owner, tank operator, ~~Corrective Action Contractor (CAC)~~ CAC, or person may petition the Board for a hearing provided a written petition is submitted to and received by the Commissioner within thirty (30) days of receipt of the ~~Division~~ division's determination. The ~~Division~~ division's determination and action shall be final and not subject to review unless the written petition for hearing is submitted and received by the Commissioner within this time frame. The written petition shall set forth the basis for the appeal as required by the Uniform Administrative Procedures Act, T.C.A. § 4-5-101 et ~~Seq~~ seq. and the rules promulgated thereunder, in particular, Rule ~~1360-04-01-05~~.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-12~~ 0400-18-01-12 Indicia of Ownership.

(1) Applicability.

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- (a) This rule applies to holders of security interests in petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located.
- (b) Holders are subject to these requirements if they became holders on or after April 12, 1996.
- (2) Notification by the Holder.
- (a) Within thirty (30) days after foreclosure or its equivalent is completed, the holder shall notify the Department of the foreclosure. The holder shall use a notification form prescribed by the Division ~~division~~. Holders shall complete the notification form accurately and in its entirety.
- (b) If at any time after foreclosure, the holder causes a change in the status of the tanks at a petroleum UST facility, the holder shall report the change within thirty (30) days. This includes but is not limited to change of ownership, upgrading, or replacement of tanks, changes in mailing address and changes in service. Such reports shall be made using an amended notification form prescribed by the Division ~~division~~.
- (c) In the case of a sale of petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located or the sale of the security interest in such petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located, which occurs at any time after foreclosure, the holder must submit the notification form prescribed by the Division ~~division~~ and must also inform the buyer of the notification requirements.
- (3) Fund Eligibility Requirements.
- (a) If a release from a petroleum underground storage tank system would have been eligible for reimbursement from the UST Fund under the provisions of Rule ~~4200-01-15-09~~ 0400-18-01-09 had there been no foreclosure, then the holder shall be able to take full advantage of the Petroleum Underground Storage Tank Fund. Reimbursement from the Fund shall be in accordance with the provisions of Rule ~~4200-01-15-09~~ 0400-18-01-09.
- (b) A holder who is eligible for reimbursement from the state Fund must satisfy the deductible requirements as required by ~~rule 4200-01-15-09~~ subparagraph (6)(b) of Rule 0400-18-01-09.
- (c) If a Fund Eligible release occurred prior to the time of foreclosure and assessment and remediation activities have been initiated in accordance with the requirements of Rule ~~4200-01-15-09~~ 0400-18-01-09, then assessment and remediation, in accordance with the requirements of Rule ~~4200-01-15-09~~ 0400-18-01-09, must be continued for the site to remain Fund Eligible after the holder has sold or otherwise disposed of his interest in it.
- (d) If it is determined that the tanks are not fund eligible due to failure to timely register the tanks, the purchaser of such tanks from a holder must follow the requirements of ~~rule 4200-01-15-09~~ subparagraph (4)(b) of Rule 0400-18-01-09 to establish Fund Eligibility for the UST systems.
- (4) Fee Payment.
- Annual tank fees may be paid after foreclosure either by the holder or by an operator who is in charge of the daily operation of the UST systems provided that the holder has properly registered the tanks in accordance with paragraph (2) of this rule.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~4200-01-15-13~~ 0400-18-01-13 Voluntary Registry.

- (1) Registration.

- (a) Any person that owns an interest in a petroleum site, including without limitation, owners in fee simple and holders, as defined in ~~rule 1200-01-15-01 paragraph (4) of Rule 0400-16-01-01~~, may register with the voluntary registry maintained by the division.
- (b) Any person intending to become a registrant shall register by completing and submitting to the division the registration form designated by the division. The form shall be completed accurately and in its entirety in accordance with instructions provided by the division. At a minimum the registration form shall provide:
 - 1. Name, address and phone number of the person submitting the registration form, and
 - 2. The facility identification number assigned to the UST facility by the division and the location and/or the address of the facility.
- (c) Notification of Registration in the Voluntary Registry shall be dispatched as set forth in parts 1 and 2 of this subparagraph.
 - 1. The registrant shall be notified by the division of current registration in the Voluntary Registry. This notification shall also set forth the due date for the annual fee for renewal of registration.
 - 2. The owner of the tanks at the facility provided in the registration form shall be sent notification of the registration in the Voluntary Registry. The notification shall inform the tank owner that the registrant shall be sent copies of all notices sent to the tank owner in accordance with paragraph 3 of this rule.
- (d) Registration shall be amended by the registrant whenever the pertinent information contained in the registration form has changed by re-submitting to the division a registration form with revised information.

(2) Fees

- (a) All registrants shall pay an annual fee of \$500 per site.
- (b) The annual fee shall be paid upon initial registration and annually thereafter by the first day of July until the registration is removed or withdrawn as provided in this rule.
 - 1. Each year, the department shall send the registrant an invoice at least sixty (60) days prior to the annual fee due date.
 - 2. If the registrant has not renewed the annual registration for the subsequent year, the department shall send the registrant a second invoice by certified mail at least thirty (30) days prior to the fee due date.
- (c) Payment of the entire amount of the annual fee is required for any portion of the current year, which extends from July 1 through June 30. Initial registration after the current year begins or withdrawal of registration before the current year ends shall not result in a refund of the annual fee or any portion thereof.
- (d) The division may remove a registrant from the Voluntary Registry in the event that the annual fee is not paid when ~~due, the due~~. The registrant shall be notified that he has been removed from the Voluntary Registry. Restoration to the Voluntary Registry shall be accomplished by fee payment and submittal of a new registration form.

(3) Notices to Registrants

- (a) A copy of each notice issued to the tank owner, tank operator or petroleum site owner by the division, which concerns the underground storage tank facility provided in the registration form in accordance with part (1)(b)2 of this rule, shall be sent to the registrant.

- (b) Each copy of a notice to the registrant shall be sent by the division simultaneously with the original notice to the owner and/or operator or petroleum site owner, and delivered in the same manner as the original notice.
 - (c) Notices to be copied to the registrant include, but are not limited to, invoices for tank and/or compartment fees, letters establishing deadlines for compliance with release response requirements, notices of violation and notices relating to loss of fund eligibility.
 - (d) Copies of notices sent to the registrant shall be sent to the current address appearing in the registration, as amended by the registrant due to change of address.
- (4) **Withdrawal of Registration**
- (a) A registrant may have their name removed from the Voluntary Registry at any time by requesting removal in writing.
 - (b) An owner and/or operator of a UST on a petroleum site or the owner of the petroleum site may petition the division for removal of a registration if such owner and/or operator or petroleum site owner can demonstrate that the registrant does not have a current interest in that petroleum site. Prior to making any determination on the removal of a registration based on the petition of the owner or operator or petroleum site owner, the division shall notify the registrant and the registrant shall have an opportunity to confirm its current interest in the petroleum site.
 - (c) A registrant whose only interest in a petroleum site is as a holder shall withdraw or otherwise approve the removal of its registration no later than thirty (30) days following the satisfaction of the secured debt.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-14~~ 0400-18-01-14 Record Retention by the Division.

(1) **Notification and tank ownership records.**

The division shall maintain both tank registration/notification information and responsible party information that has been provided to the division or otherwise obtained by the division. Documents containing notification, tank registration and/or responsible party information shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) Tank ownership records must be available should petroleum contamination be discovered sometime in the future, requiring the division to make determinations concerning fund eligibility and/or responsible parties, because:
 1. Timely registration or notification, in accordance with Rule ~~1200-01-15-03~~ 0400-18-01-03, is required for establishment of fund eligibility in accordance with rule ~~1200-01-15-09~~ subparagraphs (3)(a) and (b) of Rule 0400-18-01-09;
 2. The tank owner at the time of a release is a responsible party in accordance with ~~Tennessee Code Annotated T.C.A. § 68-215-103(17)(B)(A)~~;
 3. There may be some residual petroleum contamination that is not discovered during the site assessment at closure required by rule ~~1200-01-15-07~~ subparagraph (5)(a) of Rule 0400-18-01-07; and/or
 4. Some petroleum underground storage tanks regulated under T.C.A. § 68-215-101 et seq. were permanently closed, and in some cases removed from the ground, prior to the promulgation of regulatory requirements to perform a site assessment at closure. Residual petroleum contamination may exist at such sites; and

- (b) Some of these records include copies of deeds to real property, causing them to have permanent value.

(2) Fee payment records.

The division shall maintain fee payment information that has been provided to the division or otherwise obtained by the division. Records documenting the fee payment history associated with a petroleum site shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) Fee payment records must be available should petroleum contamination be discovered sometime in the future, requiring the division to make determinations concerning fund eligibility, because:
 1. For releases which occurred prior to July 1, 2008, fee payment was required for establishment and maintenance of fund eligibility;
 2. For releases which occurred prior to July 1, 2008, the determination of fund eligibility is based, in part, on fee payment records; and/or
 3. There may be some residual petroleum contamination that is not discovered during the site assessment at closure required by rule 1200-01-15-07 subparagraph (5)(a) of Rule 0400-18-01-07.

(3) Release response, remediation and risk management records.

Records documenting the actions taken to assess, remediate and/or manage petroleum contamination at a petroleum site caused by a release from a UST system shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) These records pertain to real property, causing them to have permanent value.
 1. These records may contain copies of Notices of Land Use Restrictions, which have been attached to the deed to real property, in accordance with rule 1200-01-15-06 subparagraph (8)(c) of Rule 0400-18-01-06 and T.C.A. § 68-212-225.
- (b) Risk based cleanup levels are required to be based on current and reasonably anticipated use of the property and location of receptors in accordance with rule 1200-01-15-06 part (5)(b)4 of Rule 0400-18-01-06.
 1. If a person is contemplating a future use that was not anticipated at the time the site assessment and remediation was done in accordance with Rule 1200-01-15-06 0400-18-01-06, new risk calculations may need to be made taking into consideration the historical documents; and
 2. If a person is contemplating the future location of receptors that were not anticipated at the time the site assessment and remediation was done in accordance with Rule 1200-01-15-06 0400-18-01-06, new risk calculations, including the risk of human exposure to carcinogens, may need to be made taking into consideration the historical documents.

(4) Reimbursement records.

Records documenting fund eligibility determinations and/or fund reimbursement payment history associated with a petroleum site shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) These records have fiscal value, causing them to have permanent value.
- (b) For any fund eligible release there is a maximum reimbursable amount of one million dollars (\$1,000,000) less the deductible for that release, as set forth in rule 1200-01-15-00 paragraph (6)

of ~~Rule 0400-18-01-09~~, for taking corrective actions. Reimbursement records contain information concerning the portion of this reimbursement amount which has been expended and the balance, if any, available for future reimbursement for corrective actions which might need to be taken in the future for previously undetected contamination.

1. Post tank closure discovery of residual contamination.
 - (i) There may be some residual petroleum contamination that is not discovered during the site assessment at tank closure required by ~~rule 1200-01-15-07 subparagraph (5)(a) of Rule 0400-18-01-07~~.
 - (ii) Some petroleum underground storage tanks regulated under T.C.A. § 68-215-101 et seq. were permanently closed, and in some cases removed from the ground, prior to the promulgation of regulatory requirements to perform a site assessment at closure. Residual petroleum contamination may exist at such sites and may be discovered many years after the tanks were permanently closed.
2. Discovery of residual contamination post closure of a contamination case.
 - (i) Previously undetected residual petroleum contamination may be discovered years after assessment and remediation activities have been completed in accordance with ~~Rule 1200-01-15-06~~ 0400-18-01-06.
 - (ii) Additional remediation activities may be needed after assessment and remediation activities have been completed in accordance with ~~Rule 1200-01-15-06~~ 0400-18-01-06 if the risk at the site has changed, as described in subparagraph (3)(b) of this rule.

(5) Tank closure records.

The division shall maintain tank closure information that has been provided to the division or otherwise obtained by the division. Records documenting tank closure as well as the site assessment records associated with tank closure shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) These records pertain to real property, causing them to have permanent value; and
- (b) In accordance with ~~rule 1200-01-15-07 subparagraph (4)(b) of Rule 0400-18-01-07~~ petroleum underground storage tanks may be closed in place if they are filled with an inert substance or removed from the ground. It is important, when future use of the petroleum site is being considered, to know which tank closure option was utilized.

(6) Orders for correction and/or assessment, and cost recovery actions.

Records documenting enforcement actions that result in the issuance of an administrative order, under the provisions of ~~Tennessee Code Annotated T.C.A. § 68-215-114~~, and/or the issuance of an administrative order for the assessment of civil penalties, under the provisions of ~~Tennessee Code Annotated T.C.A. § 68-215-121~~, and records relating to cost recovery actions, under the provisions of ~~Tennessee Code Annotated T.C.A. § 68-215-115~~, shall be maintained as permanent records by the Division of Underground Storage Tanks due to the following factors:

- (a) These records have legal value; and
- (b) These records have fiscal value. These records may contain information concerning uncollected debts owed to the State of Tennessee, for example, when a respondent moves after being served with an administrative order and leaves no forwarding address.

(7) Maintenance of records.

- (a) All division records, including the permanent records specified in this rule, may be maintained as paper records, compact disks, microfilm records, electronic records, photographic records, and/or other forms that allow access for review and duplication.
- (b) The form of the record at the time of submittal to the division shall not limit or otherwise prescribe the form in which that record may be permanently maintained.
- (c) Nothing in this rule shall be construed to mean that the division is required to accept record submittals in any form other than that prescribed by the division.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-15~~ 0400-18-01-15 Petroleum Product Delivery.

(1) Delivery prohibition.

It shall be unlawful for any person to place or cause to be placed, petroleum substances in a petroleum underground storage tank or to dispense petroleum from a tank, if the Division division has taken one or more of the following actions:

- (a) A tag or notice has been affixed to the dispensers;
- (b) A tag has been affixed to the fill ports; or
- (c) Notice has been given on the Department's web site.

(2) Dispensing prohibition.

It shall be unlawful for any person to dispense petroleum from a petroleum underground storage tank if the Division division has taken one or more of the actions in subparagraphs (1)(a) through (c) of this rule.

(3) If the Division division has prohibited delivery and dispensing of petroleum products in accordance with paragraphs (1) and (2) of this rule, resumption of deliveries of petroleum and dispensing of petroleum shall not occur until:

- (a) The Division division has notified the tank owner and/or operator that the tag may be removed; and
- (b) The Division division has removed the facility from the delivery prohibition list on the Division division's section of the Department's website.

Authority: T.C.A. §§ 68-215-101 et seq. and 4-5-201 et seq.

~~1200-01-15-16~~ 0400-18-01-16 Certified Operator Program.

(1) Operator Designation Requirements.

- (a) Effective August 8, 2012, every facility having one or more petroleum UST systems subject to the requirements of Chapter ~~1200-01-15~~ 0400-18-01 must have one or more persons who have been designated by the tank owner as Class A, Class B, and Class C Operator(s).
- (b) A Class A, Class B, or Class C Operator is not necessarily considered the same as "operator" defined in paragraph (4) of Rule ~~1200-01-15-01~~ 0400-18-01-01, although the same individual may hold both positions.
- (c) A Class A, Class B, or Class C Operator is not necessarily the same as "owner" as defined in paragraph (4) of Rule ~~1200-01-15-01~~ 0400-18-01-01, unless such a person also owns these petroleum underground storage tanks.

(2) Operator Training Requirements

- (a) Persons to be classified as Class A, Class B, or Class C Operators must log on to the Division division's web based training database and indicate how operator training requirements are met for each applicable classification by indicating successful completion of at least one of the following:
1. Applicable portions of the Division division's web-based operator training program designed to meet Class A, Class B, and/or Class C Operator training requirements, or
 2. Obtaining a passing score on the Tennessee UST System Operator Examination administered by the International Code Council and submit the record to the Division division, or
 3. Obtaining a passing score on the UST System Operator Examination administered by the International Code Council and submit the record to the Division division, or
 4. Obtaining a passing score on a UST operator training program examination administered by the Division division.
- (b) Class C Operator training may be provided by the tank owner, a trained Class A or Class B Operator in accordance with guidance published by the Division division, or by successful completion of Class C Operator training using the Division division's web-based operator training program.
- (c) Class C Operators must be trained before assuming responsibility for responding to emergencies.

(3) Tank Owner Responsibilities.

- (a) Tank owners must register a Class A, and Class B Operator(s) for each facility where petroleum UST systems are located using the Division division's web-based operator training database on or before August 8, 2012.
- (b) Tank owners must verify in the Division division's web-based operator training database that a trained individual meeting the requirements for a Class C Operator will be on site whenever the facility is operating.
- (c) If a UST facility has a person(s) on site, at least one person on site must be a Class C Operator whenever the facility is operating. Unmanned facilities must have a designated Class A and Class B Operator, but are not required to have designated operators on site. Class C Operator requirements for unmanned facilities may be met through appropriate conspicuously posted signage.
- (d) Tank owners may elect to replace Class A or Class B Operators at any time by providing proper notice to the Division division in accordance with subparagraph (1)(h) of Rule ~~1200-01-15-03~~ 0400-18-01-03. Notice to the Division division is not required when replacing a designated Class C Operator.
- (e) It will be unlawful to operate a petroleum UST facility without a Class A, Class B, and Class C Operator designations after August 8, 2012.

(4) Retraining

If a significant operational compliance violation is discovered at any time, then successful completion of operator retraining appropriate to the level of the operator Class must be completed within a time frame determined by the Division division.