G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	University of Tennessee
DIVISION:	University of Tennessee at Chattanooga
SUBJECT:	Library Fines
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-9-209
EFFECTIVE DATES:	July 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rules modifies the amounts of library fines for lost or overdue items at the University of Tennessee at Chattanooga. For lost or billed items, borrowers will be assessed a flat replacement fee of $100.00 plus a nonrefundable processing fee of $5.00 for each item. Upon request, in lieu of the flat replacement fee, the borrower will be allowed to either pay the library the amount of the market cost to replace the item or to provide the library with a replacement item acceptable to the library. Hourly reserve items and library equipment are subject to overdue fines of $5.00 per hour, up to a limit of $15.00 for each item.

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)

The University of Tennessee anticipates that this rule change will have minimal to no impact on local governments.

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For Department of State Use Only

Sequence Number: 02-14-13
Rule ID(s): 5378
File Date: 2/7/13
Effective Date: 7/29/13

Proposed Rule(s) Filing Form

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

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

Revision Type (check all that apply):

x Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1720-02-07	Library Fines
Rule Number	**Rule Title**
1720-02-07-.01	Library Fines

RULES
OF
THE UNIVERSITY OF TENNESSEE AT CHATTANOOGA

CHAPTER 1720-2-7
LIBRARY FINES

TABLE OF CONTENTS

1720-2-7-.01	Library Fines	1720-2-7-.03	Repealed
1720-2-7-.02	Repealed		

1720-2-7-.01 LIBRARY FINES.

(1) There are no fines for overdue items borrowed from the library's regular book or audiovisual collections. For lost or billed items, however, borrowers are assessed a flat replacement fee of $100.00 ~~the current cost of replacement for each item~~ plus a nonrefundable processing fee of $~~1~~5.00 for each ~~book~~item. Upon request by a borrower, in lieu of the flat replacement fee, the borrower will be allowed to either pay the library the amount of the market cost to replace the item or provide the library with a replacement item acceptable to the library.

(2) Hourly reserve items and library equipment are subject to ~~an~~ overdue fines of $5.00~~25 cents~~ per hour, up to a limit of $15.00 for each item. Daily reserve items are subject to an overdue fine of $1.00 per hour, up to a limit of $15.00 for each item.

~~(3) Other library resources (e.g., study rooms, laptops) are subject to an overdue fine of $5.00 per hour, up to a limit of $15.00 for each resource.~~

(34) If fines for overdue books and charges for lost books are not paid as required, the borrowers will be blocked from use of the library and not permitted by the business office and registrar (on this or other campuses of the University) either to register or to receive course credits and transcripts until the outstanding obligations are fully cleared.

Authority: *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64.* ***Administrative History:*** *Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed August 31, 1982; effective November 15, 1982. Repealed by Public Chapter 575; effective July 1, 1986. New rule filed May 27, 1986; effective August 12, 1986. Amendment filed November 13, 1987; effective February 28, 1988; Amendment filed November 17, 2008; effective March 30, 2009.*

1720-2-7-.02 REPEALED.

Authority: *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64.* ***Administrative History:*** *Original rule filed September 15, 1976; effective October 15, 1976. Amendment filed August 22, 1980; effective December 1, 1980. Amendment filed August 31, 1982; effective November 15, 1982. Repealed by Public Chapter 575; effective July 1, 1986.*

1720-2-7-.03 REPEALED.

Authority: *Public Acts of Tennessee, 1839-1840, Chapter 98, Section 5 and Public Acts of Tennessee, 1807, Chapter 64.* ***Administrative History:*** *Original rule filed September 15, 1976; effective October 15,*

1976. Amendment filed August 22, 1980; effective December 1, 1980. Amendment filed August 31, 1982; effective November 15, 1982. Repealed by Public Chapter 575; effective July 1, 1986.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Bill Haslam	x				
Commissioner Julius Johnson	x				
Commissioner Kevin Huffman				x	
Dr. Joe DiPietro	x				
Dr. Richard D. Rhoda			Non-voting		
Charles C. Anderson, Jr.	x				
Ann Holt Blackburn	x				
George E. Cates	x				
Spruell Driver, Jr.	x				
J. Brian Ferguson	x				
Teresa K. Fowler	x				
John N. Foy	x				
Crawford Gallimore	x				
Vicky B. Gregg	x				
Monice Moore Hagler	x				
Douglas A. Horne	x				
Raja J. Jubran	x				
James L. Murphy, III	x				
Karl A. Schledwitz	x				
Shalin N. Shah			Non-voting		
Don Stansberry	x				
Dr. Victoria S. Steinberg			Non-voting		
Betty Ann Tanner	x				
Charles E. Wharton	x				
Tommy G. Whittaker				x	
Dr. Janet M. Wilbert	x				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the University of Tennessee Board of Trustees on November 9, 2012, 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: 1/3/13

Signature:

Name of Officer: Matthew Scoggins

Title of Officer: Assistant General Counsel

Subscribed and sworn to before me on: 1-3-13

Notary Public Signature: Lynette Russell

My commission expires on: 1-27-15

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

Robert E. Cooper, Jr.
Attorney General and Reporter

1-28-13
Date

Department of State Use Only

Filed with the Department of State on: 2/7/13

Effective on: 7/29/13

Tre Hargett

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
DIVISION:	
SUBJECT:	Qualifications for Criminal Justice Teachers
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-1-302
EFFECTIVE DATES:	July 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules adjust the qualifications for trade and industrial education teachers to accommodate a need for a larger pool of qualified applicants to work as criminal justice teachers. These rules make changes in the requirements set out in Rule 0520-02-04-.13(2)(ii) to provide for alternate pathways to the existing options for prospective teachers who hold a bachelor's degree or master's degree in criminal justice as those degrees relate to the requisite work experience.

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.

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.

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For Department of State Use Only

Sequence Number: 02-08-13
Rule ID(s): 5371-5372
File Date: 2/6/13
Effective Date: 7/29/13

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 F. Walker
Address:	9th Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

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

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

Chapter Number	**Chapter Title**
0520-01-02	Administrative Rules and Regulations
Rule Number	**Rule Title**
0520-01-02-.03	Employment Standards

Chapter Number	**Chapter Title**
0520-02-04	Licensure
Rule Number	**Rule Title**
0520-02-04-.13	Requirements for Occupational Education License

Rules
Of
The State Board of Education

Chapter 0520-01-02
Administrative Rules and Regulations

(9) Career and Technical Education.

(a) A teacher of agricultural education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have appropriate work experience.

(b) A teacher of marketing education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have two (2) years of appropriate experience in marketing education.

(c) A teacher of health science education shall have completed three (3) years of successful employment experience as a registered nurse or in an allied health occupation within the seven (7) years prior to initial employment as a teacher.

(d) A teacher of trade and industrial education shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test. The teacher shall have a minimum of five (5) years of appropriate and current work experience in the field for which application is made. A combination of career and technical education at the postsecondary level from a state technical institute, Tennessee Technology Center, or other accredited public or private institution may also be evaluated. The amount of credit awarded for postsecondary related education shall not exceed two (2) years with the exception of criminal justice in which case a bachelor's degree in criminal justice may count for four (4) years of paid or unpaid work experience or a master's degree or higher may be substituted for five (5) years of paid or unpaid work experience. ~~A teacher of trade and industrial education shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test. The teacher shall have a minimum of five (5) years of appropriate and current work experience in the field for which application is made. A combination of career and technical education at the postsecondary level from a state technical institute, Tennessee Technology Center, or other accredited public or private institution may also be evaluated. The amount of credit awarded for postsecondary related education shall not exceed two (2) years.~~

Chapter 0520-02-04
Licensure

0520-02-04-.13 Requirements for Occupational Education License.

(1) Apprentice Occupational Education License.

(a) Issuance of License.

2. Trade and Industry.

(i) Effective September 1, 2002, trade and industry teachers shall hold and maintain a current industry certification, where available, in the specific endorsement area for which they are licensed. This Industry Certification may be acquired prior to Apprentice license, but must be presented at the time the teacher advances from Apprentice to Professional Occupational License.

(ii) Endorsements in Trade and Industrial Education can be obtained through one of five (5) different pathways using work experience, industry certification and postsecondary training. The five (5) possible pathways are~~Endorsements in Trade and Industrial Education can be obtained through one of four different pathways using work experience, industry certification and post-secondary training. The four possible pathways are:~~

(I) Credentialed (certificate or diploma) postsecondary training in the endorsed area, or associate degree, or industry certification may substitute for two (2) years of work experience. In addition, applicant must also have at least three (3) years of work experience in the endorsed area in the last eight (8) years for a total of five (5) years; or~~Credentialed (certificate or diploma) post-secondary training in the endorsed area, or associate degree, or industry certification may substitute for two (2) years of work experience. In addition, applicant must also have at least three (3) years of work experience in the endorsed area in the last eight (8) years for a total of five (5) years; or~~

(II) A combination of an associate degree related to the endorsed area and industry certification may be substituted for four (4) years of work experience. In addition, applicant must have at least one (1) year of work experience in the endorsed area in the last eight years (8) for a total of five (5) years; or~~A combination of an associate degree related to the endorsed area and industry certification may be substituted for four (4) years of work experience. In addition, applicant must have at least one (1) year of work experience in the endorsed area in the last eight years (8) for a total of five (5) years; or~~

(III) A bachelor's degree or higher degree in the endorsed area may be substituted for four (4) years of work experience. In addition, applicant must also have at least one (1) year of work experience in the endorsed area—paid or unpaid in the field of criminal justice—in the last eight (8) years for a total of five (5) years; or~~A bachelor's degree or higher degree in the endorsed area may be substituted for four (4) years of work experience. In addition, applicant must also have at least one (1) year of work experience in the endorsed area in the last eight (8) years for a total of five (5) years; or~~

(IV) Five (5) years of full-time work experience accrued in the occupational area of endorsement within the last eight (8) years.~~Five (5) years of full-time work experience accrued in the occupational area of endorsement within the last eight (8) years.~~

~~(IV)~~(V) A master's degree or higher in criminal justice may be substituted for the five (5) years of work experience in criminal justice.

* 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				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 7/27/12, 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.

BETH COOPER
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

Date: October 1, 2012

Signature: Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director

Subscribed and sworn to before me on: October 1, 2012

Notary Public Signature: Beth Cooper

My commission expires on: January 24, 2016

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

1-28-13
Date

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Filed with the Department of State on: 2/6/13

Effective on: 7/29/13

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
DIVISION:	
SUBJECT:	Commercial Advertising on School Buses
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-6-2109
EFFECTIVE DATES:	July 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Public Chapter 665 of 2012 removed the limitation on commercial advertising on school buses that required such advertising to "be composed of lettering on a background color." The statute now allows pictures and logos to be used in such advertising. This rulemaking conforms the rules with the recent statutory change.

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.

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.

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For Department of State Use Only

Sequence Number: 02-10-13
Rule ID(s): 5377
File Date: 2/6/13
Effective Date: 7/29/13

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 F. Walker
Address:	9th Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

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

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

Chapter Number	**Chapter Title**
0520-01-05	Pupil Transportation
Rule Number	**Rule Title**
0520-01-05-.03	Commercial Advertising on School Buses

Chapter Number	**Chapter Title**
Rule Number	**Rule Title**

Rules
Of
The State Board of Education

Chapter 0520-01-05
Pupil Transportation

0520-01-05-.03 Commercial Advertising on School Buses.

(1) Commercial advertising may be displayed on school buses as follows:

(a) The local board of education shall adopt a policy to regulate commercial advertising on school buses. Such policy shall address the following minimum standards:

1. Cost of the commercial advertising.

2. Designation of the individual(s) with the authority to sell and approve commercial advertising.

3. Definition of appropriate commercial advertising.

4. Specification of how the advertising will be attached, if not painted on the school bus.

5. Issues relating to contracts with independent contractors.

(i) All contracts for commercial advertising must comply with board policy.

(ii) Contracts with independent bus owners must indicate how the revenue from the commercial advertising will be allocated.

(b) Commercial advertising shall be permitted only on the rear quarter panels of the school bus; no more than two (2) advertisements per rear quarter panel shall be permitted.

(c) The size of commercial advertising per quarter panel shall not exceed sixteen (16") inches in height and sixty (60") inches in length, including any border or framing.

~~(d) The commercial advertising shall consist of lettering on a background color.~~

~~(e)~~(d)_____No commercial advertising of tobacco or alcohol products shall be permitted. Political campaign advertising shall be expressly prohibited.

~~(f)~~(e)_____Commercial advertising shall not cover any structural or sheet metal damage or alteration.

~~(g)~~(f)_____No commercial advertising of food items that pursuant to T.C.A. § 49-6-2307 cannot be sold or offered for sale to pupils

Formatted: Indent: Left: 0.25", No bullets or numbering

* 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				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 7/27/12, 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: October 1, 2012

Signature: Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director

BETH COOPER
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

Subscribed and sworn to before me on: October 1, 2012

Notary Public Signature: Beth Cooper

My commission expires on: January 26, 2016

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

1-28-13
Date

Department of State Use Only

Filed with the Department of State on: 2/6/13

Effective on: 7/29/13

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State Board of Education
DIVISION:	
SUBJECT:	Qualifications for Health Science Teachers
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-1-302
EFFECTIVE DATES:	July 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules adjust the qualifications of health science teachers to accommodate a need for a larger pool of qualified applicants to teach in the field of health science education. Currently, teachers of health science education are required to have completed three years of successful employment experience in a related health occupation within the seven years prior to initial employment as a teacher. The revisions change this requirement to be one year of employment, obtained through either full-time or part-time status, within the past five years prior to teaching.

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.

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.

Department of State
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For Department of State Use Only

Sequence Number: 02-12-13
Rule ID(s): 5374-5375
File Date: 2/6/13
Effective Date: 7/29/13

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 F. Walker
Address:	9th Floor, 710 James Robertson Parkway, Andrew Johnson Tower, Nashville, TN
Zip:	37243
Phone:	615-253-5707
Email:	Dannelle.Walker@tn.gov

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

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

Chapter Number	**Chapter Title**
0520-01-02	Administrative Rules and Regulations
Rule Number	**Rule Title**
0520-01-02-.03	Employment Standards

Chapter Number	**Chapter Title**
0520-02-04	Licensure
Rule Number	**Rule Title**
0520-02-04-.13	Requirements for Occupational Education License

Rules
Of
The State Board of Education

Chapter 0520-01-02
Administrative Rules and Regulations

(9) Career and Technical Education.

(a) A teacher of agricultural education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have appropriate work experience.

(b) A teacher of marketing education shall hold a valid Tennessee teacher license with appropriate endorsement and shall have two (2) years of appropriate experience in marketing education.

(c) *A teacher of health science education shall have completed one (1) year of successful employment experience, obtained through full-time or part-time status, within the past five (5) years in a related health occupation prior to teaching.*

Deleted: A teacher of health science education shall have completed three (3) years of successful employment experience as a registered nurse or in an allied health occupation within the seven (7) years prior to initial employment as a teacher.

(d) A teacher of trade and industrial education shall be a high school graduate or the equivalent, as determined by the General Education Development (GED) test. The teacher shall have a minimum of five (5) years of appropriate and current work experience in the field for which application is made. A combination of career and technical education at the postsecondary level from a state technical institute, Tennessee Technology Center, or other accredited public or private institution may also be evaluated. The amount of credit awarded for postsecondary related education shall not exceed two (2) years.

Chapter 0520-02-04
Licensure

0520-02-04-.13 Requirements for Occupational Education License.

(1) Apprentice Occupational Education License.

(a) Issuance of License.

An apprentice occupational education license may be issued to individuals who meet the following requirements. Qualifications including experience and educational preparation shall be reviewed by the Department of Education staff who shall recommend issuance of the apprentice occupational education license.

1. Health Sciences Education.

(i) The secondary health science teacher shall have completed one (1) year of successful employment, obtained through full-time or part-time status, within the past five (5) years in a related health occupation prior to teaching.

(ii) *Health science teachers must hold an associate or higher degree in a health-related area and hold current licensure registration or certification in an allied health occupation or current*

Deleted: <#>The health science education teacher must hold an associate or higher degree that is related to their health care license. The license, registration or certification must be in an allied health occupation, or as a registered nurse, or in an appropriate medical profession in Tennessee that can be verified by Tennessee Department of Health Licensure or a national license accreditation agency. (EX: Radiological Technologist, Nuclear Medicine, etc.)¶

licensure as a registered nurse in Tennessee. Teachers must successfully complete a comprehensive test administered or accepted by the Tennessee Health Related Boards.

Deleted: Applicant shall have completed three years of full-time successful employment within the past five years in a health care clinical setting having a current active health care license. (Ex: hospital, long-term care facility, rehabilitation or athletic training facility, dental or medical office, home health, day surgery center, etc.)

* 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				
Student Member				X	

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TN State Board of Education on 7/27/12, 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: October 1, 2012

Signature: Gary Nixon

Name of Officer: Dr. Gary L. Nixon

Title of Officer: Executive Director

BETH COOPER
STATE OF TENNESSEE NOTARY PUBLIC
SUMNER COUNTY

Subscribed and sworn to before me on: October 1, 2012

Notary Public Signature: Beth Cooper

My commission expires on: January 26, 2016

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

1-28-13

Date

Department of State Use Only

Filed with the Department of State on: 2/6/13

Effective on: 7/29/13

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Student Assistance Corporation (TSAC)
DIVISION:	Higher Education
SUBJECT:	Procedures Affecting Professional Licenses
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-4-204
EFFECTIVE DATES:	March 1, 2013 through August 29, 2013
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

The proposed rule acts to adopt the Procedures Affecting Professional Licenses as Chapter 1640-01-23. These rules implement the process whereby professional licenses, certificates, and registrations authorized by the state of Tennessee may be subject to disciplinary action for default on a repayment or service obligation under any Federal Family Education Loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

As these rules are proposed as new rules there are no previous regulations effectuated by such rules.

Regulatory Flexibility Addendum

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

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rules

The Tennessee Student Assistance Corporation (TSAC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing for the new rules Chapter 1640-01-23 Procedures Affecting Professional Licenses. It is the intent of TSAC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

The proposed rules implement the process whereby professional licenses, certificates, and registrations authorized by the state of Tennessee may be subject to disciplinary action for default on a repayment or service obligation under any Federal Family Education Loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

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

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

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

   The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

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

   The proposed rules were drafted to facilitate administration of the program for all Tennessee state licensing authorities.

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

   TSAC has met with and provided a copy of these rules to the Tennessee Board of Professional Responsibility, the Tennessee Bar Association, and the Tennessee State Board of Education. No comments or concerns regarding these rules or the schedules and deadlines for compliance and/or reporting requirements have been expressed by any of these entities.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

   TSAC expects all Tennessee state licensing authorities engaged in the administration of the procedures affecting professional licenses to comply with all applicable rules.

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

   The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

   Not Applicable. These rules affect only those Tennessee entities responsible for the issuance of professional licenses.

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

   There are no significant reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

   Not Applicable. The proposed rules implement a program whereby Tennessee state licensing authorities will implement procedures affecting professional licenses.

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

   As these proposed rules present no foreseeable cost to small businesses, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

   There will be no exemptions created by these proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments."

The rules for the Procedures Affecting Professional Licenses Chapter 1640-01-23, as proposed, shall have no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 03-05-13
Rule ID(s): 5388
File Date: 3/1/13
Effective Date: 3/1/13

Emergency Rule Filing Form

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

Agency/Board/Commission:	Tennessee Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy, Senior Associate Executive Director and Attorney
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

Rule Type:
X Emergency Rule

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

Statement of Necessity:

Tennessee 2012 Public Chapter 519 T.C.A. mandates that for the purposes of promulgation of the rules and regulations, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2013, the public welfare requiring it.

T.C.A. §§ 56-1-312 and 63-1-141 direct TSAC to work with the Department of Commerce and Insurance and the Department of Health, respectively, to pursue disciplinary action against individuals holding professional licenses or certificates who have defaulted on their federal student loans. Additionally, Tennessee 2012 Public Chapter 519 expanded the current notification requirements to other state licensing authorities, including the State Board of Education, Ethics Commission, Secretary of State, and Supreme Court.

The submitted rule Chapter 1640-01-23 Procedures Affecting Professional Licenses outlines the steps to be taken in the notification process and thereby require immediate implementation.

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**
1640-01-23	Procedures Affecting Professional Licenses
Rule Number	**Rule Title**
1640-01-23-.01	Introduction
1640-01-23-.02	Definitions
1640-01-23-.03	Determination of Default
1640-01-23-.04	Notice Prior To Issuing an Order or Notice of Default
1640-01-23-.05	Hearings and Order or Notice of Default
1640-01-23-.06	Order to Terminate Suspension or Notice of Compliance
1640-01-23-.07	Subsequent Suspensions or Defaults

Chapter 1640-01-23
Procedures Affecting Professional Licenses

New

1640-01-23-.01 INTRODUCTION.

(1) These rules implement the process whereby professional licenses, certificates, and registrations authorized by the state of Tennessee may be subject to disciplinary action for default on a repayment or service obligation under any Federal Family Education Loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.02 DEFINITIONS.

(1) Borrower: An individual who owes a balance on a federal family education loan program loan, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

(2) Default: The failure of a borrower to make installment payments when due on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan program, provided that this failure persists for the most recent period of 270 consecutive days (for a loan repayable in monthly installments) or the most recent period of 330 consecutive days (for a loan repayable in less frequent installments).

Default may also occur if a borrower has failed to enter into a payment plan, fulfill a service obligation, or comply with a payment plan previously approved by TSAC.

(3) Delinquency: A period that begins on the first day following the due date of a payment when the borrower fails to make the equivalent of one full payment as established in the approved payment agreement.

(4) Discharge: The release of a borrower from all or a portion of the borrower's loan obligation due to school closure, death, total and permanent disability, false certification, or other conditions specified by court order.

(5) Due Date: The date that payment is due as established by the lender or TSAC.

(6) Eligible Payment: A fully negotiated voluntary payment made by the borrower, which may include administrative wage garnishment, but does not include U.S. or state of Tennessee Treasury offsets.

(7) FFELP: Federal Family Education Loan Program.

(8) License: A license, certification, registration, permit, approval or other similar document issued by the state of Tennessee to an individual evidencing admission to or granting authority to engage in a profession, trade, occupation, business, or industry.

(9) Licensee: An individual who holds a license, certification, registration, permit, approval or other similar document issued by a granting authority in the state of Tennessee to engage in a profession, trade, occupation, business, or industry.

(10) Licensing Authority: A department, division, board, commission, committee, agency or other state of Tennessee governmental entity that has been established by statute or regulation to oversee the issuance and regulation of any license.

(11) Notice of Compliance: A notice issued by TSAC to the Tennessee Supreme Court or the Tennessee State Board of Education that the borrower has paid the debt in full, entered into a payment plan, complied with a payment plan previously entered into and approved by TSAC, is otherwise in satisfactory compliance, or has entered into a service obligation.

(12) Notice of Default: A notice issued by TSAC to the Tennessee Supreme Court or the Tennessee State Board of Education advising that the borrower has been determined to be in default on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

(13) Notice of Intent to File an Order of Default: A notice issued to the borrower by TSAC advising the borrower of its intent to file an order with the appropriate licensing authority to suspend, deny, or revoke the borrower's license unless certain conditions are met.

(14) Notice of Intent to issue a Notice of Default: A notice issued to the borrower by TSAC advising the borrower whose license is issued by the Tennessee Supreme Court or the Tennessee Board of Education of its intent to issue a notice with the appropriate licensing authority unless certain conditions are met.

(15) Order of Default: An order issued by TSAC to the appropriate licensing authority requesting to suspend, deny, or revoke the license of the licensee determined to be in default, and, further requesting the borrower to refrain from engaging in the activity for which a license has been issued.

(16) Order to Terminate Suspension: An order issued by TSAC to the appropriate licensing authority to terminate the suspension, denial, or revocation of a license upon TSAC's determination that the borrower has paid the debt in full, entered into a payment plan, complied with a payment plan previously entered into and approved by TSAC, is otherwise in satisfactory compliance, or has entered into a service obligation.

(17) Regularly: As it relates to requesting names of licensees from licensing authorities and generating lists of those in default or eligible for reinstatement, a frequency that both TSAC and each individual licensing authority agree upon but no less than annually.

(18) Satisfactory Payment Agreement: An arrangement between the borrower and TSAC which satisfies the borrower's payment obligation, which may include voluntary payments, administrative wage garnishment, deferment, or forbearance.

(19) Service-Conditional Scholarship Program: A state or federal loan forgiveness program that requires the recipient of an educational loan to sign a promissory note stipulating a service obligation in exchange for loan forgiveness.

(20) TSAC: Tennessee Student Assistance Corporation.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.03 DETERMINATION OF DEFAULT.

(1) TSAC shall regularly request a list of licenses from those licensing authorities authorized by the state of Tennessee to issue any license granting an individual authority to engage in a profession, trade, or occupation.

(2) TSAC shall request that the licensing authority submit the licensee information in a format acceptable to TSAC and contain, if collected by the licensing authority, the following information:

(a) Name, (Last, First, Middle Initial);

(b) A minimum of the last four digits of the Social Security Number, provided that the Social Security Number is not a public record and shall only be used by TSAC for purposes related to the administration of these rules;

(c) Address (Street, City, State, and ZIP-Plus4-Plus2);

(d) Date of Birth (MMDDYYYY);

(e) Professional License Number;

(f) Type of license held; and

(g) Licensing Authority.

(3) TSAC shall regularly generate a list of all defaulted borrowers to match against the list of licensees to determine those licensees that are in default.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.04 NOTICE PRIOR TO ISSUING AN ORDER OR NOTICE OF DEFAULT.

(1) Following a match against the list of licenses from a licensing authority, TSAC shall serve notice to the licensee, personally or by certified mail with return receipt requested. Service of process will be considered sufficient if the return receipt requested is refused or unclaimed as noted by the postal authority. The notice shall advise the borrower of TSAC's intent to file an Order of Default with the appropriate licensing authority ninety (90) days after service to suspend, deny or revoke the borrower's license unless the borrower:

(a) Pays the entire debt as stated in the notice;

(b) Enters into a payment plan or service obligation, or complies with a payment plan previously entered into and approved by TSAC;

(c) Requests and qualifies for deferment, forbearance, or other satisfactory compliance; or

(d) Requests a hearing before TSAC.

(2) The service and compliance requirements of this Rule 1640-01-23-.04 shall apply to those borrowers whose license has been issued by the Tennessee Supreme Court or the Tennessee State Board of Education, except that upon failure to comply with the requirements stated in the notice TSAC shall issue a Notice of Default to the appropriate licensing authority, advising only that the borrower is in default.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.05 HEARINGS AND ORDER OR NOTICE OF DEFAULT.

(1) Hearing requests by the borrower must be made in writing and received by TSAC within twenty (20) days of the date the initial notice of default or delinquency is served.

(2) Upon receipt of a request for a hearing from the borrower, TSAC shall schedule a hearing to determine whether determination of delinquency or default which could result in suspension, denial, or revocation of the license is appropriate. The borrower's license may not be suspended, denied, or revoked until a determination is reached following the hearing. The issues that may be determined in the hearing are:

(a) The amount of the debt, if any;

(b) Whether the borrower is delinquent or in default; or

(c) Whether the borrower:

1. Has entered into a payment plan or service obligation approved by TSAC;

2. Is willing to enter into a payment plan or service obligation approved by TSAC;

3. Is willing to comply with a payment plan or service obligation previously entered into and approved by TSAC or the guarantee agency; or

(d) Whether the debtor is eligible for deferment, forbearance, or other satisfactory compliance.

(3) If a borrower, without good cause, fails to respond to the notice of intent, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the borrower's defenses, objections, or request for a payment plan or compliance with a payment plan may be determined to be without merit; and TSAC shall enter a final decision and order, requesting suspension, denial, or revocation of the borrower's license, and further requesting the licensing authority to order the borrower to refrain from engaging in the activity for which a license has been issued.

(4) Paragraphs (1), (2), and (3) of this rule 1640-01-23-.05 shall apply to those borrowers licensed under the Tennessee Supreme Court or Tennessee State Board of Education, except TSAC shall enter a final determination and issue a Notice of Default to the appropriate licensing authority.

(5) TSAC shall send a copy of the Order or Notice of Default to the licensing authority and the borrower.

(6) The administrative hearings shall be conducted in accordance with the rules and regulations adopted under the Uniform Administrative Procedures.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.06 ORDER TO TERMINATE SUSPENSION OR NOTICE OF COMPLIANCE.

(1) Once the debt has been paid in full, a payment plan acceptable to TSAC has been entered into and a payment has been received by TSAC, or a service obligation is fulfilled, the borrower shall be eligible for reinstatement and TSAC shall issue an Order to Terminate Suspension to the appropriate licensing authority to terminate the suspension, denial, or revocation, restoring or reinstating the license that was previously suspended, revoked, or denied, except that

(a) TSAC shall issue a Notice of Compliance to the Tennessee Supreme Court or the Tennessee State Board of Education.

(2) TSAC shall send a copy of the Order to Terminate Suspension to the borrower notifying the borrower that the suspension, denial, or revocation has been rescinded and puts the borrower on notice for actions of subsequent defaults, except that

(a) TSAC shall send a copy of the Notice of Compliance to those borrowers whose license has been issued by the Tennessee Supreme Court or the Tennessee State Board of Education.

(3) TSAC shall regularly compile a list of all borrowers determined to be eligible for reinstatement.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.07 SUBSEQUENT SUSPENSIONS OR DEFAULTS.

(1) Following an initial reinstatement, should a licensee fail to comply with the agreed payment plan or service obligation, a subsequent Order of Default shall immediately be issued to the appropriate licensing authority requesting the suspension, revocation, or denial of the borrower's license, and further requesting the licensing authority to order the licensee to refrain from engaging in the activity for which a license has been issued, except that

(a) For those licensed by the Tennessee Supreme Court or the Tennessee State Board of Education who fail to comply with the agreed payment plan or service obligation, a subsequent Notice of Default shall immediately be issued to the Tennessee Supreme Court or the Tennessee State Board of Education.

(2) A second default or delinquency by the same borrower will result in the requirement of three (3) consecutive monthly payments before the borrower can be eligible for reinstatement. All subsequent defaults or delinquencies by the same borrower will result in the requirement of four (4) consecutive monthly payments before the borrower can be eligible for reinstatement, except that

(a) For those licensed by the Tennessee Supreme Court or the Tennessee State Board of Education who have a second Notice of Default issued to the Tennessee Supreme Court or the Tennessee State Board of Education, three (3) consecutive monthly payments shall be required before TSAC will issue a Notice of Compliance. Furthermore, all subsequent Notices of Default by the same borrower will result in the requirement of four (4) consecutive monthly payments before a Notice of Compliance will be issued.

(3) The borrower shall be notified in both the initial Order or Notice of Default and the payment agreement plan that all subsequent defaults or delinquencies will result in an immediate issuance of an Order or Notice of Default to the appropriate licensing authority.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam, by Mr. Mark Cate	X				
Dr. Richard Rhoda	X				
Dr. Claude Pressnell	X				
Mr. David H. Lillard, Jr., by Joy Harris	X				
Comptroller Justin P. Wilson, by Ms. Faye Weaver	X				
Commissioner Mark Emkes, by Greg Turner	X				
Commissioner Kevin Huffman, by Mr. Morgan Branch	X				
Chancellor John Morgan by David Gregory	X				
Dr. Joe Dipietro, by Dr. Keith Carver	X				
Gary Weedman	X				
Dr. J. Gary Adcox	X				
Mr. Jeff Gerkin	X				
Mr. William Samuel Stuard, Jr.	X				
Mr. Will Pinkston	X				
Mr. LaSimba Gray	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TSAC Board of Directors on 09/27/2012, 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: 10.11.12

Signature: [signature]

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director

Subscribed and sworn to before me on: 10/11/12

Notary Public Signature: [signature]

My commission expires on: 1/9/2013

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

[signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

1-16-13

Date

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Filed with the Department of State on: 3/1/13

Effective on: 3/1/13

[signature]

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Real Estate Commission
DIVISION:	Regulatory Boards
SUBJECT:	Vacation Lodging Services
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 62-13-104
EFFECTIVE DATES:	June 2, 2013 through June 30, 2014
FISCAL IMPACT:	The agency states that there is no estimated fiscal impact by the promulgation of these rules due to the current practice of charging the fees addressed in these rules pursuant to the schedule outlined in Rule 1260-01-12.

STAFF RULE ABSTRACT:

Rule 1260-07-01 Scope is a new rule which states that all new rules in Chapter 1260-07 only apply to persons performing vacation lodging services and vacation lodging service firms.

Rule 1260-07-. 02 Designated Agent Qualifications is a new rule which outlines the requirements for an applicant who wishes to obtain a designated agent license for a vacation lodging service firm.

Rule 1260-07-03 Designated Agent Responsibilities is a new rule outlining the responsibilities of a designated agent of a vacation lodging service firm.

Rule 1260-07-04 Civil Penalties is a new rule which sets forth the civil penalty ranges for violations of the various subsections of Tennessee Code Annotated, § 62-1 3-104, and any Commission rule or order by any person who is required to have a vacation lodging service license and/or a designated agent license. It also provides factors which the Commission may consider in imposing a civil penalty.

Rule 1260-07-05 Vacation Lodging Services Instructor Qualifications is a new rule which outlines the qualifications for any individual wishing to obtain certification as a vacation lodging services instructor.

Rule 1260-07-. 06 Fees is a new rule which outlines the fee schedule for all vacation lodging service licensees and designated agents.

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.

On June 14, 2012, the Tennessee Real Estate Commission conducted a Rulemaking Hearing regarding the proposed rules submitted in the public notice of hearing filed on 4/20/12. At that hearing, there were no public comments regarding the rules contained within this form, currently numbered 1260-07-.01 through 1260-07-.06. However, two individuals attended the rulemaking hearing to comment on a proposed Rule 1260-07-.05, titled Advertising, and there were sixteen (16) written comments sent regarding the advertising rule.

First, Mr. Bill Nolan, a lobbyist, went on the record as being in favor of the rules with the exception of the proposed rule regarding advertising. Mr. Nolan stated his belief that the Commission did not have the authority to pass the proposed advertising rule. Further, Mr. Nolan stated that the proposed advertising rule was stricter than the advertising rules for brokers and time shares, and the proposed advertising rule's requirement that the registered name of the VLS must appear on all advertising, would result in harm to the industry.

Secondly, Mr. Brad Ivens, President of the Smoky Mountain Vacation Lodging Association ("SMVLA"), appeared with Mr. Nolan and also discussed his opposition to the proposed advertising rule. Mr. Ivens specifically noted the cost of adding the firm number, as required by the proposed advertising rule, to all advertising, which Mr. Ivens noted is not required of brokers or time shares.

The Commission engaged Mr. Nolan and Mr. Ivens in discussion regarding the VLS industry's use of d/b/a names. Mr. Ivens stated that his VLS firm uses multiple d/b/a names on advertising, and the proposed advertising rule would result in unnecessary expense by requiring him to change all of his signage and other advertising to include both the d/b/a name as well as the VLS firm name which is registered with the Commission. It was discussed that brokers are permitted to use d/b/a names on their advertising if the d/b/a name is included in the registered firm name with the Commission.

It was further discussed that real estate brokers do not have to include their firm number on advertising. However, the Commission stated that the firm phone number, which is required on all advertising for real estate brokers, identifies the broker, whereas VLS firms utilize multiple numbers which are not all specifically tied to the VLS firm licensed with the Commission.

The Commission, Mr. Nolan, and Mr. Ivens then discussed the possibility of the VLS firms registering all d/b/a names utilized by the firm with the Commission and then allowing use of the d/b/a name on advertising. However, the problem was raised of the State's system's incapability of registering multiple d/b/a names to a single licensed VLS firm.

There were sixteen (16) written comments submitted prior to the hearing via e-mail, which were summarized as a group at the hearing and entered into the record as an exhibit. Two (2) of the written comments were made by Mr. Ivens, and the remainder of the comments endorsed Mr. Ivens' position regarding the proposed advertising rule, stating that the rule's requirements were unnecessary, overly burdensome, costly, and stricter than the advertising requirements of brokers and time shares and asking that the Commission delay or forego the proposed advertising rule and work with industry members to revise the proposed advertising rule.

The Commission then voted to withdraw and not adopt the proposed rule regarding advertising (formerly numbered Rule 1260-07-.05) at that time. Accordingly, the Commission voted to renumber the rules proposed as Rule 1260-07-.06, titled Vacation Lodging Services Instructor Qualifications, and Rule 1260-07-.07, titled Fees, to become Rule 1260-07-.05 and Rule 1260-07-.06 respectively.

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)

Economic Impact Statement:

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

All licensed vacation lodging services firms, regardless of size, within the State of Tennessee will be affected by the proposed rules. The estimated number of licensed vacation lodging service firms is 139.

(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;

Any reported, recordkeeping and/or other administrative costs resulting from these proposed rules is necessary to protect the citizens of the State of Tennessee, which is accomplished by requiring proper education for licensees and instructors, maintaining updated information with the Commission, and instituting measures which help to ensure accountability for improper activity by licensees. These rules are not expected to create any additional reporting, recordkeeping and/or other administrative costs to what is already required by T.C.A. § 62-13-104.

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

The proposed rules will economically impact all vacation lodging service firms, but these proposed rules are necessary in order to protect the welfare and safety of the citizens of the State of Tennessee.

(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;

Although less burdensome, less intrusive, or less costly methods may exist to achieve the purpose and objectives of these proposed rules, those methods would not result in an equivalent level of protection for citizens of the State of Tennessee.

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

The proposed rules appear consistent with similar rules adopted by other boards as well as by the Tennessee Real Estate Commission with regard to its other licensees, and counsel is not aware of any federal or state counterparts.

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

Exemption of small businesses from these rules would result in less protection for the citizens of the State of Tennessee.

Impact on Local Governments

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

The rules are not reasonably viewed as having a projected impact on local governments.

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For Department of State Use Only

Sequence Number: 03-07-13
Rule ID(s): 5390
File Date: 3/4/13
Effective Date: 6/2/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Real Estate Commission
Division:	Regulatory Boards
Contact Person:	Julie Cropp
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	(615) 741-3072
Email:	julie.cropp@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
1260-07	Vacation Lodging Services
Rule Number	**Rule Title**
1260-07-.01	Scope
1260-07-.02	Designated Agent Qualifications
1260-07-.03	Designated Agent Responsibilities
1260-07-.04	Civil Penalties
1260-07-.05	Vacation Lodging Services Instructor Qualifications
1260-07-.06	Fees

(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 1260-07
Vacation Lodging Services

New Rules

1260-07-.01 Scope
1260-07-.02 Designated Agent Qualifications
1260-07-.03 Designated Agent Responsibilities
1260-07-.04 Civil Penalties
1260-07-.05 Vacation Lodging Services Instructor Qualifications
1260-07-.06 Fees

1260-07-.01 Scope. The rules in Chapter 1260-07 only apply to persons who perform vacation lodging services and vacation lodging service firms, as defined and governed under T.C.A. § 62-13-104(b).

Authority: T.C.A. §62-13-104.

1260-07-.02 Designated Agent Qualifications

To obtain a designated agent license, applicants must meet the following prerequisites:

(1) Applicants must have obtained a high school diploma or general education diploma;

(2) Applicants must have certified proof of completion of eight (8) hours of pre-licensing education; and

(3) Applicants shall not be considered for licensure unless two (2) years have passed from the date of expiration of probation, parole or conviction, or from the date of release from incarceration, whichever is longer in time. This restriction shall apply to all felonies, and to misdemeanors which involve the theft of money, services, or property. An applicant who appears before the Commission requesting licensure and who is denied will not be eligible for reconsideration for six (6) months from the date of denial.

Authority: T.C.A. §62-13-104.

1260-07-.03 Designated Agent Responsibilities

(1) The designated agent shall be responsible for supervising all employees of the firm.

(2) Designated agents shall be reasonably available to manage and supervise each vacation lodging service office during regular business hours.

(3) The designated agent shall be responsible for maintaining the vacation lodging service escrow account.

Authority: T.C.A. §62-13-104.

1260-07-.04 Civil Penalties.

(1) The Commission may, in a lawful proceeding against any person required to have a designated agent license and/or a vacation lodging services license, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty for each separate violation of a statute, rule, or order pertaining to the Commission with the following schedule:

Violation	Penalty
T.C.A. § 62-13-104(b)(3)(C)	$ 200 ---- 1000

T.C.A. § 62-13-104(b)(3)(D)(i)		200 ---- 1000
T.C.A. § 62-13-104(b)(7)(B)		
	(i)	250 ---- 1000
	(ii)	250 ---- 1000
	(iii)	300 ---- 1000
	(iv)	100 ---- 1000
	(v)	300 ---- 1000
	(vi)	200 ---- 1000
	(vii)	100 ---- 1000
	(viii)	200 ---- 1000
	(ix)	300 ---- 1000
	(x)	300 ---- 1000
	(xi)	50 ---- 1000
	(xii)	250 ---- 1000
	(xiii)	200 ---- 1000
T.C.A. § 62-13-104(b)(8)(A)(ii)		200 ---- 1000
T.C.A. § 62-13-104(b)(9)	(A)	25 ---- 1000
	(B)	25 ---- 1000
Any Commission Rule or Order		50 ---- 1000

(2) Each day of a continued violation may constitute a separate violation.

(3) In determining the amount of a civil penalty, the Commission may consider such factors as the following:

(a) whether the amount imposed will be a substantial economic deterrent to the violation;

(b) the circumstances leading to the violation;

(c) the severity of the violation and the risk of harm to the public;

(d) the economic benefits gained by the violator as a result of non-compliance; and

(e) the interest of the public.

Authority: T.C.A. §62-13-104 and 56-1-308.

1260-07-.05 Vacation Lodging Services Instructor Qualifications

(1) To obtain certification as an instructor of vacation lodging services, applicants must meet the following prerequisites:

(a) Applicants must have obtained a high school diploma or general education diploma;

(b) Applicants must also:

1. hold a license as a designated agent under the Vacation Lodging Services Act; or

2. possess a minimum of three (3) years experience in vacation lodging services.

(i) If a course concerns any other field in which a degree, certification, or other recognized designation is commonly awarded then the instructor must have earned that degree or designation, or have at least three (3) years of relevant experience in the field.

(2) The Commission may charge a fee of twenty-five dollars ($25) for each instructor in an education cycle, in order to review that instructor's qualifications.

Authority: T.C.A. §62-13-104.

1260-07-.06 Fees. The following fees shall apply:

(1) For the issuance of an original vacation lodging service firm or original designated agent license, a fee to be paid to the Commission of one hundred dollars ($100.00);

(2) For each renewal of a license, a fee to be paid to the Commission of eighty dollars ($80.00);

Authority: T.C.A. §62-13-104.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Janet DiChiara	X				
John Griess	X				
David Flitcroft	X				
Michelle Haynes	X				
Isaac Northern, Jr.	X				
Wendell Alexander				X	
Grover Collins				X	
Austin McMullen				X	
Bear Stephenson				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Real Estate Commission on 06/14/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/20/12

Rulemaking Hearing(s) Conducted on: (add more dates). 06/14/12

Date: 2/12/13

Signature: Julie Cropp

Name of Officer: Julie Cropp

Title of Officer: Assistant General Counsel

LINDA L. BLACK
STATE OF TENNESSEE NOTARY PUBLIC
TROUSDALE COUNTY

Subscribed and sworn to before me on: 2/12/13

Notary Public Signature:

My commission expires on: 4/5/16

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

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RE Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

2-22-13
Date

Department of State Use Only

Filed with the Department of State on: 3/4/13

Effective on: 6/2/13

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	State
DIVISION:	Business Services
SUBJECT:	Uniform Commercial Code
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 4-5-202
EFFECTIVE DATES:	June 17, 2013 through June 30, 2014
FISCAL IMPACT:	The agency has provided the following fiscal impact information: These rules conform to the provisions of Chapter 708 of the Public Acts of 2012. The current Uniform Commercial Code Management System (UCCMS) is being redesigned into a new system, which is the Tennessee Business Entity Annual Report Uniform Commercial code System (TN-BEAR UCC). Since the system is currently being redesigned, the rules which affect the forms can be accommodated within the existing redesign project. Therefore, the fiscal impact of the rules is not significant.
STAFF RULE ABSTRACT:	These rules reflect changes to the Uniform Commercial; code (codified at Tennessee Code Annotated, §§ 47-1-101 through 47-9-610) authorized by Chapter 708 of the Public Acts of 2012. Such changes took effect on July 1, 2013.

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 January 4, 2013.

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 governmental rules.

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

The rules are amended to accommodate for the changes made in the statute based on passage of Public Chapter 708 of the Public Acts of 2012. Therefore, the rules are clear, concise, and not ambiguous.

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

The rules provide filing guidelines which should provide flexibility in compliance and reporting for small businesses.

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

Schedules and effective dates are provided in the rules which should assist small businesses in compliance and reporting.

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

Compliance is simplified because the rules follow the statute based on the passage of Public Chapter 708 of the Public Acts of 2012.

(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.

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.

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Sequence Number: 03-12-13
Rule ID(s): 5393-5397
File Date: 3/19/13
Effective Date: 6/17/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of State
Division:	Business Services
Contact Person:	Nathan Burton
Address:	312 Rosa L. Parks Ave., Snodgrass Tower, 6th Floor, Nashville, TN
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Phone:	615-741-2819
Email:	nathan.burton@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ New
_X_ Repeal

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

Chapter Number	**Chapter Title**
1360-08-01	Uniform Commercial Code General Provisions
Rule Number	**Rule Title**
1360-08-01-.01	Definitions
1360-08-01-.02	Means to Deliver UCC Records
1360-08-01-.03	Search Request Delivery
1360-08-01-.04	Forms
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1360-08-01-.07	Methods of Payment
1360-08-01-.08	Overpayment and Underpayment
1360-08-01-.09	Public Records Services
1360-08-01-.10	Fees for Public Records Services
1360-08-01-.11	Office Hours
1360-08-01-.12	Effective Date
1360-08-01-.13	Repealed
1360-08-01-.14	Repealed
1360-08-01-.15	Repealed
1360-08-01-.16	Repealed
1360-08-01-.17	Repealed
1360-08-01-.18	Repealed
1360-08-01-.19	Repealed

Chapter Number	**Chapter Title**
1360-08-02	Uniform Commercial Code Acceptance and Refusal of Records
Rule Number	**Rule Title**
1360-08-02-.01	Role of Filing Officer

1360-08-02-.02	Time for Filing a Continuation Statement
1360-08-02-.03	Grounds for Refusal
1360-08-02-.04	Procedure upon Refusal
1360-08-02-.05	Refusal Errors
1360-08-02-.06	Notification of Defects
1360-08-02-.07	Repealed
1360-08-02-.08	Repealed
1360-08-02-.09	Repealed

Chapter Number	**Chapter Title**
1360-08-03	Uniform Commercial Code UCC Information Management System
Rule Number	**Rule Title**
1360-08-03-.01	General
1360-08-03-.02	Primary Data Elements
1360-08-03-.03	Individual Debtor Names
1360-08-03-.04	Organization Debtor Names
1360-08-03-.05	Estates
1360-08-03-.06	Trusts
1360-08-03-.07	Initial Financing Statement
1360-08-03-.08	Amendments Generally
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1360-08-03-.11	Information Statement
1360-08-03-.12	Procedure upon Lapse
1360-08-03-.13	Removal of Record
1360-08-03-.14	Repealed
1360-08-03-.15	Repealed
1360-08-03-.16	Repealed
1360-08-03-.17	Repealed
1360-08-03-.18	Repealed
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1360-08-03-.68	Repealed
1360-08-03-.69	Repealed
1360-08-03-.70	Repealed
1360-08-03-.71	Repealed
1360-08-03-.72	Repealed

Chapter Number	**Chapter Title**
1360-08-04	Uniform Commercial Code Filing and Data Entry Procedures
Rule Number	**Rule Title**
1360-08-04-.01	Errors of the Filing Office
1360-08-04-.02	Data Entry
1360-08-04-.03	Verification of Data Entry
1360-08-04-.04	Reserved
1360-08-04-.05	Notice of Bankruptcy
1360-08-04-.06	Redaction of Certain Information
1360-08-04-.07	Repealed
1360-08-04-.08	Repealed
1360-08-04-.09	Repealed
1360-08-04-.10	Repealed
1360-08-04-.11	Repealed
1360-08-04-.12	Repealed
1360-08-04-.13	Repealed
1360-08-04-.14	Repealed
1360-08-04-.15	Repealed
1360-08-04-.16	Repealed
1360-08-04-.17	Repealed
1360-08-04-.18	Repealed

Chapter Number	**Chapter Title**
1360-08-05	Uniform Commercial Code Search Requests and Reports
Rule Number	**Rule Title**
1360-08-05-.01	General Requirements
1360-08-05-.02	Search Requests – Required Information
1360-08-05-.03	Search Requests – Optional Information
1360-08-05-.04	Search Methodology
1360-08-05-.05	Changes in Standard Search Logic
1360-08-05-.06	Search Responses

(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 1360-08-01
Uniform Commercial Code
General Provisions

Table of Contents

1360-08-01-.01 Definitions
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1360-08-01-.06 Reserved
1360-08-01-.07 Methods of Payment
1360-08-01-.08 Overpayment and Underpayment
1360-08-01-.09 Public Records Services
1360-08-01-.10 Fees for Public Records Services
1360-08-01-.11 Office Hours
1360-08-01-.12 Effective Date

Rule 1360-08-01-.01 Definitions. The following terms shall have the respective meanings provided in this rule. Terms not defined in this rule which are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

(a) "Active record" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the searchable indexes and has not either lapsed or been terminated.

(b) "Address" means either (i) a street address, route number (may include box), or P.O. Box number, plus the city, state, and zip code, or (ii) an address that purports to be a mailing address outside the United States of America. Submitted addresses will be verified and standardized using the United States Postal Service Address Matching System Application Programming Interface.

(c) "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations, and terminations.

(d) "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

(e) "Statement of claim" means a UCC record whereby the debtor or secured party indicates that a financing statement is inaccurate or wrongfully filed.

(f) "Filing office" and "filing officer" mean the Tennessee Secretary of State, Division of Business Services.

(g) "Filing officer statement" means a statement entered into the filing office's information system to correct an error.

(h) "Initial financing statement" means a UCC record that causes the filing office to establish the initial record of filing of a financing statement.

(i) "Remitter" means a person who tenders a UCC record to the filing officer for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service, but does include a service provider who acts as a filer's representative in the filing process.

(j) "Searchable indexes" means the searchable index of individual debtor names and the searchable index of organization debtor names maintained in the UCC information management system.

(k) "Secured party of record" includes a secured party of record as defined in the UCC as well as a person who has been a secured party of record with respect to whom an amendment has been filed purporting to delete such person as a secured party of record.

(l) "UCC" means the Uniform Commercial Code as adopted in this State.

(m) "UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements as described in Rule 1360-08-03.

(n) "UCC record" means an initial financing statement, an amendment, an assignment, a continuation statement, a termination statement, a filing officer statement, or a statement of claim, and includes a record thereof maintained by the filing office. The term "UCC record" shall not be deemed to refer exclusively to paper or paper-based writings.

(o) "Unlapsed record" means a UCC record that has been stored and indexed in the UCC information management system, which has not yet lapsed under T.C.A. § 47-9-515 with respect to all secured parties of record.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-102, 47-9-520, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.02 Means to Deliver UCC Records. UCC records may be tendered for filing at the filing office as follows:

(a) Personal delivery by remitter, at the filing office's street address. The file time for a UCC record delivered by this method is based on the file date and file time assigned by the scanner software when the document is scanned by the filing office, even though the UCC record may not yet have been accepted for filing and subsequently may be rejected. This rule applies only to a remitter who tenders a UCC record to the filing office and awaits an immediate determination of whether the UCC record will be taken.

(b) Courier delivery by a person other than a remitter, at the filing office's street address. The file time for a UCC record delivered by this method is based on the file date and file time assigned by the scanner software when the document is scanned by the filing office, even though the UCC record may not yet have been accepted for filing and subsequently may be rejected. This rule does not apply to a courier who is acting as an agent of the remitter and who tenders a UCC record to the filing office and awaits an immediate determination of whether the UCC record will be taken under Rule 1360-08-01-.02(a).

(c) Postal service delivery, to the filing office's mailing address. The file time for a UCC record delivered by this method is based on the file date and file time assigned by the scanner software when the document is scanned by the filing office, even though the UCC record may not yet have been accepted for filing and subsequently may be rejected.

(d) Reserved.

(e) Reserved.

(f) Electronic data entry. UCC records may be delivered by electronic data entry using the filing office's website on the Internet. The file time for a UCC record delivered by this method is the time the entry of all required elements of the UCC record in the proper format is acknowledged by the online entry system and confirmation is received that all fees and taxes that constitute the payment have been received.

(g) Means of communication. Regardless of the method of delivery, information submitted to the UCC filing office must be communicated only in the form of characters that are defined in an acceptable character set. A financing statement or amendment form that does not designate separate fields for organization and individual names and separate fields for first, middle, and last names and suffixes for individual names is not an acceptable means of communication to the filing office.

(h) Transmitting utility, manufactured home, and public finance transactions. The only means to indicate to the filing office that an initial financing statement is being filed in connection with a manufactured home or public finance transaction or that a financing statement is being or has been filed against a debtor that is a transmitting utility, in order to affect the filing office's determination of the lapse date under Rule 1360-08-03-.07(3) or Rule 1360-08-03-.08, is to check the appropriate box on a UCC-1 addendum filed with respect to the financing statement or to transmit the requisite information in the proper field in an electronic filing that is such initial financing statement or is a part of such financing statement.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-501, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.03 Search Request Delivery. UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office. A search request may not be delivered by checking a box or otherwise including a search request in or on an initial financing statement, but may be delivered in or on a separate search request after the initial financing statement is filed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.04 Forms. The forms prescribed by T.C.A. § 47-9-521 are accepted by the filing office. Paper-based forms approved by the International Association of Commercial Administrators on or after July 1, 2013 and forms otherwise approved by the filing office from time to time shall be accepted. If applicable, UCC initial financing statements and amendment documents shall include the statutory language required in T.C.A. § 67-4-409(b)(5)(C). A list of forms approved by the filing office will be made available on request.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-521, 47-9-526, and 67-4-409(b) and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.05 Fees.

(1) The following fees apply to UCC documents:

(a) The fee for filing and indexing an initial financing statement is fifteen dollars ($15) per debtor, plus fifty cents (50¢) per page in excess of ten (10) pages. Each different address listed for a debtor is treated as a separate debtor for filing and indexing purposes.

(b) The fee for filing and indexing a financing statement amendment that changes, modifies, deletes, or adds one or more debtors is fifteen dollars ($15) per debtor or debtor address changed, modified, deleted, or added, plus fifty cents (50¢) per page in excess of ten (10) pages.

(c) The fee for filing and indexing a financing statement amendment that amends the collateral description or changes, deletes, modifies, or adds a secured party is fifteen dollars ($15), plus fifty cents (50¢) per page in excess of ten (10) pages.

(d) The fee for filing and indexing each assignment, continuation, termination, or correction statement is fifteen dollars ($15), plus fifty cents (50¢) per page in excess of ten (10) pages.

(2) UCC search fee. The fee for responding to a written request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is fifteen dollars ($15).

(3) UCC search – copies. The fee for UCC search copies is one dollar ($1) per page (or page equivalent for electronically transmitted search responses).

(4) In addition to the fees described above, tax may be payable under T.C.A. § 67-4-409(b) upon the filing of a financing statement. The filing office may accept the representation on the financing statement, or in an accompanying sworn statement, of the amount of the maximum principal indebtedness for recording tax purposes. The filing officer is not required to verify the computation of the amount of such tax. The amount tendered to the filing office shall be applied first to the filing fee and then to any tax imposed on the filing.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-525, 47-9-526, and 67-4-409(b) and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.06 Reserved.

Rule 1360-08-01-.07 Methods of Payment.

(1) Cash. Payment in cash shall be accepted only if paid in person at the filing office.

(2) Checks. Personal checks, cashier's checks, and money orders made payable to the Tennessee Secretary of State or the State of Tennessee shall be accepted for payment provided that the drawer (or

the issuer in the case of a cashier's check or money order) is deemed creditworthy by the filing office in its discretion.

(3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

(4) Prepaid accounts. Checks may be deposited in a prepaid account only for use with electronic filings submitted using .xml technology.

(5) Debit or credit cards. The filing office may accept payment by debit cards or credit cards issued by approved issuers. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the card issuer, the name of the person or entity to whom the card was issued, and the billing address for the card. Payment will not be deemed tendered until the issuer or his agent has confirmed payment.

(6) Credit vouchers. The filing office shall accept credit vouchers issued by the State through the Uniform Commercial Code Management System based on the expiration date shown on the credit voucher. The filing office will not accept credit vouchers on or after January 1, 2014.

(7) Inter-unit journal vouchers. The filing office shall accept inter-unit journal vouchers from other State agencies for payment of filings and searches.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.08 Overpayment and Underpayment.

(1) Overpayment. The filing officer shall refund the amount of an overpayment of ten dollars ($10) or more to the remitter. The filing officer shall refund an overpayment of less than ten dollars ($10) only upon the written request of the remitter.

(2) Underpayment. Upon receipt of a UCC record with an insufficient fee and recording tax (if applicable), the filing officer shall return the UCC record to the remitter as provided in Rule 1360-08-02-.03. The underpayment may be included with the UCC record or delivered under separate cover.

(3) Returned for Nonpayment. A filer whose payment is returned for nonpayment will have sixty (60) calendar days from the date of the returned payment to provide a valid cashier's check or money order to replace the nonpayment. Otherwise, all filings associated with the nonpayment will be voided.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.09 Public Records Services. Public records services are provided on a nondiscriminatory basis to any member of the public. Copies of individual UCC records, bulk copies of records, and data elements from the filing office UCC information management system are made available in such forms, at such times, and for such fees as the filing office may prescribe from time to time.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-523(f), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.10 Fees for Public Records Services. Fees for public records services are established as follows:

(a) Paper copies of individual documents: as provided in Rule 1360-08-01-.05.

(b) Bulk copies of documents: as provided in Rule 1360-08-01-.05.

(c) Reserved.

(d) Reserved.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-523(f), 47-9-525(c), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.11 Office Hours. Although the filing office maintains regular office hours, it may receive and process transmissions electronically 24 hours per day, 365 days per year, except for scheduled maintenance and unscheduled interruption of service.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.12 Effective Date. The rules established in Chapter 1360-08 shall take effect on July 1, 2013.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-01-.13 Repealed.

Rule 1360-08-01-.14 Repealed.

Rule 1360-08-01-.15 Repealed.

Rule 1360-08-01-.16 Repealed.

Rule 1360-08-01-.17 Repealed.

Rule 1360-08-01-.18 Repealed.

Rule 1360-08-01-.19 Repealed.

Chapter 1360-08-02
Uniform Commercial Code
Acceptance and Refusal of Records

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1360-08-02-.06 Notification of Defects

Rule 1360-08-02-.01 Role of Filing Officer. The duties and responsibilities of the filing officer with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to these rules, the filing officer does not determine the legal sufficiency or insufficiency of the UCC record or determine that information in the record is correct or incorrect, in whole or in part. Accepting for filing or refusing to file a UCC record does not create a presumption that information in the UCC record is correct or incorrect, in whole or in part.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-516, 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-02-.02 Time for Filing a Continuation Statement.

(1) First Day Permitted. The first date on which a continuation statement may be filed is the date six months preceding the date on which such financing statement would lapse. If there is no such corresponding date, the first date on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The foregoing rule is subject to the ability of the filing office to take delivery of the continuation statement as tendered and to Rule 1360-08-01-.02.

(2) Last Day Permitted. The last day on which a continuation statement may be filed is the date upon which the related financing statement lapses. The foregoing rule is subject to the ability of the filing office to take delivery of the continuation statement as tendered and to Rule 1360-08-01-.02. Accordingly, the

is not open for business on such day.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-515, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-02-.03 Grounds for Refusal.

set forth in Rule 1360-08-01-.01(b).

tax imposed under T.C.A. § 67-4-409(b), if any.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-516, 47-9-520(a), 47-9-526, and 67-4-409(b) and 2012 Tenn. Pub. Acts Ch. 708.

copy of the refused UCC record and the ground(s) for refusal, shall be maintained for a period of five (5) years from the initial rejection date.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-520, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-02-.05 Refusal Errors. If a secured party or a remitter demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused under Rule 1360-08-02-.03, the filing officer will file the UCC record with the filing date and time the UCC record was originally tendered for filing. A filing officer statement relating to the relevant initial financing statement will be placed in the UCC information management system on the date that the corrective action was taken. The filing officer statement must provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the initial financing statement is preserved in the UCC information management system.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-516(d), 47-9-518, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-02-.06 Notification of Defects. Nothing in these rules prevents a filing officer from communicating to a remitter that the filing officer noticed apparent potential defects in a UCC record, whether it was filed or refused for filing. The filing office is, however, under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. The responsibility for the legal effectiveness of filing rests with filers and remitters, and the filing office bears no responsibility for such effectiveness.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-520, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-02-.07 Repealed.

Rule 1360-08-02-.08 Repealed.

Rule 1360-08-02-.09 Repealed.

Chapter 1360-08-03
Uniform Commercial Code
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Rule 1360-08-03-.01 General. The filing officer uses an information management system to store, index, and retrieve information relating to financing statements. The information management system includes an index of the names of debtors included on financing statements that are active records. The rules in this section describe the UCC information management system.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.02 Primary Data Elements. The primary data elements used in the UCC information management system are the following:

(1) Identification Numbers.

(a) Each initial financing statement is identified by its file number. Identification of the initial financing statement is stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC information management system. A record is created in the information management system for each initial financing statement, and all information comprising such record is maintained in the system. The record is identified by the same information assigned to the initial financing statement.

(b) A UCC record other than an initial financing statement is identified by a unique file number assigned by the filing officer. In the UCC information management system, all UCC records other than initial financing statements are linked to the record of their related initial financing statement.

(2) Type of Record. The type of UCC record is identified in the UCC information management system from information supplied by the remitter.

(3) Filing Date and Filing Time. The filing date and filing time of UCC records are stored in the UCC information management system. Calculation of the lapse date of an initial financing statement is based upon the filing date.

(4) Identification of Parties. The names and addresses of debtors and secured parties are recorded in the UCC information management system using one or more data entry or transmittal techniques.

(5) Page Count. The total number of pages in a UCC record is maintained in the UCC information management system.

(6) Lapse Indicator. An indicator is maintained by which the information management system identifies whether a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in Rules 1360-08-03-.07, 1360-08-03-.08, and 1360-08-03-.09.

(7) Indexes of Names. The filing office maintains in the UCC information management system a searchable index of organization debtor names and a searchable index of individual debtor names. The filing office may also maintain a searchable index of names of secured parties of record. Such an index need not be a separate database but may be comprised of records in the UCC information management system identified to be included in such searchable index.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.03 Individual Debtor Names. For purposes of this rule, an "individual debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the actual debtor.

(1) Individual Name Fields. Individual debtor names are stored in fields that include only the individual debtor names and not organization debtor names. Separate data entry fields are established for first (given), middle (given), and last names (surnames or family names) of individuals. The name of a debtor with a single name (e.g., "Cher") is treated as a last name and shall be entered in the last name field. The filing officer assumes no responsibility for the accurate designation of the components of a name but shall accurately enter the data in accordance with the filer's designations.

(2) Titles, Prefixes and Suffixes. Titles, prefixes (e.g., "Ms."), and suffixes of indications of status (e.g., "M.D.") are not typically part of a debtor's name. When entering a "name" into the UCC information management system, however, the data will be entered exactly as it appears.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.04 Organization Debtor Names. For purposes of these rules, an "organization debtor name" means any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an organization, without regard to the nature or character of the name or to the nature or character of the actual debtor. Organization debtor names are stored in fields that include only organization debtor names and not individual debtor names. A single field is used to store an organization debtor name.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.05 Estates. The debtor name to be provided on a financing statement for a debtor that is an estate is the name of the relevant decedent. In order for the information management system to function in accordance with the usual expectations of filers and searchers, the filer should provide the debtor name as an individual debtor name. The filing office will, however, enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-503(a), 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.06 Trusts. The debtor name to be provided for a debtor that is a trust or a trustee acting in respect of trust property is the name of the trust as set forth in its organic record(s), if the trust has such a name, or, if the trust is not so named, the name of the trust's settlor. In order for the information management system to function in accordance with the usual expectations of filers and searchers, the name of a trust or of a settlor that is an organization should be provided as an organization debtor name, and the name of a settlor who is an individual should be provided as an individual debtor name, in each case without regard to the nature or character of the debtor. Notwithstanding the foregoing, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-503(a), 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.07 Initial Financing Statement. Upon the filing of an initial financing statement, the status of the parties and the status of the financing statement shall be as follows:

(1) Status of Secured Party. Each secured party named on an initial financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of Debtor. Each debtor name provided by the initial financing statement shall be indexed in the UCC information management system so long as the financing statement is an active record.

(3) Status of Financing Statement. The financing statement shall be an active record. A lapse date shall be calculated five years from the file date, unless:

(a) The initial financing statement indicates as provided in Rule 1360-08-01-.02(h) that it is filed with respect to a public-financing transaction or a manufactured-home transaction, in which case the lapse date shall be thirty (30) years from the file date; or

(b) The initial financing statement indicates as provided in Rule 1360-08-01-.02(h) that it is filed against a transmitting utility, in which case there shall be no lapse date. For system purposes, no lapse date is designated as 12/31/9999.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-511, 47-9-514(a), 47-9-515, 47-9-519, 47-9-522(a), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.08 Amendments Generally. Upon the filing of an amendment, the status of the parties shall be unchanged, except that in the case of an amendment that adds a debtor or a secured party, the new debtor or secured party shall be added to the appropriate index and associated with the record of the financing statement in the UCC information management system, and an amendment that designates an assignee shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC information management system. Notwithstanding the filing of an amendment that deletes a debtor or a secured party from a financing statement, no debtor or secured party of record is deleted from the UCC information management system. A deleted secured party will still be treated by the filing office as a secured party of record as the filing office cannot verify the effectiveness of an amendment. In general, the filing of an amendment does not affect the status of the financing statement, but an amendment that indicates that the debtor is a transmitting utility will cause the filing office to reflect in the information management system that the amended financing statement has no lapse date.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-511, 47-9-512, 47-9-515(e), 47-9-519, 47-9-522(a), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.09 Continuation Statement.

(1) Continuation of Lapse Date. Upon the timely filing of a continuation statement by any secured party of record, the lapse date of the financing statement shall be postponed for five (5) years from the prior lapse date. Only one continuation statement can be filed on a financing statement during the continuation period.

(2) Status. The filing of a continuation statement shall have no effect upon the status of any party to the financing statement or upon the status of the financing statement.

Authority: T.C.A. §§4-5-202, 4-5-204, 47-9-515, 47-9-519, 47-9-522(a), 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.10 Termination. The filing of a termination statement shall cause the financing statement to show as terminated.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-513(d), 47-9-519, 47-9-522(a), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.11 Information Statement. The filing of a statement of claim by a debtor or secured party shall have no effect upon the status of any party to the financing statement, the status of the financing statement, or the information maintained in the information management system. The filing of a statement of claim does not affect the effectiveness of an initial financing statement or other filed record.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-518(c), 47-9-519, 47-9-522(a), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.12 Procedure upon Lapse. If there is no timely filing of a continuation statement with respect to a financing statement, the financing statement shall lapse on its lapse date, but no action shall then be taken by the filing office. On the first anniversary of such lapse date, the information management system shall render or cause to be rendered the financing statement inactive, and the financing statement will no longer be made available to a searcher, unless inactive statements are requested by the searcher and the financing statement is still retrievable by the information management system.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-515, 47-9-522(a), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.13 Removal of Record. A financing statement must remain as an active record until one year after it lapses, or if it is indicated to be filed against a transmitting utility, until at least one year after it is terminated with respect to all secured parties of record. On or after the first anniversary of such lapse or termination date, the filing office or the UCC information management system may remove the financing statement and all related UCC records from the searchable indexes or from the UCC information management system, and upon such removal, the removed UCC records shall cease to be active records.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-519, 47-9-522, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-03-.14 Repealed.

Rule 1360-08-03-.15 Repealed.

Rule 1360-08-03-.16 Repealed.

Rule 1360-08-03-.17 Repealed.

Rule 1360-08-03-.18 Repealed.

Rule 1360-08-03-.19 Repealed.

Rule 1360-08-03-.20 Repealed.

Rule 1360-08-03-.21 Repealed.

Rule 1360-08-03-.22 Repealed.

Rule 1360-08-03-.23 Repealed.

Rule 1360-08-03-.24 Repealed.

Rule 1360-08-03-.25 Repealed.

Rule 1360-08-03-.26 Repealed.

Rule 1360-08-03-.27 Repealed.

Rule 1360-08-03-.28 Repealed.

Rule 1360-08-03-.29 Repealed.

Rule 1360-08-03-.30 Repealed.

Rule 1360-08-03-.31 Repealed.

Rule 1360-08-03-.32 Repealed.

Rule 1360-08-03-.33 Repealed.

Rule 1360-08-03-.34 Repealed.

Rule 1360-08-03-.35 Repealed.

Rule 1360-08-03-.36 Repealed.

Rule 1360-08-03-.37 Repealed.

Rule 1360-08-03-.38 Repealed.

Rule 1360-08-03-.39 Repealed.

Rule 1360-08-03-.40 Repealed.

Rule 1360-08-03-.41 Repealed.

Rule 1360-08-03-.42 Repealed.

Rule 1360-08-03-.43 Repealed.

Rule 1360-08-03-.44 Repealed.

Rule 1360-08-03-.45 Repealed.

Rule 1360-08-03-.46 Repealed.

Rule 1360-08-03-.47 Repealed.

Rule 1360-08-03-.48 Repealed.

Rule 1360-08-03-.49 Repealed.

Rule 1360-08-03-.50 Repealed.

Rule 1360-08-03-.51 Repealed.

Rule 1360-08-03-.52 Repealed.

Rule 1360-08-03-.53 Repealed.

Rule 1360-08-03-.54 Repealed.

Rule 1360-08-03-.55 Repealed.

Rule 1360-08-03-.56 Repealed.

Rule 1360-08-03-.57 Repealed.

Rule 1360-08-03-.58 Repealed.

Rule 1360-08-03-.59 Repealed.

Rule 1360-08-03-.60 Repealed.

Rule 1360-08-03-.61 Repealed.

Rule 1360-08-03-.62 Repealed.

Rule 1360-08-03-.63 Repealed.

Rule 1360-08-03-.64 Repealed.

Rule 1360-08-03-.65 Repealed.

Rule 1360-08-03-.66 Repealed.

Rule 1360-08-03-.67 Repealed.

Rule 1360-08-03-.68 Repealed.

Rule 1360-08-03-.69 Repealed.

Rule 1360-08-03-.70 Repealed.

Rule 1360-08-03-.71 Repealed.

Rule 1360-08-03-.72 Repealed.

Chapter 1360-08-04
Uniform Commercial Code
Filing and Data Entry Procedures

Table of Contents

1360-08-04-.01	Errors of the Filing Office	1360-08-04-.04	Reserved
1360-08-04-.02	Data Entry	1360-08-04-.05	Notice of Bankruptcy
1360-08-04-.03	Verification of Data Entry	1360-08-04-.06	Redaction of Certain Information

Rule 1360-08-04-.01 Errors of the Filing Office. The filing office may correct data entry and indexing errors of filing office personnel in the UCC information management system at any time. If a correction is made to a record of a financing statement, the filing office will associate with the record of the financing statement in the UCC information management system a filing officer statement on the date that the corrective action was taken providing the date and an explanation of the correction.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-04-.02 Data Entry. Data is entered into the UCC information management system exactly as provided in a UCC record, without regard to apparent errors. Data provided in electronic form is transferred to the information management system exactly as submitted by the remitter.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-04-.03 Verification of Data Entry. The filing office will not verify accuracy of the data from UCC records entered in accordance with Rule 1360-08-04-.02 into the UCC information management system. Data entry performed by remitters with respect to electronically-filed UCC records is the responsibility of the remitter and is not verified by the filing office.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-04-.04 Reserved.

Rule 1360-08-04-.05 Notice of Bankruptcy. The filing officer shall take no action upon the receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor named in the UCC information management system.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-515, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-04-.06 Redaction of Certain Information. Pursuant to Tennessee Code Annotated Title 10, Chapter 7, Part 5, data entered into the information management system is public information. The filing office will not redact information. Personally identifiable information not required on forms should not be included in UCC records. All UCC forms contain the following notice: "NOTE: All information on this form is public record."

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-04-.07 Repealed.

Rule 1360-08-04-.08 Repealed.

Rule 1360-08-04-.09 Repealed.

Rule 1360-08-04-.10 Repealed.

Rule 1360-08-04-.11 Repealed.

Rule 1360-08-04-.12 Repealed.

Rule 1360-08-04-.13 Repealed.

Rule 1360-08-04-.14 Repealed.

Rule 1360-08-04-.15 Repealed.

Rule 1360-08-04-.16 Repealed.

Rule 1360-08-04-.17 Repealed.

Rule 1360-08-04-.18 Repealed.

Chapter 1360-08-05
Uniform Commercial Code
Search Requests and Reports

Table of Contents

1360-08-05-.01	General Requirements	1360-08-05-.04	Search Methodology
1360-08-05-.02	Search Requests–Required Information	1360-08-05-.05	Changes in Standard Search Logic
1360-08-05-.03	Search Requests–Optional Information	1360-08-05-.06	Search Responses

Rule 1360-08-05-.01 General Requirements. The filing officer maintains for public inspection a searchable index for all active records in the UCC information management system. Active records will be retrievable by the name of the debtor or by the file number of the related initial financing statement, and each active record related to an initial financing statement can be retrieved with the initial financing statement using either retrieval method.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-523(c), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-05-.02 Search Requests–Required Information. Search requests shall include the following:

(1) Name Searched. A search request must set forth the name of the debtor to be searched using designated fields for organization or individual first, middle, and last names. A search request will be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is the subject of the search.

(2) Requesting Party. The request shall include the name and address of the person to whom the search results are to be sent.

(3) Fee. The appropriate fee shall be tendered by a method described in Rule 1360-08-01-.07.

(4) Search Logic. The request shall specify if a search methodology other than that described in Rule 1360-08-05-.04(1) is to be applied in conducting the search. If no such methodology is specified, the one described in Rule 1360-08-05-.04(1) shall be applied.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-523(c), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-05-.03 Search Requests–Optional Information. Search requests may include the following:

(1) Copies. The request may limit the copies of the UCC records that would normally be provided with a search report by requesting that no copies be provided or that the first page of each copy be provided.

(2) Scope of Search. A search request may ask for a search that reports active records or unlapsed records.

(3) Mode of Delivery. A search request may specify a mode of delivery for search results, and that request will be honored if the requested mode is made available by the filing office and all requisite fees are tendered.

(4) Search Request with Filing. If a filer requests a search at the time an initial financing statement is filed by submitting a search request with the initial financing statement at the time it is tendered for filing, the search request shall be deemed to request a search to be conducted as soon as practicable such that it

would include all UCC records filed against the debtor name(s) provided on the initial financing statement on or prior to the date and time the initial financing statement is filed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-523(c), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-05-.04 Search Methodology. Search results are produced by the application of search logic to the name presented to the filing officer. Human judgment does not play a role in determining the results of the search.

(1) Standard Search Logic. The following rules describe the filing office's standard search logic and apply to all searches except for those where the search request specifies that a non-standard search logic be used:

(a) There is no limit to the number of matches that may be returned in response to the search criteria.

(b) No distinction is made between upper and lower case letters.

(c) The character "&" (the ampersand) is deleted and replaced with the characters "and" each place it appears in the name.

(d) Punctuation marks and accents are disregarded. For the purposes of this rule, punctuation marks and accents include all characters other than the numerals 0 through 9 and the letters A through Z (in any case) of the English alphabet.

(e) The following words and abbreviations at the end of an organization name that indicate the existence or nature of the organization are "disregarded" to the extent practicable as determined by the filing office's programming of its UCC information management system:

i. Agency

ii. Association

iii. Assn

iv. Associates

v. Assc

vi. Assoc

vii. Attorneys at Law

viii. Bank

ix. National Bank

x. Business Trust

xi. Charter

xii. Chartered

xiii. Company

xiv. Co

xv. Corporation

xvi. Corp

xvii. Credit Union

xviii. CU

xix. Federal Savings Bank

xx. FSB

xxi. General Partnership

xxii. Gen part

xxiii. GP

xxiv. Incorporated

xxv. Inc

xxvi. Limited

xxvii. Ltd

xxviii. Ltee

xxix. Limited Liability Company

xxx. LC

xxxi. LLC

xxxii. Limited Liability Partnership

xxxiii. LLP

xxxiv. Limited Partnership

xxxv. LP

xxxvi. Medical Doctors Professional Association

xxxvii. MDPA

xxxviii. Medical Doctors Professional Corporation

xxxix. MDPC

xl. National Association

xli. NA

xlii. Partners

xliii. Partnership

xliv. Professional Association

xlv. Prof Assn

xlvi. PA

xlvii. Professional Corporation

xlviii. Prof Corp

xlix. PC

l. Professional Limited Liability Company

li. Professional Limited Liability Co

lii. PLLC

liii. Railroad

liv. RR

lv. Real Estate Investment Trust

lvi. REIT

lvii. Registered Limited Liability Partnership

lviii. RLLP

lix. Savings Association

lx. SA

lxi. Service Corporation

lxii. SC

lxiii. Sole Proprietorship

lxiv. SP

lxv. SPA

lxvi. Trust

lxvii. Trustee

lxviii. As Trustee.

(f) The word "the" at the beginning of an organization debtor name is disregarded.

(g) All spaces are disregarded.

(h) For first and middle names of individual debtor names, initials are treated as the logical equivalent of all names that begin with such initials, and first name and no middle name or initial is equated with all middle names and initials. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name, and the initial "A" or any name beginning with "A" in the middle name field. This search will not return the name "Jon A. Smith" or "Jonathan A. Smith." If the search request were for "John Smith" (first and last names with no designation in the middle name field), the search would retrieve all filings against individual debtors with "John" or the initial "J" as the first name, "Smith" as the last name, and any name or initial or no name or initial in the middle name field. This search will not return the name "Jon Smith" or "Jonathan Smith."

(i) If the name being searched is the last name of an individual debtor name without any first or middle name provided, the search will retrieve from the UCC information management system all financing statements with individual debtor names that include the last name.

(j) After using the preceding rules to modify the name being searched, the search will retrieve from the UCC information management system all unlapsed records, or, if requested by the searcher, all active records that pertain to financing statements with debtor names that, after being modified as provided in this rule, exactly match the modified name being searched.

(k) Additional search criteria include:

i. Filter by debtor city or state.

ii. Filter by secured party.

iii. Filter by a particular date range.

iv. Filter for a specific UCC file number.

(2) Non-Standard Search Logic. The following non-standard search logic options may be requested on a search request and will be applied when requested:

(a) The debtor search can be restricted to return only debtors in a specified city or state.

(b) A secured party search can be requested based on secured party name and optional city/state.

(c) A search can be performed based solely on a UCC file number.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-523(c), and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-05-.05 Changes in Standard Search Logic. If the filing office changes its standard search logic or the implementation of its standard search logic in a manner that could alter search results, the filing office will provide public notice of such change.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-523, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

Rule 1360-08-05-.06 Search Responses. Responses to a search request shall include the following:

(1) Copies. Copies of all UCC records retrieved by the searcher unless the searcher requests only partial copies or the searcher does not request copies.

(2) Introductory Information. A filing officer shall include the following information with a UCC search response:

(a) Filing Office Identification. Identification of the filing office responsible for the search response.

(b) Unique Search Report Identification Number. Unique number which identifies the search report.

(c) Report Date and Time. The date and time the report was generated.

(d) Through Date and Time. The date and time at or prior to which a UCC record must have been filed with the filing office in order for it to be reflected on the search.

(e) Certification Language. The certification language reads as follows: "Pursuant to the request you submitted, a search was conducted based on the search criteria listed below. I, Tre Hargett, Secretary of State of the State of Tennessee, do hereby certify that the information outlined below along with the copies which are attached to this cover sheet constitute the certified copies of all UCC filings based on the search criteria."

(f) Scope of Search. The scope of search includes active records and unlapsed records.

(g) Search Logic Used. The search logic used is the search logic recommended by the International Association of Commercial Administrators, which may be modified from time to time.

(h) Name Provided. Name as provided by searcher.

(i) Copies. If requested, all copies, first pages only, or date range of UCC documents revealed by the search.

(3) Report. The search report shall contain the following:

(a) Identification. Identification of the filing office responsible for the search report.

(b) Search Report Identification Number. Unique number assigned under Rule 1360-08-05-.06(2)(b).

(c) Identification of Financing Statement. Identification of each initial financing statement, including a listing of all related amendments and Information Statements (Statements of Claim), filed on or prior to the through date corresponding to the search criteria (including whether the searcher has requested active records or only unlapsed records). Financing statement information shall include, but is not limited to, the following:

i. Initial Financing Statement File Number.

ii. Initial Financing Statement Filing Date and Time. The date and time it was filed.

iii. Lapse Date.

iv. Debtor Name. The debtor name(s) that appear(s) of record.

v. Debtor Address. The debtor address(es) that appear(s) of record.

vi. Secured Party Name. The secured party name(s) that appear(s) of record.

vii. Secured Party Address. The secured party address(es) that appear(s) of record.

viii. Amendment Type. An indication of type of each amendment, if any.

ix. Amendment Filing Date and Time. The date and time each amendment, if any, was filed.

x. Amendment Filing Number. The amendment file number of each amendment, if any.

xi. Information Statement (Statement of Claim). The date and time a correction statement, if any, was filed.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 47-9-519, and 47-9-526 and 2012 Tenn. Pub. Acts Ch. 708.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of State (board/commission/ other authority) on 1/7/2013 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: (11/09/2012)

Rulemaking Hearing(s) Conducted on: (add more dates). (01/04/2013)

Date: 1/7/2013

Signature: Tre Hargett

Name of Officer: TRE HARGETT

Title of Officer: SECRETARY OF STATE

Subscribed and sworn to before me on: 1/7/2013

Notary Public Signature: Notary Public

My commission expires on: Aug. 23, 2016

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

RE Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

3-14-13
Date

Department of State Use Only

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SECRETARY OF STATE

Filed with the Department of State on: 3/19/13

Effective on: 6/17/13

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Labor and Workforce Development
DIVISION:	Workers' Compensation
SUBJECT:	Medical Impairment Rating Registry; Utilization Review of Pain Management Treatment
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 50-6-102
EFFECTIVE DATES:	June 23, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

These amendments concern several areas of Tennessee Workers' Compensation Law and include minimal changes to these areas. In general, the rules address administrative difficulties experienced by program participants.

The rules also establish increased qualifications for physician participation in the Medical Impairment Rating (MIR) program and enhance peer review rules to ensure that the ratings provided by MIR Registry physicians are as accurate as possible.

Finally, the rules establish fees to cover administrative costs that the Department will incur through implementation of Chapter 1100 of the Public Acts of 2012.

Public Chapter 1100 created a procedure for review of certain pain management treatments in workers' compensation cases in which the injured employee has been prescribed a schedule II, III or IV narcotic medication. Public Chapter 1100 provides that the Department may impose a fee to offset administrative costs associated with providing appeals of these utilization review cases.

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.

No public comments were submitted at the public hearing concerning these rules. The Department allowed a period of thirty days following the hearing for the provision of written comments but received none.

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: Small businesses that provide workers' compensation insurance to their employees will be assessed a new cost to secure an appeal of a utilization review decision recommending pain management for an injured employee that includes the prescription of schedule II, III, or IV controlled substances. However, the ability to appeal the prescription of these expensive medications will outweigh any increased costs. Small businesses that utilize the MIR Program will be assessed a peer review fee if the decision of the MIR physician is submitted for peer review. Physicians operating a small business in the form of a medical who are members of the MIR Registry could see increased revenue from participation in the peer review program.

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: None.

3. A statement of the probable effect on impacted small businesses and consumers: The effect of the costs to small businesses would be minimal and would be outweighed by the added benefit of achieving review of pain management treatments. These treatments are costly and the reduction in number should result on lower overall costs in the workers' compensation system.

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 businesses: There are no less burdensome, intrusive or costly methods of achieving the purposes and objectives.

5. Comparison of proposed rule with any federal or state counterparts: None.

6. Analysis of the effect of the possible exemption of small businesses from all or part of the requirements contained in the proposed rule: Small businesses would not be required to file appeals of utilization review approval concerning pain management treatments that include the prescription of schedule II, III, or IV controlled substances.

Impact on Local Governments

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

These amendments will have a minimal impact on local and state governments that file appeals of utilization review decisions involving the prescription of schedule II, III or IV controlled substances. Considering the probable result of the expanded utilization review process, the overall fiscal impact should be positive despite the added costs for administrative review. The fees for peer review of MIR reports should also have minimal fiscal impact. The number of ratings requested through the program is relatively small and not all reports will be subject to peer review.

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For Department of State Use Only

Sequence Number: 03-16-13
Rule ID(s): 5461-5465
File Date: 3/25/13
Effective Date: 6/23/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Josh Baker
Address:	220 French Landing Drive Nashville, TN
Zip:	37243
Phone:	(615) 253-6909
Email:	josh.baker@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
0800-02-01	General Rules of the Workers' Compensation Program
Rule Number	**Rule Title**
0800-02-01-.02	Definitions
0800-02-01-.06	First Report of Injury

Chapter Number	**Chapter Title**
0800-02-06	General Rules of the Workers' Compensation Program - Utilization Review
Rule Number	**Rule Title**
0800-02-06-.12	~~Repealed~~ Appeals for Pain Management Services

Chapter Number	**Chapter Title**
0800-02-13	Penalty Program
Rule Number	**Rule Title**
0800-02-13-.15	Review of Initial Order

Chapter Number	**Chapter Title**
0800-02-15	Uninsured Employers Fund
Rule Number	**Rule Title**
0800-02-15-.10	Representation at Show Cause Hearing

Chapter Number	**Chapter Title**
0800-02-20	Medical Impairment Rating Registry Program
Rule Number	**Rule Title**
0800-02-20-.01	Definitions
0800-02-20-.04	Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry

0800-02-20-.05	Application Procedures for Physicians to Join the Registry
0800-02-20-.06	Request for a MIR Registry Physician
0800-02-20-.07	Payment/Fees
0800-02-20-.09	Communication with Registry Physicians
0800-02-20-.11	Requirements for the ~~"MIR Impairment Rating Report"~~"MIR Report"
0800-02-20-.12	Peer Review
0800-02-20-.13	Removal of a Physician from the Registry
0800-02-20-.14	~~Other~~ Penalties

(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 0800-02-01
General Rules of the Workers' Compensation Program

Amendments

Rule 0800-02-01-.02 Definitions is amended by deleting the current language of paragraph (2) and replacing it with the following:

(2) "Director" shall mean the Director of the Workers' Compensation Division of the Tennessee Department of Labor. As of the date of filing these rules, the Director may be contacted as follows:

~~James W. Farmer~~
Director, Division of Workers' Compensation
Tennessee Department of Labor and Workforce Development
~~710 James Robertson Parkway~~
220 French Landing Drive
Nashville, Tennessee 37243-~~0661~~

Rule 0800-02-01-.02 Definitions is amended by deleting the current language of paragraph (4) and replacing it with the following:

(4) "Filing" ~~is~~ shall be effective upon receipt ~~when received~~ by the ~~Director~~ Division and shall be done through electronic data interchange whenever possible.

Authority: T.C.A §§50-6-101 et seq. and 50-6-102.

Rule 0800-02-01-.06 First Report of Injury is amended by deleting the current language and replacing it with the following:

0800-02-01-.06 First Report of Injury.

~~Each employer, self-insured employer, and/or insurance company shall file with the Director an accident report, Form C-20 (Tennessee Employer's First Report of Work Injury), which records each and every accident resulting in a work-related death or personal injury as defined in TCA §50-6-102.~~ Each employer, self-insured employer, and/or insurer shall file a Form C-20 (Tennessee Employer's First Report of Work Injury or Illness) in accordance with the following:

(1) ~~Where the injured person does not return to employment within seven (7) days after the occurrence of such accident, or if there is permanent disability regardless of the number of days of lost work, Form C-20 must be filed. Form C-20 shall be submitted to the Director as soon as possible, but not later than fourteen (14) days after the accident.~~ The Form C-20 shall be filed with the Division in all cases where the injury or illness results in the receipt of medical treatment outside of the employer's premises, absence from work, retention of a permanent impairment, or death. Except as provided in paragraph (2) of this Rule, in no event shall the requirement to file Form C-20 differ based upon the number of days between the injury or illness and the employee's return to employment.

(2) ~~Reports of all accidents causing seven (7) days of disability or less and/or causing no permanent impairment shall be submitted to the Director on or before the fifteenth (15th) day of the month following the month covered by the report. Such reports shall be submitted on Form C-21.~~ Employers, other than self-insured employers, shall report the injuries or illnesses described in paragraph (1) of this Rule to their insurer within one (1) business day of knowledge of the injury or illness. Insurers, and self-insured employers, shall file the Form C-20 with the Division as soon as possible, but not later than fourteen (14) days after knowledge of an injury or illness of a nature that an employee does not return to his or her employment within seven (7) days after the occurrence of the injury or illness. Reports of

injuries or illnesses in which an employee returns to his or her employment within seven (7) days or fewer shall be filed as soon as possible, but not later than the fifteenth (15th) day of the month following the month in which the injury or illness occurred.

(3) ~~All First Reports of Injury shall be submitted in duplicate; one original and one legible copy. All First Reports of Injury must include the Federal Employer Identification number (FEIN). Employers that do not have FEIN numbers must provide the employer's social security number.~~ The penalty for non-compliance with Rule 0800-02-01-.06 is $25 for each fifteen (15) days past the required date for filing. Where non-compliance is the result of the employee's failure to provide the employer with notice of the injury, the employer shall submit written evidence of the lack of knowledge of the injury upon the Division's request. The Division may adjust and/or eliminate the penalty based on such written evidence.

Authority: T.C.A. §§50-3-701; 50-3-702; 50-6-102; 50-6-118; 50-6-201; and 50-6-233.

Chapter 0800-02-06
General Rules of the Workers' Compensation Program
Utilization Review

Amendments

Rule 0800-02-06-.12 Repealed is amended by renaming the rule "Appeals for Pain Management Services" and adding the following as the new language:

The Division shall charge a fee of no more than $224.00 per utilization review appeal for any utilization review conducted pursuant to T.C.A. § 50-6-204(j). The fee shall be paid by the employer within 30 calendar days of the Division's completion of the appeal. If the fee is not paid within such timeframe, then a 10% interest payment shall accrue for every 30 calendar days that the fee remains unpaid.

Authority: T.C.A. §§ 4-5-202, 4-5-203, 50-6-102, 50-6-124, 50-6-126, 50-6-204, and 50-6-233.

Chapter 0800-02-13
Penalty Program

Amendments

Rule 0800-02-13-.15 Review of Initial Order is amended by deleting the current language of paragraph (5) and replacing it with the following:

(5) ~~The Commissioner shall enter a Final Order that decides the petition for review of the Initial Order or remands the matter for further proceedings at the contested hearing level with instruction.~~ If no action is taken by the Commissioner within twenty (20) calendar days of filing of the petition for review, the petition is deemed denied and the Initial Order shall become the Final Order. Otherwise, the Commissioner shall consider the petition for review of the Initial Order and enter a Final Order or remand the matter for further proceedings at the contested hearing level with instruction.

Authority: T.C.A. §§4-5-317, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

Chapter 0800-02-15
Uninsured Employers Fund

Amendments

Rule 0800-02-15-.10 Representation at Show Cause Hearing is amended by deleting the current language of paragraph (3) and replacing it with the following:

~~(3) All notices of appearance shall be delivered to the Commissioner or Commissioner's designee or mailed to:~~

~~Tennessee Department of Labor and Workforce Development~~
~~Division of Workers' Compensation~~
~~Uninsured Employers Fund~~
~~Andrew Johnson Tower, Second Floor~~
~~710 James Robertson Parkway~~
~~Nashville, TN 37243-0661~~

(3) All notices of appearance shall be delivered to the Commissioner or Commissioner's designee or mailed to:

Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Uninsured Employers Fund
220 French Landing Drive
Nashville, TN 37243-1002

Authority: T.C.A. §§50-6-118, 50-6-233, 50-6-412, and 50-6-801.

Chapter 0800-02-20
Medical Impairment Rating Registry Program

Amendments

Chapter 0800-02-20 Medical Impairment Rating Registry Program shall be amended to delete the phrase "MIR Impairment Rating Report" wherever it appears and replace it with "MIR Report."

0800-02-20-.05 APPLICATION PROCEDURES FOR PHYSICIANS TO JOIN THE REGISTRY.

(1) Appointment to the MIR Registry shall be for a two (2) year term, except as otherwise set forth in these Rules. Physicians may seek renewal appointments by the same process as the initial application described herein. The Division reserves the right to charge physicians a non-refundable application fee upon appointment, renewal, or reinstatement to the MIR Registry. The Commissioner, upon the advice of the Medical Director, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.

(2) Physicians seeking appointment to the MIR Registry shall complete an "Application for Appointment to the MIR Registry," available upon request or on-line at www.state.tn.us/laborwfd/ mainforms.html, certify to and, upon approval of the application, comply with the following conditions:

(a) Conduct all MIR evaluations based on the guidelines in the applicable edition of the AMA Guides and submit the original ~~"MIR Impairment Rating Report"~~"MIR Report" with all attachments to the Program Coordinator. In cases not covered by the applicable AMA Guides, any impairment rating allowed under the Act shall be appropriate;

(b) Decline requests to conduct an evaluation only on the basis of good cause shown. Consideration will be given to a physician's schedule and other previously arranged or emergency obligations;

(c) Comply with the MIR Registry's Rules;

(d) While on the MIR Registry, agree to maintain an active and unrestricted license to practice medicine or osteopathy in Tennessee and to immediately notify the Commissioner of any change in the status of the license, including any restrictions placed upon the license;

(e) While on the MIR Registry, agree to maintain all board certifications listed on the application and to I immediately notify the Commissioner of any change in their status;

(f) Conduct MIR evaluations in an objective and impartial manner, and shall:

1. Conduct these evaluations only in a professional medical office suitable for medical or psychiatric evaluations where the primary use of the site is for medical service.

2. Comply with all local, state and federal laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.

3. Not conduct a physical examination on a claimant of the opposite sex without a witness of the same sex as the claimant present.

(g) Not refer any MIR Registry claimant to another specific physician for any treatment or testing nor suggest referral or treatment. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the claimant about the condition and recommend further medical assessment;

(h) Not become the treating physician for the claimant regarding the work-related injury;

(i) Not evaluate an MIR Registry claimant if a conflict of interest exists;

(j) Not substitute, or allow to be substituted, anyone else, including any other physician, physician assistant, nurse practitioner, physical therapist or staff member, as the physician to conduct the MIR Registry evaluation;

(k) No later than fifteen (15) calendar days after a request by the Program Coordinator to refund to the paying party part or all of any fee paid by that party for a MIR Registry evaluation, as may be required by these Rules and the Commissioner; and

(l) For each MIR Registry case assigned, address only the issue of permanent impairment rating.

(3) Physicians denied appointment to the MIR Registry on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Final Determination which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

0800-02-20-.10 REQUIREMENTS FOR THE EVALUATION.

(1) The MIR Registry physician's responsibilities prior to the evaluation are to:

(a) Review all materials provided by the parties subject to these Rules; and,

(b) Review the purpose of the evaluation and the impairment questions to be answered in the evaluation report.

(2) The MIR Registry physician's responsibilities following the evaluation are to:

(a) Consider all medical evidence obtained in the evaluation and provided by the parties subject to the Rules;

(b) Complete an ~~"MIR Impairment Rating Report"~~"MIR Report";

(c) Notify the Program Coordinator when the report has been completed;

(d) Send that complete report with all required attachments to the Program Coordinator only, via electronic mail or overnight delivery. The Program Coordinator will acknowledge, to the physician, receipt of the report.

(3) No physician-patient relationship is created between the MIR physician and the claimant through the MIR Registry evaluation. The sole purpose of the evaluation is to establish an impairment rating and not to recommend future treatment or to provide a diagnosis or other medical advice. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the claimant about the condition and recommend further medical assessment.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

0800-02-20-.11 REQUIREMENTS FOR THE "~~MIR IMPAIRMENT RATING REPORT~~MIR Report."

(1) After conducting the evaluation, the MIR physician shall produce the ~~"MIR Impairment Rating Report"~~"MIR Report". The format, available by using the Program's electronic access, available upon request from the Program Coordinator or available online at www.state.tn.us/laborwfd/ mainforms.html, or a materially substantial equivalent approved by the Program Coordinator shall be used in all cases to detail the evaluation's results. The MIR physician shall first review the determination by the attending physician that the claimant has reached Maximum Medical Improvement (MMI).

(2) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR Registry physician concurs with the attending doctor's determination of MMI, the report shall, at a minimum, contain the following:

(a) A brief description and overview of the claimant's medical history as it relates to the subject injury, including reviewing and recapping all previous treatments.

(b) A statement of concurrence with the attending doctor's determination of MMI;

(c) Pertinent details of the physical or psychiatric evaluation performed (both positive and negative findings);

(d) An impairment rating consistent with the findings and utilizing a standard method as outlined in the applicable AMA Guides, calculated as a total to the whole person if appropriate. In cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community is allowed, however, a statement that the AMA Guides fails to cover the case as well as a statement of the system on which the rating was based shall be included;

(e) The rationale for the rating based on reasonable medical certainty, supported by specific references to the clinical findings, especially objective findings and supporting documentation including the specific rating system, sections, tables, figures, and AMA Guides page numbers, when appropriate, to clearly show how the rating was derived; and

(f) A true or electronic signature and date by the MIR physician performing the evaluation certifying to the following:

1. "It is my opinion, both within and to a reasonable degree of medical certainty that, based upon all information available to me at the time of the MIR impairment evaluation and by utilizing the relevant AMA Guides or other appropriate method as noted above, the claimant has the permanent impairment so described in this report. I certify that the opinion furnished is my own, that this document accurately reflects my opinion, and that I am aware that my signature attests to its truthfulness. I further certify that my statement of qualifications to serve on the MIR Registry is both current and completely accurate."

(3) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR

physician does not concur with the attending doctor's determination of MMI, a report shall be completed similar to the one outlined above which documents and certifies to, in sufficient detail, the rationale for disagreeing. The physician is still entitled to collect/retain the appropriate MIR fee.

(4) Services rendered by an MIR Registry physician shall conclude upon the Commissioner's acceptance of the final "MIR Impairment Rating Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating and any necessary worksheets. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the ~~"MIR Impairment Rating Report"~~"MIR Report" the medical records file, including the final "MIR Impairment Rating Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with all applicable federal, state and local law and the Tennessee Board of Medical Examiners' rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

0800-02-20-.12 PEER REVIEW.

(1) All MIR ~~Impairment Rating~~ Reports are subject to review for appropriateness and accuracy by an individual or organization designated by the Commissioner at any time. Failure to properly apply the AMA Guides in determining an impairment rating, as determined by the Medical Director, may result in penalties up to and including removal from the MIR Registry.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.01 Definitions is amended by adding the following as a new paragraph (3) and renumbering the existing paragraphs:

(1) "Act" means the Tennessee Workers' Compensation Act, Tenn. Code Ann. § 50-6-101 et seq., as amended.

(2) "Administrator" means the chief administrative officer of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

(3) "Business day(s)" means any day upon which the Division is open for business.

(~~3~~4) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner's designee.

(~~4~~5) "Department" means the Tennessee Department of Labor and Workforce Development.

(~~5~~6) "Dispute of degree of medical impairment" means one of two things: either at least two (2) different physicians have issued differing permanent medical impairment ratings in compliance with the Act and the parties disagree as to those permanent impairment ratings; or, a dispute may also exist if a physician has issued an opinion in compliance with the Act that no permanent medical impairment exists, yet that physician has issued permanent physical restrictions to the injured employee.

(~~6~~7) "Division" means the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

(~~7~~8) "Employee" shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.

(~~8~~9) "Employer" shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.

(~~9~~10) "Form" means the "Application for a Medical Impairment Rating," required to be used to request a MIR Registry physician from the Commissioner. The Form is available upon request from the Department or online at www.state.tn.us/labor-wfd/mainforms.html.

(~~10~~11) "Insurer" or "carrier" means an employer's workers' compensation insurance carrier and additionally shall include any entity claiming, operating, or attempting to operate as a selfinsured employer, self-insured pool, or self-insured trust pursuant to the requirements of

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.01 Definitions is amended by adding the phrase "or the Medical Director's designee" at the end of the last sentence in current section (11) and by replacing the reference to "Tenn. Code Ann." with "T.C.A." so that as amended the section reads:

(11)"Medical Director" means the Division's Medical Director, appointed by the Commissioner pursuant to T~~enn~~.C~~ode~~.A~~nn~~. § 50-6-126 (Repl. 1999) or the Medical Director's designee.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry, subparagraph (1)(d) is amended by adding the phrase "amounts enumerated in T.C.A. § 29-20-403; and" so that as amended the section reads:

(d) Furnish satisfactory proof of carrying the minimum medical malpractice insurance coverage amounts enumerated in T.C.A. § 29-20-403; and

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry, is amended by adding the following as a new subparagraph (1)(e):

(e) Be trained on these program rules, either in-person or by telephone, by the Program Coordinator.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.05 Application Procedures for Physicians to Join the Registry, section (1) is amended by deleting the current language and replacing it with the following:

(1) ~~Appointment to the MIR Registry shall be for a two (2) year term, except as otherwise set forth in these Rules. Physicians may seek renewal appointments by the same process as the initial application described herein. The Division reserves the right to charge physicians a non-refundable application fee upon appointment, renewal, or reinstatement to the MIR Registry. The Commissioner, upon the advice of the Medical Director, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.~~ Appointment to the MIR Registry shall expire upon a physician's decision to withdraw from the Registry or the Division's removal of a physician from the Registry. The Division reserves the right to charge physicians a non-refundable application fee upon appointment or reinstatement to the MIR Registry. For each application, an advisory panel of three (3) current MIR Registry physicians shall be randomly selected by the Program Coordinator to review the application. The Panel shall include one member from each grand division of the state who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions imposed by the Department. Each member of the panel shall vote to either recommend or not recommend the applicant for inclusion on the MIR Registry. The Commissioner, upon the advice of the Medical Director, Program Coordinator, and the advisory panel, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.05 Application Procedures for Physicians to Join the Registry is amended by deleting the current language of paragraph (3) and replacing it with the following:

(3) ~~Physicians denied appointment to the MIR Registry on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Final Determination which shall be the final decision.~~ Physicians denied appointment to the MIR Registry by the Commissioner or Commissioner's designee on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Final Determination which shall be the final decision. If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the reference to "0800-2-20-.01(5)" in paragraph (1) and replacing it with a reference to "0800-02-20-.06" so that as amended the paragraph reads:

(1) When a dispute of the degree of medical impairment, as defined in Rule ~~0800-02-20-.01(5)~~ 0800-02-20-.06 exists, any party may request a listing of physicians from the Commissioner's MIR Registry by completing the "Application for Medical Impairment Rating" (hereinafter "Form"), available upon request from the Department or online at www.state.tn.us/labor-wfd/mainforms.html. The completed Form must then be returned to the Program Coordinator via electronic mail, facsimile or U.S. Mail.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by adding a new paragraph (2) and by appropriately renumbering the subsequent paragraphs; the newly added paragraph shall read:

(2) The requesting party shall send a copy of the Form to the opposing party. The Program Coordinator's decision to accept or deny the Form is final for administrative purposes.

(~~2~~3) The Commissioner requires the request for a MIR Registry physician designate:

(a) All body part(s) or medical condition(s) to be evaluated, including whether mental impairment shall be evaluated;

(b) The names of all physicians that have previously evaluated, treated, or are currently evaluating or treating the claimant for the work-related injury at employer and/or employee expense;

(c) The names of all physicians made available to the claimant. If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form;

(d) The state file number assigned to the claims.

(~~3~~4) Selection of MIR Registry physician through party agreement:
Within five (5) business days of receipt of the completed Form from the requesting party, the Commissioner shall issue a listing of all qualified physicians in the appropriate geographic area, (which shall mean within a one hundred (100) mile radius of the employee's residence) from the MIR Registry to all parties listed on the Form so the parties may negotiate an agreement on the selection of a physician as the MIR Registry physician. If the parties agree, they shall notify the Program Coordinator of the agreement so she or he may schedule the appointment with the selected physician for the MIR examination. Parties agreeing to the

selection of the MIR Registry physician under this paragraph must abide by all of the Rules set forth here in Chapter 0800-02-20. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

(45) If the parties cannot agree upon selection of a MIR Registry physician from the Commissioner's listing of MIR Registry physicians provided within fifteen (15) calendar days of the Commissioner issuing the requested listing, it shall be the responsibility of the employer to provide a written request to the Commissioner to provide a three-physician list by submitting such request on the Form. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

(56) The submitting party shall certify that all parties, as well as the Program Coordinator, have been sent the completed Form at the same time. The Form will not be processed until all required information has been provided.

(67) The three (3) physician listing.

(a) Within five (5) business days of receipt of the completed "Application for a Medical Impairment Rating," the Division shall produce a list of three qualified physicians drawn from the Commissioner's MIR Registry, from which one physician shall be designated to perform the evaluation. The three-physician listing created will be comprised of physicians qualified, based on the information provided by the physician and on their accreditation to perform evaluations of the body part(s) and/or medical condition(s) designated on the application for an evaluation. Psychiatric or psychological evaluations regarding mental and/or behavioral impairment shall be performed by a psychiatrist. (2) The requesting party shall send a copy of the Form to the opposing party. The Program Coordinator's decision to accept or deny the Form is final for administrative purposes.

(b) All physician selections shall be derived from the pool of qualified physicians.

(78) MIR Registry three (3) physician list selection process.

(a) Within three (3) business days of the issuance of the three-physician listing, the employer shall strike one name and inform the Program Coordinator and all parties of the remaining physicians. Within three (3) business days of the date of receipt of that name from the employer, the claimant shall strike one of the two remaining names and inform the Program Coordinator and other parties of the name of the remaining physician, who will perform the evaluation.

(b) If one party fails to timely strike a name from the listing, the other party shall notify the Program Coordinator and at the same time provide to Program Coordinator the name that it wishes to strike. In that situation, the Medical Director may randomly select one physician from the remaining two, and that physician shall perform the evaluation. The Program Coordinator shall inform the parties of the name of the selected physician in writing.

(c) If a selected physician is unable to perform the evaluation, the Medical Director shall provide one replacement name to the original listing using the same criteria and process set forth above, and present that revised listing to the parties and each shall again strike one name according to the above procedures. Additionally, if a physician is removed from the three-physician listing for any reason other than having been struck by one of the parties, the Medical Director will issue one replacement physician name.

(89) Appointment date.

(a) Within three (3) business days of providing or receiving notice of the MIR physician selection, the Program Coordinator shall contact the MIR Registry physician to

schedule the evaluation, and shall immediately notify all parties, and the Workers' Compensation Specialist if currently assigned, of the date and time of the evaluation. Only after this notification should the employer or insurance carrier contact the MIR Registry physician and only to arrange for payment and for medical records submission required by these Rules.

(~~9~~10) Submission of Medical Records.

(a) All parties shall concurrently provide to the MIR registry physician and all other parties a complete copy of all pertinent medical records pertaining to the subject injury, postmarked or hand-delivered at least ten (10) calendar days prior to the evaluation. If necessary, the claimant shall promptly sign a "MIR Waiver and Consent" permitting the release of information relevant to the subject injury to the MIR physician.

(b) In cases involving untimely medical record submission by a party, the Commissioner, in his/her sole discretion, may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Impairment Rating Report."

(c) The medical records shall include a dated cover sheet listing the claimant's name, MIR Registry physician's name, MIR Registry case number, date and time of the appointment, and the state file number. The medical records shall be in chronological order, by provider, and tabbed by year.

(d) Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records or commentaries to the MIR Registry physician shall not be submitted.

(~~10~~11) Any forms the MIR physician requests to be completed should be completed by the claimant only. If the claimant needs assistance in completing these forms for any reason, the claimant shall notify the MIR Registry physician prior to the evaluation so that assistance can be provided by the MIR Registry physician's staff. The case manager shall not meet with the MIR Registry physician.

(~~11~~12) The claimant shall notify the Program Coordinator of the necessity for a language interpreter concurrently with his/her notification of the chosen physician's name. The Program Coordinator shall arrange for such services and the employer shall be responsible for paying for such language interpreter. The language interpreter shall be impartial and independent, and have no professional or personal affiliation with any party to the claim or to the MIR Registry physician.

(~~12~~13) When a claimant is required to travel outside a radius of fifteen (15) miles from the claimant's residence or workplace, then such claimant shall be reimbursed by the employer for reasonable travel expenses as allowed in the Act.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by adding the sentence "If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form" at the end of newly renumbered subparagraph (3)(c) so that as amended the subparagraph reads:

(c) The names of all physicians made available to the claimant. If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form. If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form;

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by designating the current language in newly renumber paragraph (4) as subparagraph (4)(a), deleting the term "Commissioner" in the first sentence of newly designated subparagraph (4)(a) and replacing it with the term "Program Coordinator," changing the parenthetical language in the subparagraph to read "(which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code)" , and by adding a new subparagraph (4)(b), so that as amended the paragraph reads:

(4) Selection of MIR Registry physician through party agreement:

(a) Within five (5) business days of receipt of the completed Form from the requesting party, the ~~Commissioner~~ Program Coordinator shall issue a listing of all qualified physicians in the appropriate geographic area (~~which shall mean within a one hundred (100) mile radius of the employee's residence~~which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code), from the MIR Registry to all parties listed on the Form so the parties may negotiate an agreement on the selection of a physician as the MIR Registry physician. If the parties agree, they shall notify the Program Coordinator of the agreement so he or she may schedule the appointment with the selected physician for the MIR examination. Parties agreeing to the selection of the MIR Registry physician under this paragraph must abide by all of the Rules set forth here in Chapter 0800-02-20. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

(b) If the Program Coordinator determines that there are an inadequate number of qualified physicians within a 100 mile straight-line radius of the employee's home zip code, the Program Coordinator may produce a state-wide listing of all registry physicians qualified to give the rating.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the second and third mention of the term "Commissioner" from the first sentence of newly renumbered paragraph (5) and replacing it the term "Program Coordinator" so that as amended the paragraph reads:

(5) If the parties cannot agree upon selection of a MIR Registry physician from the Commissioner's listing of MIR Registry physicians provided within fifteen (15) calendar days of the ~~Commissioner~~Program Coordinator issuing the requested listing, it shall be the responsibility of the employer to provide a written request to the ~~Commissioner~~Program Coordinator to provide a three-physician list by submitting such request on the Form. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the phrase "and the Workers' Compensation Specialist if currently assigned" from newly renumbered subparagraph (9)(a) so that as amended the subparagraph reads:

(a) Within three (3) business days of providing or receiving notice of the MIR physician selection, the Program Coordinator shall contact the MIR Registry physician to schedule the evaluation and shall immediately notify all parties~~, and the Workers' Compensation Specialist if currently assigned,~~ of the date and time of the evaluation. Only after this notification should the employer or insurance carrier contact the MIR Registry physician and only to arrange for payment and for medical records submission required by these Rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the term "Commissioner" in the first sentence of newly renumbered subparagraph (10)(b) and replacing it with the term "Program Coordinator" and by deleting the phrase "in his/her sole discretion" so that as amended the subparagraph reads:

(b) In cases involving untimely medical record submission by a party, the ~~Commissioner~~Program Coordinator ~~in his/her sole discretion~~ may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Report."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the current language in newly renumbered subparagraph (10)(d) and replacing it with the following:

(d) ~~Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records or commentaries to the MIR Registry physician shall not be submitted.~~ Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records, commentaries, depositions, or any other document deemed by the Commissioner to compromise the impartiality of the review shall not be submitted to the MIR Registry physician.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by adding the sentence "The following timeframes shall exclude legal holidays" at the beginning of paragraph (1) and by removing the hyphen between the terms "time" and "table" so that as amended the paragraph reads:

(1) The following timeframes shall exclude legal holidays. A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated time-table as outlined below

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting the each mention of the phrase "scheduling the appointment" in subparagraphs (1)(a-d) and replacing them with the phrase "completing the examination."

(1) A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated time-table as outlined below:

(a) Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of ~~scheduling the appointment~~completing the examination $1,000.00

(b) Completed reports received and accepted by the Program Coordinator between thirty-one (31) and forty-five (45) calendar days of ~~the scheduling the appointment~~completing the examination ... $850.00

(c) Completed reports received and accepted by the Program Coordinator between forty-six (46) and sixty (60) calendar days of the ~~scheduling of the appointment~~completing the examination $500.00

(d) Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of ~~scheduling the appointment~~completing the examination ..... No fee paid

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting the current language of paragraph (2) and replacing it with the following:

(2) ~~The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Impairment Rating Report." All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost.~~ The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Report." At the Commissioner's sole discretion, the evaluation fee may be increased up to an additional $250.00 if the time required for

the record review, evaluation, or production of the MIR Report is extraordinary. All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost. Any additional x-rays that the registry physician deems necessary to render the MIR Report must be approved in writing by the Program Coordinator and are subject to the Medical Fee Schedule.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting paragraph (3) in its entirety and appropriately renumbering the remaining subsequent paragraphs.

(1) A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated time-table as outlined below:

(a) Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of scheduling the appointment $1,000.00

(b) Completed reports received and accepted by the Program Coordinator between thirtyone (31) and forty-five (45) calendar days of the scheduling the appointment ... $850.00

(c) Completed reports received and accepted by the Program Coordinator between fortysix (46) and sixty (60) calendar days of the scheduling of the appointment $500.00

(d) Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of scheduling the appointment ..... No fee paid

(2) The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Impairment Rating Report." All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost.

~~(3) Late fees and penalties. Failure by an employer or insurer to pre-pay the evaluation fee shall allow the physician to charge the employer an additional $100.00 late fee for the evaluation. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid. Failure by a MIR Registry physician to timely refund any unearned evaluation fee shall allow the employer or insurer to recover in addition to the unearned fee a $100.00 late fee from that MIR Registry physician. If the unearned fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty against the MIR Registry physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.~~

(43) Cancellations. To be considered timely, notice of a party's desire to cancel an evaluation appointment shall be given to the Program Coordinator at least three (3) business days prior to the date of the evaluation. An evaluation may be canceled or rescheduled only after obtaining the consent of the Commissioner. The Commissioner shall decide whether an evaluation may be rescheduled within ten (10) calendar days of a request to cancel.

(a) If the request to cancel is not timely, the MIR registry physician shall be entitled to collect/retain a $300.00 cancellation penalty fee. If the evaluation is rescheduled, the

MIR Registry physician is entitled to the entire evaluation fee (for the rescheduled evaluation) in addition to this fee.\

1. If the claimant fails to appear for the evaluation with good cause, the Program Coordinator shall reschedule the evaluation.

2. If the claimant fails to appear for the evaluation without good cause as determined by the Commissioner, this may be deemed a refusal to comply with a reasonable request for medical examination and the injured employee's right to compensation may be suspended pursuant to Tenn. Code Ann. § 50-6-204(d)(8) and no compensation shall be due and payable while the injured employee continues such refusal.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting the word "penalty" from the first sentence of newly renumbered paragraph (3)(a) and by capitalizing the term "Registry" in the same sentence so that as amended the subparagraph reads:

(a) If the request is not timely, the MIR rRegistry physician shall be entitled to collect/retain a $300.00 ~~penalty~~cancellation fee. If the evaluation is rescheduled, the MIR Registry physician is entitled to the entire evaluation fee (for the scheduled evaluation) in addition to this fee.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.09 Communication with Registry Physicians is amended by deleting the word "evaluation" in the first sentence of paragraph (2) and replacing it with the phrase "Program Coordinator's acceptance and distribution of the final MIR Report," and by deleting the term "Commissioner" and replacing it with the term "Program Coordinator," and by adding the term "provided" between the terms "to" and "all" in the second sentence of the paragraph so that as amended the paragraph reads:

(2) If selected as the MIR physician, there shall be no communication with the parties or their representatives prior to the ~~evaluation~~Program Coordinator's acceptance and distribution of the final MIR Report, unless allowed by the Rules or approved by the ~~Commissioner~~Program Coordinator. Any approved communication, other than arranging for payment and the submission of medical records and the evaluation itself, shall be in writing with copies provided to all parties and the Program Coordinator. Failure by a Registry physician to disclose such communications will the physician to penalties under the Rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.09 Communication with Registry Physicians is amended by adding a new paragraph (4), which shall read:

(4) This Rule 0800-02-20-.09 shall also apply to any MIR physician selected to perform peer review pursuant to Rule 0800-02-20-.12.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.11 Requirements for the "MIR Report" is amended by deleting the current language of paragraph (4) in its entirety and replacing it with the following:

(4) ~~Services rendered by an MIR Registry physician shall conclude upon the Commissioner's acceptance of the final "MIR Impairment Rating Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating and any necessary worksheets. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the "MIR Impairment Rating Report" the medical records file, including the final "MIR ImpairmentRating Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health~~

~~records containing private information and within a time frame consistent with all applicable federal, state and local law and the Tennessee Board of Medical Examiners' rules.~~ Services rendered by an MIR Registry physician shall conclude upon the Program Coordinator's acceptance of the final "MIR Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating, along with any necessary worksheets, and is signed by the Program Coordinator. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the "MIR Report" the medical records file, including the final "MIR Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with all applicable federal, state and local laws and the Tennessee Board of Medical Examiners' rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.11 Requirements for the "MIR Report" is amended by adding a new paragraph (5), which shall read:

(5) Any addendums or changes to the MIR Report after it has been deemed accepted shall be approved and signed by the Program Coordinator prior to distribution to the parties.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.12 Peer Review is amended by deleting the current language in its entirety and replacing it with the following:

~~(1) All MIR Impairment Rating Reports are subject to review for appropriateness and accuracy by an individual or organization designated by the Commissioner at any time. Failure to properly apply the AMA Guides in determining an impairment rating, as determined by the Medical Director, may result in penalties up to and including removal from the MIR Registry.~~

~~(2)~~(1) All MIR Reports are subject to peer review for appropriateness and accuracy by either the Medical Director or a physician selected randomly by the Program Coordinator who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions, shall be certified in the applicable edition of the AMA Guides by the American Academy of Disability Evaluating Physicians or the American Board of Independent Medical Examiners, and shall comply with Rule 0800-02-20-.05(2); provided, however, that the peer review shall not include a physical examination of the claimant. If the peer review is performed by a MIR Registry physician, then such physician shall be entitled to a fee of $250.00 to be paid by the employer in advance of the peer review.

~~(3)~~(2) The peer review shall be completed within ten (10) business days of referral from the Program Coordinator. The Medical Director or peer review physician may recommend an MIR Report for reconsideration by the examining MIR physician if the Medical Director or peer review physician deems the report to be incomplete, inaccurate, or unclear pursuant to the requirements of Rule 0800-02-20-.11. Reconsideration and any revision shall be completed by the examining MIR physician within ten (10) business days of referral from the Program Coordinator.

(3) The time limits in Rule 0800-02-20-.07(1) shall be tolled while a MIR Report is being reviewed or reconsidered pursuant to this rule; provided, however, that if the examining MIR physician or the peer review physician does not comply with the time requirements in paragraph (2), then the Program Coordinator may reduce their respective fees.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.13 Removal of a Physician from the Registry is amended by adding the sentence "If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision" at the end of subparagraph (2)(d) so that as amended the subparagraph reads:

(d) A MIR Registry physician may seek reconsideration of an adverse decision from the Commissioner by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Determination. The

Commissioner may affirm, modify or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Determination upon Reconsideration which shall be the final decision. If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.14 Other Penalties, is amended by changing the rule title to "Penalties" and is further amended by deleting the current language and replacing it with the following:

~~(1) Notwithstanding any other provision in these rules to the contrary, and in addition to any other penalty provided for in these Rules and the Act, failure by any party to comply with these Rules in a manner for which no penalty has specifically been set forth herein may subject that party to civil penalties of $100.00 per violation, as determined by the Commissioner. Any party so penalized may request a contested case hearing in accordance with the Penalty Program Rules of the Division, 0800-2-13, by submitting a request for such hearing within fifteen (15) days of issuance of the notice of violation and assessment of civil penalties hereunder.~~

~~(2)~~(1) Failure by an employer or insurer to pre-pay the evaluation fee shall allow the physician to charge the employer a $100.00 late fee in addition to the evaluation fee. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

~~(3)~~(2) If an employer or insurer fails to pay the cancellation fee of $300.00, an additional $250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

~~(4)~~(3) Failure by a MIR Registry physician to timely refund any unearned evaluation fee shall allow the employer or insurer to recover in addition to the unearned fee a $100.00 late fee from that MIR Registry physician. If the unearned fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty against the MIR Registry physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

~~(5)~~(4) If any party engages in unauthorized communications with the MIR physician, then the Commissioner or Commissioner's designee is authorized to assess a penalty of up to $500.00 per violation against that party.

~~(6)~~(5) Notwithstanding any other provision in these rules to the contrary, and in addition to any other penalty provided for in these Rules and the Act, failure by any party to comply with these Rules in a manner for which no penalty has specifically been set forth herein may subject that party to civil penalties of $100.00 per violation, as determined by the Commissioner.

(6) Any party assessed a monetary penalty by the Division may request a contested case hearing in accordance with the Penalty Program Rules of the Division, 0800-2-13, by submitting a request for such hearing within fifteen (15) days of issuance of the notice of violation and assessment of civil penalties hereunder.

Authority: T.C.A. §§ 4-5-202, 50-6-118, 50-6-204 and 50-6-233 (2005).

Chapter 0800-02-20 Medical Impairment Rating Registry Program shall be further amended to delete the phrase "MIR Report" wherever it appears and replace it with "MIR Report."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Labor and Workforce Development (board/commission/ other authority) on 10/10/12 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/12/12

Rulemaking Hearing(s) Conducted on: (add more dates). 08/16/12

Date: 12/12/12

Signature: Karla Davis

Name of Officer: Karla Davis

Title of Officer: Commissioner

ROSEMARY S. COLE STATE OF TENNESSEE NOTARY PUBLIC RUTHERFORD COUNTY COMM. EXP. 7-9-2016

Subscribed and sworn to before me on: 12/12/12

Notary Public Signature: Rosemary S. Cole

My commission expires on: 7/9/16

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

Robert E. Cooper, Jr.
Attorney General and Reporter

3-20-13
Date

Department of State Use Only

Filed with the Department of State on: 3/25/13

Effective on: 6/23/13

Tre Hargett
Secretary of State

RECEIVED 2013 MAR 25 PM 12:56 SECRETARY OF STATE

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Student Assistance Corporation (TSAC)
DIVISION:	Higher Education
SUBJECT:	Graduate Nursing Loan Forgiveness Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-4-702
EFFECTIVE DATES:	August 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

The proposed rule acts to adopt changes to the Graduate Nursing Loan Forgiveness Program regulated by Chapter 1640-01-03. These rules regulate a loan forgiveness program pursuant to Tennessee Code Annotated, § 49- 4-702, providing loans and loan forgiveness to eligible candidates for master's and post-master's degrees in nursing education who agree to employment upon completion of the degree as a teacher or administrator in a Tennessee nursing education program at an eligible postsecondary institution.

The proposed changes to the rules include adding a section that will provide TSAC with a greater opportunity to collect payments from recipients who do not fulfill the required service obligation; defining the term "default" as used by the TSAC Loan Administration Division; providing a hardship deferment for recipients who are unable to make payments; and addressing various technical corrections and housekeeping matters.

Regulatory Flexibility Addendum

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

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Amendments

The Tennessee Student Assistance Corporation (TSAC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing to amend the current rules of Chapter 1640-01-03 Graduate Nursing Loans Forgiveness Program. It is the intent of TSAC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

The proposed changes to the rule include adding a section that will provide TSAC with a greater opportunity to collect payments from recipients who do not fulfill the required service obligation; defining the term "default" as used by the TSAC Loan Administration Division; providing a hardship deferment for recipients who are unable to make payments; and to address various technical corrections and housekeeping matters.

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

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

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

   The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

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

   The proposed rules were drafted to facilitate administration of the program for all postsecondary education institutions.

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

   TSAC worked diligently with key postsecondary education institution personnel to ensure that proposed compliance and/or reporting requirements can be practically applied by institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

   The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting

requirements.

6. Performance standards for small businesses:

   TSAC expects all education institutions engaged in the administration of the Graduate Nursing Loan Forgiveness Program to comply with all applicable rules.

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

   The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

   Independent postsecondary education institutions that employ fifty (50) or fewer full-time employees that have students in attendance receiving this grant program.

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

   There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

   The proposed rules were drafted to facilitate administration of the program for all postsecondary institutions and should have a positive effect on the independent postsecondary institutions employing fifty (50) or fewer full-time employees.

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

   As these proposed rules present no foreseeable cost to small businesses, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

   There will be no exemptions created by these proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments."

The rules for the Graduate Nursing Loan Forgiveness Program Chapter 1640-01-03, as amended, shall have no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 03-01-13
Rule ID(s): 5384
File Date: 3/1/13
Effective Date: 8/29/13

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 Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy, Senior Associate Executive Director and Attorney
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

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

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

Chapter Number	**Chapter Title**
1640-01-03	Graduate Nursing Loan Forgiveness Program
Rule Number	**Rule Title**
1640-01-03-.01	Introduction
1640-01-03-.02	Definitions
1640-01-03-.03	Eligibility
1640-01-03-.04	Award Amount
1640-01-03-.05	Application Process
1640-01-03-.06	Interest
1640-01-03-.07	Repayment
1640-01-03-.08	Deferment
1640-01-03-.09	Cancellation/Forgiveness
1640-01-03-.10	Collections
1640-01-03-.11	Leave of Absence
1640-01-03-.12	Appeals Procedure

RULES OF
TENNESSEE STUDENT ASSISTANCE CORPORATION

CHAPTER 1640-01-03
GRADUATE NURSING LOAN-FORGIVENESS PROGRAM

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1640-01-03-.01 INTRODUCTION.

(1) These rules implement the Tennessee Graduate Nursing Loan Forgiveness Program authorized in T.C.A. § 49-4-702 in 2006 Public Acts, Chapter 882 (hereinafter called the Act). The Act makes provision for loans and loan forgiveness to certain candidates for master's and post-master's degrees in nursing education. Loan forgiveness requires employment as a teacher or administrator in a Tennessee nursing education program at an eligible postsecondary institution upon completion of the program of study.

(2) While the Act refers to the program as a "loan-scholarship," the Tennessee Student Assistance Corporation ~~Corporation~~ interprets the Act as establishing a loan forgiveness program because the Act requires the recipient to sign a promissory note that stipulates a repayment obligation. ~~In order T~~to avoid confusion, the working title of the program shall be the "Tennessee Graduate Nursing Loan Forgiveness Program."

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204 and 49-4-702~~2006 Tenn. Pub. Acts Ch. 882~~.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Amendment filed March 18, 1977; effective April 18, 1977. Repeal and new rule filed as a Public necessity rule filed December 11, 2006; expires May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.*

1640-01-03-.02 DEFINITIONS.

(1) As used in these rules (Chapter 1640-01-03):

~~(a) "Corporation" means the Tennessee Student Assistance Corporation.~~

(~~b~~a) ~~"~~Cost of Attendance~~"~~: ~~means T~~the combined cost of tuition, mandatory fees, room and board, books, and other educational expenses as determined by the financial aid office of the eligible postsecondary institution.

(b) Default: The failure of a recipient in repayment status to make installment payments for a period of two hundred seventy (270) consecutive days.

(c) Deferment: A period of time in which the student's payments may be postponed, pursuant to Rule 1640-01-03-.08.

~~(cd) "Eligible Postsecondary Institution" means~~
~~(1) a Tennessee institution that is operated by the Tennessee Board of Regents of the state university and community college system, or(2) an institution in the~~

~~University of Tennessee system, or (3) a Tennessee private postsecondary institution that is accredited by the SouthernAssociation of Colleges and Schools (SACS), or (4) an out-of-state institution that is accredited by a regional accrediting association and which uses distance education to deliver instruction to a graduate nursing loan recipient residing in the state of Tennessee.~~

(d) ~~"~~Eligible Academic Program~~":~~ ~~means A~~a graduate program accredited by the National League for Nursing Accrediting Commission (NLNAC) and/or by the Commission on Collegiate Nursing Education (CCNE) and approved by the Tennessee Board of Nursing which leads to a master's or post-master's degree in a field of study which will qualify the graduate to become a teacher or administrator in a college or university nursing education program.

(e) Eligible Postsecondary Institution:

1. A Tennessee institution that is operated by the Tennessee Board of Regents of the state university and community college system;

2. An institution in the University of Tennessee system;

3. A Tennessee private postsecondary institution that is accredited by the Southern Association of Colleges and Schools (SACS); and

4. An out-of-state institution that is accredited by a regional accrediting association and which uses distance education to deliver instruction to a graduate nursing loan recipient residing in the state of Tennessee.

(~~e~~f) ~~"~~Full-time enrollment~~":~~ ~~means a student enrolling in at least T~~the minimum number of credit hours per term necessary to be considered a full-time student, as defined by the eligible postsecondary institution.

(g) Grace period: The three (3) month period of time that begins when the recipient either completes his or her eligible academic program or no longer meets the graduate nursing loan eligibility requirements, and during which period of time interest does not accrue and repayment is not required.

(~~f~~h) ~~"~~Graduate Nursing Loan~~":~~ ~~means T~~the loan-scholarship referenced in T.C.A. § 49-4-702 ~~in 2006 Tennessee Public Acts, Chapter 882~~.

~~(g) "Grace period" means the three (3) month period of time which begins when the borrower either completes his/her eligible academic program or no longer meets graduate nursing loan eligibility requirements, and during which period of time interest does not accrue and repayment is not required.~~

(~~h~~i) ~~"~~Loan forgiveness~~":~~ ~~means T~~the partial or complete cancellation of a graduate nursing loan, as described ~~elsewhere~~ in these rules.

(~~i~~j) ~~"~~Part-time enrollment~~":~~ ~~means a student enrolling~~Enrollment in fewer credit hours per term than the number necessary to be considered a full-time student, as defined by the eligible postsecondary institution.

(k) Priority Date: March 1 preceding the intended academic year of attendance, or such other date as TSAC may require.

(Rule 1640-01-03-.02, Continued)

(jl) "Program Administrator": means Tthe TSAC staff member of the Corporation who has been assigned administrative responsibility for the graduate nursing loan forgiveness program by the Corporation's Associate Executive Director for Grant and Scholarship Programs.

(km) "Regional Accrediting Association": means Aapproved accrediting agencies as follows:including the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges;, the North Central Association of Colleges and Schools, the Northwestern Association of Schools and Colleges, the Southern Association of College and Schools, and the Western Association of Schools and Colleges.

(ln) "Satisfactory Academic Progress": means Aa standard of progress toward completion of the eligible academic program during which the student meets minimum academic requirements and progresses towards a degree as required by the nursing education program at the eligible postsecondary institution attended.

(o) TSAC: Tennessee Student Assistance Corporation.

(mp) "Year of continuous full-time employment": means Nine (9) to twelve (12) months of continuous employment considered by the employer to be full-time.

(nq) "Year of continuous part-time employment": means Nine (9) to twelve (12) months of continuous employment considered by the employer to be at least half-time but less than full-time.

(o) "Priority Date" means March 1 prior preceding to the intended academic year of attendance, or such other date as the CorporationTSAC may require.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-7022006 Tenn. Pub. Acts Ch. 882.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Repeal and new rule filed as a Public necessity rule on December 11, 2006; effective through May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.*

1640-01-03-.03 ELIGIBILITY.

(1) In order Tto receive a graduate nursing loan a student must meet the following criteria:

(a) Bbe a citizen of the United States; and

(b) Bbe a resident of Tennessee, as defined by regulations promulgated by the Tennessee Board of Regents for the state university and community college system, under the authority of T.C.A. § 49-8-104 where applicable; and

(c) Hhold an unencumbered Tennessee Registered Nurse License; and

(d) Bbe enrolled either part-time or full-time in an eligible academic program at an eligible postsecondary institution; and

(e) Pprovide written evidence of the student's intention to become employed full-time or part-time in a Tennessee nursing education program in a teaching or administrative capacity; and

(f) Mmaintain satisfactory academic progress; and

(Rule 1640-01-03-.03, Continued)

(~~h~~g) N~~n~~ot owe a refund or repayment on any grant, and not be in default on any loan received at any postsecondary institution, under the provision of ~~on a federal~~ Title IV of the Higher Education Act of 1965, as amended, ~~student financial aid program~~ or a Tennessee student financial aid program; and

(~~i~~h) S~~s~~ign a promissory note before receiving any funds~~.~~; and

(i) Agree to inform TSAC in writing when any change occurs in name, address, or school enrollment, and provide supporting documentation. After completing the program, the recipient shall continue to notify TSAC of any change in name or address, and when he or she has obtained a teaching or administrative position, changed teaching or administrative positions, or terminated teaching or administrative positions.

(2) Eligibility is limited to four (4) years of full-time enrollment, or the equivalent part-time enrollment, with one (1) year of full-time enrollment equaling two (2) years of part-time enrollment.

(3) In certain circumstances, a student may receive more than one graduate nursing loan. A borrower who received a (first) graduate nursing loan while earning a master's degree may apply for a (second) graduate nursing loan in a post-master's program. If the application for the second loan is successful, repayment of the first loan is deferred until the recipient enters repayment on the second loan, at which time repayment of both loans is expected. A borrower who is employed while receiving a second graduate nursing loan may apply that employment towards cancellation of the first graduate nursing loan provided that the cancellation requirements described elsewhere in these rules are met.

(4) Eligibility is subject to the availability of funds.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-702~~2006 Tenn. Pub. Acts Ch. 882~~.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Amendment filed March 18, 1977; effective April 18, 1977. Amendment filed July 17, 1991; effective October 29, 1991. Repeal and new rule filed as a Public necessity rule on December 11, 2006; effective through May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.*

1640-01-03-.04 AWARD AMOUNT.

(1) The maximum amount of the graduate nursing loan shall be seven thousand dollars ($7,000) per year during periods of full-time enrollment and three thousand five hundred dollars ($3,500) per year during periods of part-time enrollment, or such other amounts as may be established by ~~the Corporation~~TSAC, and shall in no ~~case~~ instance exceed the student's cost of attendance. Awards are divided equally in disbursements of two (2) semesters or three (3) quarters payments.

(2) ~~The Corporation~~TSAC shall disburse the graduate nursing loan funds directly to eligible postsecondary institutions, which shall in turn credit the borrower's account or disburse funds to the eligible borrower with one (1) credit or payment at the beginning of each academic term attended.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-702~~2006 Tenn. Pub. Acts Ch. 882~~.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Repeal and new rule filed as a Public necessity rule on December 11, 2006; effective through May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.*

1640-01-03-.05 APPLICATION PROCESS.

(Rule 1640-01-03-.05, Continued)

(1) The student must apply to ~~the Corporation~~TSAC for the graduate nursing loan by the established priority application date as required by ~~the Corporation~~TSAC.

(2) First priority shall be given to renewal ~~applications~~ applicants received by the priority application date.

(3) Second priority shall be given to applicants who provide satisfactory evidence ~~satisfactory~~ to ~~the Corporation~~TSAC that they expect to enter a full-time teaching position in a Tennessee nursing education program immediately upon completion of their master's or post-master's degree program and who apply by the priority application date.

(4) Third priority shall be given to applicants who provide satisfactory evidence ~~satisfactory~~ to ~~the Corporation~~TSAC that they expect to enter a part-time teaching position in a Tennessee nursing education program immediately upon completion of their master's or post-master's degree program and who apply by the priority application date.

(5) Fourth priority will be given to applicants who provide satisfactory evidence ~~satisfactory~~ to ~~the Corporation~~TSAC that they expect to enter a full-time administrative position in a Tennessee nursing education program immediately upon completion of their master's or post-master's degree program and who apply by the priority application date.

(6) Fifth priority will be given to applicants who provide satisfactory evidence ~~satisfactory~~ to ~~the Corporation~~TSAC that they expect to enter a part-time administrative position in a Tennessee nursing education program immediately upon completion of their master's or post-master's degree program and who apply by the priority application date.

(7) Sixth priority shall be given to applications received after the priority application date. Applications will be awarded based on the date of receipt.

(8) Applicants shall be grouped according to the priority assigned to their application. Should available funds be exhausted before all eligible applicants have received an award, applicants in the lowest priority grouping for which funds are available shall be distinguished by the date of receipt of their application by ~~the Corporation~~TSAC and awards shall be made to those applicants with the earliest dates of receipt until all available funds are expended.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and ~~49-4-702~~2006 ~~Tenn. Pub. Acts Ch. 882~~.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Amendment filed March 18, 1977; effective April 18, 1977. Repeal and new rule filed as a Public necessity rule on December 11, 2006; effective through May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.*

1640-01-03-.06 INTEREST.

(1) Interest shall accrue at the rate of nine percent (9%) per year or such other rate as shall be established by ~~the Corporation~~TSAC, starting at the end of the grace period. All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and ~~49-4-702~~2006 ~~Tenn. Pub. Acts Ch. 882~~.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Repeal and new rule filed as a Public necessity rule on December 11, 2006; effective through May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.*

1640-01-03-.07 REPAYMENT.

(1) The graduate nursing loan must be repaid unless cancelled as described elsewhere in

these rules. Repayment will include the full amount of the graduate nursing loan received plus accrued interest.

(2) Repayment shall begin at the end of the grace period, upon demand by TSAC, and shall be in monthly installments over a period of no more than eight (8) years, provided that payments must be a minimum of one hundred dollars ($100) per month.

(3) The graduate nursing loan and accrued interest may be prepaid in whole or part at any time without penalty.

(4) If the borrower of a graduate nursing loan is determined to have received the award based on inaccurate application information, the full amount of the loan and accrued interest shall become due immediately.

(5) If the borrower fails to complete an enrollment period for any reason, the postsecondary institution must determine if any of the graduate nursing loans should be returned to ~~the Corporation~~TSAC. The postsecondary institution should use its own institutional refund policy to calculate the refund amount. If the student withdraws after the refund period is over, the postsecondary institution must follow the Return of Title IV guidelines, if applicable, to calculate any return of the graduate nursing loan.

(6) If a borrower issues a check, draft, warrant, or electronic funds transfer, which is subsequently returned to ~~the Corporation~~TSAC ~~due to~~for reason of insufficient funds, a stop payment order by the issuer, or any other reason, the payment to which these funds was applied shall be reversed on the borrower's account and interest shall continue to accrue from the date of the last valid payment. Additionally, ~~the Corporation~~TSAC may charge a reasonable service fee for such a transaction.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-702~~2006 Tenn. Pub. Acts Ch. 882~~.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Amendment filed March 18, 1977; effective April 18, 1977. Repeal and new rule filed as a Public necessity rule on December 11, 2006; effective through May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.*

1640-01-03-.08 DEFERMENT.

(1) Repayment shall be deferred, but interest shall continue to accrue, while the ~~borrower~~ recipient is employed in a Tennessee nursing education program in a teaching or administrative capacity.

(2) Repayment shall be deferred, but interest shall continue to accrue, while the student is seeking the post-master's degree after first receiving the loan to obtain their master's degree.

(3) Repayment shall be deferred if the recipient is unable to make payments due to financial, medical, or personal circumstances beyond the recipient's control, or other extenuating circumstances approved by the Associate Executive Director for Grant and Scholarship Programs. Such period of hardship shall not exceed two (2) years.

(~~3~~4) ~~In order F~~for repayment to be deferred, ~~borrowers~~ recipients shall provide employment verification as required by ~~the Corporation~~TSAC.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-702~~2006 Tenn. Pub. Acts Ch. 882~~.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Amendment filed March 18, 1977; effective April 18, 1977. Repeal and new rule filed as a Public necessity rule on*

(Rule 1640-01-03-.08, Continued)

December 11, 2006; effective through May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.

1640-01-03-.09 CANCELLATION/FORGIVENESS.

(1) For each year of continuous full-time employment in a Tennessee nursing education program in a teaching or administrative capacity, the borrower shall receive a credit of twenty-five percent (25%) of the amount borrowed, plus accrued interest on that portion of the debt cancelled. Cancellation credit will be applied at the end of each year and upon receipt of verification of such service.

(2) For each year of continuous part-time employment in a Tennessee nursing education program in a teaching or administrative capacity, the borrower shall receive a credit of twelve and one-half percent (12.5%) of the amount borrowed, plus accrued interest on that portion of the debt cancelled.

(3) ~~In order T~~to receive cancellation credit, the borrower shall provide employment verification as required by ~~the Corporation~~TSAC.

(4) Cancellation credit shall not begin until the borrower completes the program of study for which the graduate nursing loan was provided.

(5) The debt shall be cancelled on the basis of conclusive evidence that the borrower has died or has been totally and permanently disabled and cannot perform the teaching obligation outlined in the regulations. The borrower is not considered totally and permanently disabled on the basis of a condition that existed prior to the loan application. If, at any time subsequent to an initial determination of disability, the borrower's condition improves to the point where a total and permanent disability no longer exists, ~~the Corporation~~TSAC may reinstate any outstanding debt previously cancelled.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-702~~2006 Tenn. Pub. Acts Ch. 882~~.* ***Administrative History:*** *Original rule filed as a Public necessity rule on December 11, 2006; effective through May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.*

1640-01-03-.10 COLLECTIONS.

(1) Due diligence requirements shall consist of the following:

(a) Provide the recipient with a signed copy of the promissory note.

(b) Notify the recipient of the repayment requirements during the grace period.

(c) Notify the recipient of repayment requirements during an approved period of deferment.

(d) Attempt to contact the recipient on no less than three separate occasions during the two hundred and seventy (270) day period in which no payments are received, beginning with the thirtieth (30th) day of delinquency and subsequent contacts no less than ninety (90) days apart.

(2) TSAC's collection activity will begin when the recipient is no longer honoring the repayment obligation. TSAC will exercise due diligence to contact the student to resolve the delinquency.

(3) TSAC will consider a recipient to be delinquent if the recipient fails to make an installment payment within thirty (30) days of the due date. Upon delinquency, TSAC will attempt to contact the recipient to give notice of the delinquency, inform the recipient of the

consequences of default, and encourage the recipient to make payments as provided under the promissory note.

(4) TSAC will consider a recipient to be in default if the recipient fails make a payment for a period of two hundred seventy (270) consecutive days.

(5) Once the recipient is in default, TSAC may take one or more of the following actions:

(a) Assign the defaulted loan(s) to a collection agency.

1. Collection costs may be added to the defaulted loan at a rate not to exceed twenty percent (20%) of the original principal balance. Payments on the combined principal, interest, and collection costs shall not exceed an amount determined to be reasonable and affordable.

(b) Report to credit bureaus the default status of each loan.

(c) Make the student ineligible for state student aid programs.

(d) Submit an order of suspension, denial, or revocation to the appropriate licensing board for any Tennessee-issued professional license held by the recipient.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-702.* ***Administrative History:***

1640-01-03-.101 LEAVE OF ABSENCE.

(1) Unless a leave of absence is granted, terms of enrollment must be continuous (other than the summer term), and a period of non-attendance (other than the summer term) will cause a recipient to enter repayment with no opportunity to regain eligibility.

(2) A student may be granted medical or personal leave of absence from attendance at an eligible postsecondary institution and resume receiving the nursing loan upon resumption of the student's attendance at an eligible postsecondary institution so long as all other applicable eligibility criteria are met. An eligible postsecondary institution may grant leaves of absence only for medical or personal reasons. Allowable medical or personal reasons shall include, but not be limited to~~:~~, illness of the student, illness or death of an immediate family member, extreme financial hardship of the student or student's immediate family, a military obligation of the student or family member, an obligation to fulfill a religious commitment expected of all individuals of that faith, or other extraordinary circumstances beyond the student's control where continued attendance by the student creates a substantial hardship. In the event an institution denies a student's request for a medical or personal leave of absence, the student may seek relief from the decision in accordance with Rule 1640-01-03-.1~~1~~2.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-702~~2006 Tenn. Pub. Acts Ch. 882~~.* ***Administrative History:*** *Original rule filed as a Public necessity rule on December 11, 2006; effective through May 25, 2007. Original rule filed December 11, 2006; effective April 30, 2007.*

1640-01-03-.1~~1~~2 APPEALS PROCEDURE.

(1) ~~Generally, the ruling of the Corporation's program administrator shall apply.~~ TSAC shall provide written notice to a student of an adverse decision relative to a student's application for an award or request for a leave of absence. A student who disagrees with such decision and wants the decision reviewed must request a review of the decision in writing. The student's request for review must be received by TSAC within ten (10) business days of the

date of the written notice provided by TSAC. Such request shall include a statement of the reason or reasons for the request for review and all information supporting the student's position regarding the decision.

(2) ~~An individual who believes that the ruling of the program administrator was not in accordance with the published regulations and the Act may appeal to the authority of the Corporation's Appeals Panel for relief.~~ Review of the TSAC decision shall be made by the TSAC Associate Executive Director for Grant and Scholarship Program, who shall issue a written decision to the student. A student who disagrees with such decision and wants the decision reviewed must request a further review of that decision in writing. The student's request for review must be received by TSAC within ten (10) business days of the date of the decision. Such request shall include a statement of the reason or reasons for request for review and all relevant supporting information.

(3) ~~An individual who believes that the ruling of the Corporation's Appeal Panel was not in accordance with the published regulations and the Act may appeal to the authority of the Corporation's Board of Directors Appeal Committee. This is the final administrative appeal.~~ Review of the decision of the TSAC Associate Executive Director for Grant and Scholarship Programs shall be made by the TSAC Executive Director, who shall issue a written decision to the student. A student who disagrees with such decision and wants the decision reviewed must request a further review of that decision in writing. The student's request for review must be received by TSAC within ten (10) business days of the date of the decision. Such request shall include a statement of the reason or reasons for request for review and all relevant supporting information.

(4) Review of the decision of the TSAC Executive Director shall be made by the TSAC Appeals Committee, who shall issue a written decision to the student. The decision of the TSAC Appeals Committee is the final administrative remedy. There shall be no right to judicial review of a decision of the TSAC Appeals Committee.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, ~~and~~ 49-4-204, and 49-4-702~~2006 Tenn. Pub. Acts Ch. 882~~.*
Administrative History: *Original rule filed as a Public necessity rule on December 11, 2006: effective through May 25, 2007. Original rule filed December 11, 2006: effective April 30, 2007.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam, by Mr. Mark Cate	X				
Dr. Richard Rhoda by Russ Deaton	X				
Dr. Claude Pressnell	X				
Mr. David H. Lillard, Jr., by Joy Harris	X				
Comptroller Justin P. Wilson, by Ms. Faye Weaver	X				
Commissioner Mark Emkes, by Greg Turner	X				
Commissioner Kevin Huffman, by Mr. Morgan Branch	X				
Chancellor John Morgan	X				
Dr. Joe Dipietro, by Dr. Keith Carver	X				
Betty Sue McGarvey	X				
Dr. J. Gary Adcox	X				
Mr. Lester McKenzie	X				
Mr. William Samuel Stuard, Jr.				X	
Mr. Will Pinkston	X				
Mr. Jeff Wilson	X				
LaSimba Gray	X				
Mr. John Alexander Peek	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TSAC Board of Directors on 03/15/2012, 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: 10.11.12

Signature: Richard G. Rhoda

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director

Subscribed and sworn to before me on: 10/11/12

Notary Public Signature: Constance A. Alexander

My commission expires on: 1/7/2013

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

Robert E. Cooper, Jr.
Attorney General and Reporter

1-31-13
Date

Department of State Use Only

Filed with the Department of State on: 3/1/13

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Effective on: 8/29/13

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Student Assistance Corporation (TSAC)
DIVISION:	Higher Education
SUBJECT:	Minority Teaching Fellows Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-4-706
EFFECTIVE DATES:	August 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

The proposed rule acts to adopt changes to the Minority Teaching Fellows Program regulated by Chapter 1640-01-13. These rules regulate a loan forgiveness program pursuant to Tennessee Code Annotated, § 49-4-706, that is intended to encourage talented minority Tennesseans to enter the teaching field in Tennessee. The award is $5,000 per year for students who pursue a teacher certification at an eligible Tennessee college or university.

The proposed changes to the rules include adding a section that will provide TSAC with a greater opportunity to collect payments from recipients who do not fulfill the required service obligation; defining the term "default" as used by the TSAC Loan Administration Division; providing a hardship deferment for recipients who are unable to make payments; and addressing various technical corrections and housekeeping matters.

Regulatory Flexibility Addendum

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

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Amendments

The Tennessee Student Assistance Corporation (TSAC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing to amend the current rules of Chapter 1640-01-13 Minority Teaching Fellows Program. It is the intent of TSAC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

The proposed changes to the rule include adding a section that will provide TSAC with a greater opportunity to collect payments from recipients who do not fulfill the required service obligation; defining the term "default" as used by the TSAC Loan Administration Division; providing a hardship deferment for recipients who are unable to make payments; and to address various technical corrections and housekeeping matters.

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

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

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

   The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

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

   The proposed rules were drafted to facilitate administration of the program for all postsecondary education institutions.

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

   TSAC worked diligently with key postsecondary education institution personnel to ensure that proposed compliance and/or reporting requirements can be practically applied by institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

   TSAC expects all education institutions engaged in the administration of the Minority Teaching Fellows Program to comply with all applicable rules.

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

   The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

   Independent postsecondary education institutions that employ fifty (50) or fewer full-time employees that have students in attendance receiving this grant program.

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

   There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

   The proposed rules were drafted to facilitate administration of the program for all postsecondary institutions and should have a positive effect on the independent postsecondary institutions employing fifty (50) or fewer full-time employees.

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

   As these proposed rules present no foreseeable cost to small businesses, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

   There will be no exemptions created by these proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments."

The rules for the Minority Teaching Fellows Program 1640-01-13, as amended, shall have no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 03-02-13
Rule ID(s): 5385
File Date: 3/1/13
Effective Date: 8/29/13

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 Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy, Senior Associate Executive Director and Attorney
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

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

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

Chapter Number	**Chapter Title**
1640-01-13	Minority Teaching Fellows Program
Rule Number	**Rule Title**
1640-01-13-.01	Introduction
1640-01-13-.02	General
1640-01-13-.03	Eligibility
1640-01-13-.04	Method of Selection
1640-01-13-.05	Loan Amount and Terms
1640-01-13-.06	Collections
1640-01-13-.07	Repealed
1640-01-13-.08	Appeals Procedures

RULES OF
TENNESSEE STUDENT ASSISTANCE CORPORATION

CHAPTER 1640-01-13
MINORITY TEACHING FELLOWS PROGRAM

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1640-01-13-.04	Method of Selection	1640-01-13-.08	Appeals Procedures

1640-01-13-.01 INTRODUCTION.

(1) These rules implement the Minority Teaching Fellows Program (MTFP) authorized by T.C.A. § 49-4-706 in Public Chapter 202 of the 1989 Public Acts (hereinafter referred to as the "Act"). The Act provide~~d~~s for a fellowship award for minority Tennesseans who are preparing to become teachers. Recipients who become public school teachers in Tennessee shall receive forgiveness of the fellowship balance based on one (1) year's teaching service for each year the fellowship was awarded. The Tennessee Student Assistance Corporation (TSAC) shall administer the program under regulations and criteria developed jointly with the Tennessee State Board of Education ~~(SBE)~~ and the Tennessee Higher Education Commission (THEC).

Authority: *T.C.A. §§ 49-4-201, 49-4-204 and 49-4-706.* ***Administrative History:*** *Original rule filed July 14, 1989; effective October 29, 1989. Amendment filed February 3, 2005; effective June 28, 2005. Repeal and new rule filed December 6, 2007; effective April 29, 2008.*

1640-01-13-.02 GENERAL.

(1) Definitions. As used in these regulations (Chapter 1640-01-13):

(a) ~~"~~Academic year~~"~~: ~~is~~ A~~a~~ period of time, typically nine (9) months, and is composed of two (2) semesters.

(b) ~~"~~Act~~"~~: ~~is~~ T.C.A. § 49-4-706 as found in Public Chapter 202 of the Public Acts of 1989.

(c) Default: The failure of a recipient in repayment status to make installment payments for a period of two hundred seventy (270) consecutive days.

(~~c~~d) ~~"~~Deferment~~"~~: ~~is A~~a period of time in which the student's payments may be postponed, pursuant to Rule 1640-01-13-.05.

(~~d~~e) "Eligible schools~~"~~: ~~in which recipients may teach for credit toward their loans are those~~ Tennessee public schools approved by the ~~SBE~~ Tennessee State Board of Education ~~for teaching~~in which recipients may teach for cancellation credit towards their loans at a prekindergarten, kindergarten, elementary, or secondary level in Tennessee.

(~~e~~f) ~~"~~Full-time teaching~~"~~: ~~will be determined on the basis that A~~a minimum of fifty percent (50%) of the recipient's weekly workload is devoted to teaching, exclusive of administrative, teaching assistance, after-school programs, counseling, or other assigned duties.

(~~f~~g) ~~"~~Full year of teaching service~~"~~: ~~shall be T~~two (2) semesters of full-time teaching. Recipients must teach at least ninety (90) days each semester, or one hundred eighty (180) days for the academic year.

(~~g~~h) ~~"~~Grace period~~"~~: ~~is A~~a period of one (1) year that shall begin on the date the student completes his or her plan of study, in which repayment is not required, ~~and~~ but interest shall accrue on the loan from the date of each disbursement.

(~~h~~i) ~~"~~Minority~~"~~ ~~is A~~a person who is~~:~~ Black or African American, a person having origins in any of the black racial groups of Africa; Hispanic or Latino, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent~~,~~; Native Hawaiian or Other Pacific Islander, a person having origins in the Pacific Islands; or ~~Native~~ American Indian or Alaska Native, a person having origins in any of the original peoples of North America.

(~~i~~j) ~~"~~Plan of study~~"~~: ~~is A~~a plan of enrollment ~~not to exceed four (4) academic years (the equivalent of eight (8) semesters)~~ within which the applicant may complete requirements for licensure in an eligible field of study. The plan is transferable among Tennessee higher education institutions provided such transfer is approved by the receiving institution ~~and can be completed within the four-year time calculated from the date of disbursement~~.

(k) Promissory Note: A signed statement certifying a candidate's intent to become a teacher in a public school system of Tennessee at the prekindergarten, kindergarten, elementary, or secondary level and their obligation to repay the loan should they fail to fulfill the teaching requirements.

(~~j~~l) ~~"~~Repayment period~~"~~: ~~is A~~a period of not more than ten (10) years in which the loan will be repaid and shall begin at the end of the grace period, or when TSAC determines that the recipient has not complied with the requirements of the Act.

(~~k~~m) ~~"~~Satisfactory progress~~"~~: ~~is A~~a standard of progress toward completion of the pursued plan of study during which the student maintains at least a 2.5 cumulative grade point average (GPA) or, if required by the institution attended, a higher GPA. After two (2) or more semesters of attendance, if a student's cumulative GPA is no more than 0.1 below the required GPA, the student may continue on probation for one (1) semester. After the probation semester, the cumulative GPA must be at least 2.5, or higher if required by the institution attended. The student may have only one (1) semester of probation during eight (8) semesters of eligibility in the program.

~~(l) "Statement of Intent" is a signed statement from a candidate certifying his or her intent to become a teacher in a public school system of Tennessee at the prekindergarten, kindergarten, elementary, or secondary level.~~

(n) TSAC: Tennessee Student Assistance Corporation.

(2) All recipients must attend ~~a~~the Tennessee college or university on a full-time basis as determined by the institution's written policies to be eligible, excluding periods of internship and/or student teaching. During such periods of internship and/or student teaching, recipients must be enrolled at least half-time, but may be enrolled less than full-time as mandated by the written policies of the educational institution.

(3) Funds received from this program are considered financial assistance for purposes of

determining student assistance eligibility under programs authorized by Title IV of the Higher Education Act of 1965, as amended.

(4) All such loans shall be evidenced by notes payable to TSAC.

(5) Any applications received or approved shall be subject to the availability of funds.

(6) ~~The applicant pool for available funds for awards to be made for the year beginning in July shall be established based upon applications received prior to April 15 of that year.~~ Applications must be submitted on TSAC-approved forms by April 15, which immediately precedes the academic year for which the student is applying. The April 15 cut-off date may be extended by the TSAC Associate Executive Director for Grant and Scholarship Programs should it be determined necessary for the purpose of utilizing all available funds.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-706.* ***Administrative History:*** *Original rule filed July 14, 1989; effective October 29, 1989. Amendment filed April 2, 1996; effective August 28, 1996. Amendment filed October 20, 1997; effective February 27, 1998. Amendment filed February 3, 2005; effective June 28, 2005. Repeal and new rule filed December 6, 2007; effective April 29, 2008.*

1640-01-13-.03 ELIGIBILITY. ~~The successful applicant must meet all of the following:~~

(1) The successful applicant must meet all of the following criteria:

(a) Be a citizen of the United States.

(b) Be a resident of Tennessee as defined by regulations promulgated by the Tennessee Board of Regents.

(c) Be a minority.

(d) Be admitted to or enrolled in an accredited institution of higher education in Tennessee from which credits earned are recognized by the State to be applicable to a teacher certification program. ~~Loans~~ Awards may also be granted to students admitted to or enrolled in an accredited two-year institution of higher education, provided that a plan of study is pursued which is transferable to a college or university in Tennessee and will lead to licensure, which will then be used to teach in a public school at ~~some~~ a prekindergarten, kindergarten, elementary, or secondary level in the State, provided that the plan of study can be completed within a four-year period calculated from the date of the first disbursement.

(e) Submit to TSAC a signed ~~Statement of Intent~~ Promissory Note to teach full-time in a Tennessee public prekindergarten, kindergarten, elementary or secondary school one (1) year for each year an award is received, or repay the loan should they fail to fulfill the teaching requirements.

(f) Not accept any financial aid that carries with it a conflicting service obligation. For the purposes of this program, participation in the Tennessee Teaching Scholars Program shall be considered as accepting aid that carries a conflicting service obligation.

(g) Submit a completed TSAC-approved application to TSAC by the established deadline ~~on a TSAC-approved application~~.

(h) Submit to TSAC copies of all official transcripts and the most recent test scores.

(i) Submit an essay on "Why I Chose Teaching as a Profession" as outlined in the MTFP

application guidelines.

(j) Submit to TSAC two letters of recommendation attesting to the student's commitment to teaching: one personal recommendation and one from a school official.

(~~i~~k) Agree to inform TSAC in writing when any ~~significant~~ change ~~in his or her status~~ occurs in name, address, or school enrollment, and provide supporting documentation ~~to support it~~. ~~This shall include, but is not limited to changes in name, address, and enrollment.~~ After obtaining teacher licensure, the recipient shall continue to notify TSAC of any change in name or address, and ~~the recipient shall inform TSAC~~ when he or she has obtained a teaching position, changed teaching assignments, or terminated teaching service.

(~~j~~l) ~~Shall N~~not owe a refund or repayment on any grant, and is not in default on any loan, received at any postsecondary institution, under the provisions of Title IV of the Higher Education Act of 1965, as amended.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-706.* ***Administrative History:*** *Original rule filed July 14, 1989; effective October 29, 1989. Amendment filed October 20, 1997; effective February 27, 1998. Amendment filed February 3, 2005; effective June 28, 2005. Repeal and new rule filed December 6, 2007; effective April 29, 2008.*

1640-01-13-.04 METHOD OF SELECTION.

(1) Each year that funds are available, the Executive Director of TSAC with representatives of the ~~SBE~~State Board of Education, the TDOE, and THEC ~~with the Executive Director of TSAC~~ shall form a selection committee that shall determine the ranking of applicants in accordance with the ranking system adopted by the four agencies.

(2) The following priority groups have been established for this program:

(a) First priority shall be given to eligible renewal applicants.

(b) Second priority shall be given to eligible college students who have a 2.5 college GPA, are enrolled full-time, and are taking courses creditable to teacher education.

(c) Third priority shall be given to eligible entering freshmen who have a 2.75 high school GPA and ~~either~~ an ACT composite score of at least 18 (or the equivalent SAT total score). ~~or in the top twenty-five percent (25%) of their high school graduating class.~~

(3) Until all qualified applicants from the higher priority group(s) who have submitted their applications by the deadline have been offered the ~~loan~~award, no applicants from a lower group may be considered for selection.

(4) The ranking of applicants must consider grade point average, standardized test scores, ~~and~~ evidence of commitment (experiences that would indicate an interest in teaching), ~~. It may also include difficulty of high school and/or undergraduate courses taken, certifications sought, the grand division of the State in which the applicant resides,~~ and other such factors that shall be identified as relevant to meeting the goals and interests of the Act.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, and 49-4-706.* ***Administrative History:*** *Original rule filed July 14, 1989; effective October 29, 1989. Amendment filed October 20, 1997; effective February 27, 1998. Amendment filed December 22, 1997; effective April 30, 1998. Repeal and new rule filed December 6, 2007; effective April 29, 2008.*

1640-01-13-.05 LOAN AMOUNT AND TERMS.

(1) All loans shall be evidenced by promissory notes payable to TSAC.

(2) Funds will be sent by Automated Clearing House (ACH) to the ~~college~~ institution's financial aid office or business office ~~each semester~~ in the recipient's name and shall be disbursed on a semester pro rata basis. ~~If the institution participates in Automated Clearing House, the funds will be sent by direct deposit to the institution and~~ The institution will be directed to deliver the funds to the recipient. The maximum award for a recipient and opportunities for renewal shall be as described in T.C.A. § 49-4-706. If the recipient receives other educational assistance for the same period(s), the total assistance including this award is limited to the recipient's cost of attendance, as determined by the ~~college~~ institution's financial aid office.

(3) The awards may be transferred from one eligible institution of higher education to another provided that a TSAC-approved transfer form is submitted to TSAC.

(4) Cancellation

(a) For each year of full-time teaching service at an eligible school, as defined in these regulations, the recipient shall receive cancellation credit of one (1) academic year's award (the equivalent of two (2) semesters) toward repayment of the loan. If a recipient teaches in an eligible school that is high priority or on warning status as designated by the ~~State~~ Tennessee Department of Education or the State Board of Education, the recipient's obligation will be canceled at a rate of one and one-third (1 1/3) of the total annual award.

(b) Fractions of a year may be credited in one (1) semester or one-half (1/2) year increments toward cancellation for recipients who begin or end full time teaching in the middle of an academic year in a Tennessee public school. At the end of such period, cancellation will be applied upon receipt of verification of the completion of such service.

(c) A grace period of one (1) year will be granted to allow the recipient opportunity to secure employment to begin cancellation credit. When a recipient has obtained a full-time teaching position at an eligible school, some or all of the grace period may be waived at the recipient's written request.

(d) Recipients in teaching positions, which qualify them for cancellation credit, must notify TSAC of that teaching status. Individuals whom TSAC has determined to be in a full-time teaching position at an eligible school shall be granted a postponement on repayment to allow them the opportunity to complete a full year of teaching. At the end of such period, cancellation credit will be applied upon receipt of the verification of such service.

(e) The debt shall be canceled ~~in case of~~due to the death of the recipient upon documentation deemed acceptable by TSAC.

(f) If a recipient is determined to be totally and permanently disabled under the standards established by T.C.A., Title 8, Chapter 36, Part 5, for determining disability for members of the Tennessee Consolidated Retirement System, the outstanding debt shall be canceled. A recipient is not considered totally and permanently disabled on the basis of a condition that existed prior to his or her application unless the recipient's condition has substantially deteriorated since he or she submitted the application. If at any time subsequent to an initial determination of disability the recipient's condition

(Rule 1640-01-13-.05, continued)

improves to the point where a total and permanent disability no longer exists, ~~the Corporation~~TSAC may reinstate any outstanding debt previously canceled.

(5) Repayment

(a) The loan must be repaid should the recipient choose not to honor the terms and conditions of the loan agreement. Repayment will include the full amount of the loan funds received plus interest accrued from the date of each disbursement of the award~~(s)~~. The interest accrued is determined by an interest rate of nine percent (9%) per annum. Repayment may be in whole or in monthly installments of at least one hundred dollars ($100) over a period of not more than ten (10) years from the end of the grace period. Payments of less than ~~one hundred dollars ($100) per month~~ the amount required to amortize the loan within ten (10) years may be made only if the recipient documents to TSAC's satisfaction his or her inability to make payments of that amount. All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized.

(b) Repayment for recipients who complete the plan of study shall begin upon demand by TSAC, or in the first month following the end of the grace period. Interest shall begin to accrue on the date of each disbursement of the award(s).

(c) Repayment for recipients who fail to complete the funded plan of study shall begin upon demand by TSAC, or in the first month ~~following such failure~~ after TSAC has determined that the student is no longer enrolled in a teacher education program or other failure to comply with the terms of the agreement. Repayment will include the full amount of the loan funds received plus interest accrued from the date of disbursement and shall be based upon the nine percent (9%) per annum interest rate from the time of ~~the recipient's~~each disbursement. Repayment may be made in whole or monthly installments over a period of not more than ten (10) years from the date of failure to complete the plan of study. All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized. If a borrower issues a check, draft, warrant or electronic funds transfer, which is subsequently returned to TSAC for reason of insufficient funds, a stop payment order by the issuer, or other reason, the payment to which these funds was applied shall be reversed on the borrower's account and interest shall continue to accrue from the date of the last valid payment.

(d) Repayment of principal and interest will be prorated for partial service cancellation to reflect each full academic year taught. Such repayment shall begin upon demand by TSAC, or in the first month following termination of the creditable teaching service. Repayment of the non-canceled portion of the loan may be made in whole or in monthly installments over the remaining months of the ten~~-~~ (10) year repayment period. All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized. Minimum monthly payments of one hundred dollars ($100) will be required unless an exception as described in (45)(a) of this rule is granted.

(e) If a recipient should re-enter teaching at an eligible school after commencing monetary repayment, the repayments already made cannot be returned to the recipient. However, additional repayment balances that were not in arrears at the time of the reentry into teaching may be "forgiven" by subsequent teaching service.

(6) Repayment of principal may be deferred, but interest shall accrue, during any period while the recipient is enrolled as a full-time student in an accredited institution of higher learning, or other extenuating circumstances as determined by the Associate Executive Director for Grant and Scholarship Programs of ~~the~~ TSAC. To be eligible for deferment the recipient

(Rule 1640-01-13-.05, continued)

must request a deferment in writing and complete a TSAC-approved deferment form on a semi-annual basis.

(7) Deferments must be verified on a semi-annual basis and supporting documentation shall be provided to TSAC if requested. A student may be granted a deferment based on one or more of the following reasons:

(a) ~~"~~Enrollment not seeking a teaching certificate~~": in which T~~the student is still enrolled in an accredited institution, but is no longer seeking a teaching licensure, and shall not exceed three (3) years.

(b) ~~"~~Enrollment seeking a teaching certificate~~": in which T~~the student has not yet completed the requirements for a teaching licensure, ~~and~~ is still enrolled at least half-time at an accredited postsecondary institution, ~~and~~ is making satisfactory progress toward a teacher licensure, and shall not exceed four (4) years.

(c) ~~"~~Hardship~~": is Aa~~ period of time in which the ~~student~~ recipient is ~~not~~ unable to make payments due to financial, medical, or personal circumstances beyond the recipient's control, or other extenuating circumstances approved by the Associate Executive Director for Grant and Scholarship Programs. Such period of hardship ~~and~~ shall not exceed two (2) years.

(d) ~~"~~Military duty~~": in which aThe~~ student has been called into active duty and shall not exceed the time of deployment.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-706.* ***Administrative History:*** *Original rule filed July 14, 1989; effective October 29, 1989. Amendment filed July 17, 1991; effective October 29, 1991. Amendment filed October 20, 1997; effective February 27, 1998. Amendment filed September 17, 1998; effective January 28, 1999. Amendment filed June 30; effective October 28, 2000. Amendment filed July 26, 2000; effective November 28, 2000. Amendment filed August 29, 2000; effective December 29, 2000. Amendment filed August 6, 2002; effective December 27, 2002. Amendments filed February 3, 2005; effective June 28, 2005. Repeal and new rule filed December 6, 2007; effective April 29, 2008.*

1640-01-13-.06 COLLECTIONS.

(1) Due diligence requirements shall consist of the following:

(a) Provide the recipient with a signed copy of the promissory note.

(b) Notify the recipient of the repayment requirements during the grace period.

(c) Notify the recipient of repayment requirements during an approved period of deferment.

(d) Attempt to contact the recipient on no less than three separate occasions during the two hundred seventy (270) day period in which no payments are received, beginning with the thirtieth (30th) day of delinquency and subsequent contacts no less than ninety (90) days apart.

(2) TSAC's collection activity will begin when the recipient is no longer honoring the repayment obligation. TSAC will exercise due diligence to contact the student to resolve the delinquency.

(3) TSAC will consider a recipient to be delinquent if the recipient fails to make an installment

payment within thirty (30) days of the due date. Upon delinquency, TSAC will attempt to contact the recipient to give notice of the delinquency, inform the recipient of the consequences of default, and encourage the recipient to make payments as provided under the promissory note.

(4) TSAC will consider a recipient to be in default if the recipient fails make a payment for a period of two hundred seventy (270) consecutive days.

(5) Once the recipient is in default, TSAC may take one or more of the following actions:

(a) Assign the defaulted loan(s) to a collection agency.

1. Collection costs may be added to the defaulted loan at a rate not to exceed twenty (20%) of the original principal balance. Payments on the combined principal, interest, and collection costs shall not exceed an amount determined to be reasonable and affordable.

(b) Report to credit bureaus the default status of each loan.

(c) Make the student ineligible for state student aid programs.

(d) Submit an order of suspension, denial, or revocation to the appropriate licensing board for any Tennessee-issued professional license held by the recipient.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-706.* ***Administrative History:***

1640-01-13-.07 REPEALED.

Authority: *T.C.A. §49-4-204.* ***Administrative History:*** *Original rule filed July 14, 1989; effective October 29, 1989. Repeal of rule filed December 6, 2007; effective April 29, 2008.*

1640-01-13-.068 APPEALS PROCEDURES.

(1) TSAC shall provide written notice to a student of an adverse decision relative to a student's application for scholarship or scholarship award. A student who disagrees with such decision and wants the decision reviewed must request a review of the decision in writing. The student's request for review must be received by TSAC within ten (10) business days of the date of the written notice provided by TSAC. Such request shall include a statement of the reason or reasons for the request for review and all information supporting the student's position regarding the decision.

(2) Review of the TSAC decision shall be made by the TSAC Associate Executive Director for Grants and Scholarships Program, who shall issue a written decision to the student. A student who disagrees with such decision and wants the decision reviewed must request a further review of that decision in writing. The student's request for review must be received by TSAC within ten (10) business days of the date of the decision. Such request shall include a statement of the reason or reasons for request for review and all relevant supporting information.

(3) Review of the decision of the TSAC Associate Executive Director for Grants and Scholarships Programs shall be made by the TSAC Executive Director, who shall issue a written decision to the student. A student who disagrees with such decision and wants the decision reviewed must request a further review of that decision in writing. The student's request for review must be received by TSAC within ten (10) business days of the date of the decision. Such request shall include a statement of the reason or reasons for request

(Rule 1640-01-13-.068, continued)

for review and all relevant supporting information.

(4) Review of the decision of the TSAC Executive Director shall be made by the TSAC Appeals Committee, who shall issue a written decision to the student. The decision of the TSAC Appeals Committee is the final administrative remedy. There shall be no right to judicial review of a decision of the TSAC Appeals Committee.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-706.* ***Administrative History:*** *Original rule filed July 14, 1989; effective October 29, 1989. Repeal and new rule filed December 6, 2007; effective April 29, 2008.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam, by Mr. Mark Cate	X				
Dr. Richard Rhoda by Russ Deaton	X				
Dr. Claude Pressnell	X				
Mr. David H. Lillard, Jr., by Joy Harris	X				
Comptroller Justin P. Wilson, by Ms. Faye Weaver	X				
Commissioner Mark Emkes, by Greg Turner	X				
Commissioner Kevin Huffman, by Mr. Morgan Branch	X				
Chancellor John Morgan	X				
Dr. Joe Dipietro, by Dr. Keith Carver	X				
Betty Sue McGarvey	X				
Dr. J. Gary Adcox	X				
Mr. Lester McKenzie	X				
Mr. William Samuel Stuard, Jr.				X	
Mr. Will Pinkston	X				
Mr. Jeff Wilson	X				
LaSimba Gray	X				
Mr. John Alexander Peek	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TSAC Board of Directors on 03/15/2012, 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: 10.11.12

Signature: Richard G. Rhoda

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director

Subscribed and sworn to before me on: 10/11/12

Notary Public Signature: Constance A. Moore

My commission expires on: 1/7/2013

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

Robert E. Cooper, Jr.
Attorney General and Reporter

2-6-13
Date

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Filed with the Department of State on: 3/1/13

Effective on: 8/29/13

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Student Assistance Corporation (TSAC)
DIVISION:	Higher Education
SUBJECT:	Tennessee Teaching Scholars Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section
EFFECTIVE DATES:	August 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

The proposed rule acts to adopt changes to the Tennessee Teaching Scholars Program regulated by Chapter 1640- 01-17. These rules regulate a loan forgiveness program pursuant to Tennessee Code Annotated, § 49-4-212, that encourages exemplary students to enter the teaching field. Participation in this loan forgiveness program is limited to college juniors, seniors and post-baccalaureate students formally admitted to a teacher education program in Tennessee. The award carries a service obligation of one year of teaching service for each year an award was received. Awards are up to $4,500 per academic year.

The proposed changes to the rules include adding a section that will provide TSAC with a greater opportunity to collect payments from recipients who do not fulfill the required service obligation; specifying the specific number of days recipients must teach to receive loan forgiveness; defining the term "default" as used by the TSAC Loan Administration Division; providing a hardship deferment for recipients who are unable to make payments; and addressing various technical corrections and housekeeping matters.

Regulatory Flexibility Addendum

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

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Amendments

The Tennessee Student Assistance Corporation (TSAC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing to amend the current rules of Chapter 1640-01-17 Tennessee Teaching Scholars Program. It is the intent of TSAC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

The proposed changes to the rule include adding a section that will provide TSAC with a greater opportunity to collect payments from recipients who do not fulfill the required service obligation; providing the specific number of days recipients must teach to receive loan forgiveness; defining the term "default" as used by the TSAC Loan Administration Division; providing a hardship deferment for recipients who are unable to make payments; and to address various technical corrections and housekeeping matters.

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

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

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

   The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

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

   The proposed rules were drafted to facilitate administration of the program for all postsecondary education institutions.

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

   TSAC worked diligently with key postsecondary education institution personnel to ensure that proposed compliance and/or reporting requirements can be practically applied by institutions administering the program.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

   TSAC expects all education institutions engaged in the administration of the Tennessee Teaching Scholars Program to comply with all applicable rules.

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

   The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

   Independent postsecondary education institutions that employ fifty (50) or fewer full-time employees that have students in attendance receiving this grant program.

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

   There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

   The proposed rules were drafted to facilitate administration of the program for all postsecondary institutions and should have a positive effect on the independent postsecondary institutions employing fifty (50) or fewer full-time employees.

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

   As these proposed rules present no foreseeable cost to small businesses, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

   There will be no exemptions created by these proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments."

The rules for the Tennessee Teaching Scholars Program Chapter 1640-01-17, as amended, shall have no projected impact on local governments.

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Sequence Number: 03-03-13
Rule ID(s): 5386
File Date: 3/1/13
Effective Date: 8/29/13

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 Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy, Senior Associate Executive Director and Attorney
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
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Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1640-01-17	Tennessee Teaching Scholars Program
Rule Number	**Rule Title**
1640-01-17-.01	Introduction
1640-01-17-.02	General
1640-01-17-.03	Eligibility
1640-01-17-.04	Method of Selection
1640-01-17-.05	Loan Amount and Terms
1640-01-17-.06	Collections
1640-01-17-.07	Repealed
1640-01-17-.08	Appeals Procedures

RULES OF
TENNESSEE STUDENT ASSISTANCE CORPORATION

CHAPTER 1640-01-17
TENNESSEE TEACHING SCHOLARS PROGRAM

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1640-01-17-.01 INTRODUCTION.

(1) These rules implement the Tennessee Teaching Scholars Program (TTSP) authorized by the Tennessee Teaching Scholars Act, T.C.A. § 49-4-212, in Public Chapter 392 of the 1995 Public Acts (hereinafter referred to as the "Act"). The Act ~~provided~~ provides for a forgivable loan program for exemplary students who desire to enter the teaching force in Tennessee. Participation in the program is limited to college juniors, seniors, and post-baccalaureate candidates admitted to teacher education programs in Tennessee. Persons receiving program awards who become public school teachers in Tennessee shall receive forgiveness of the program award balance based on one (1) year's teaching service for each year an award was ~~made~~received.

(2) The Tennessee Student Assistance Corporation (TSAC) ~~is assigned to~~shall administer the program under the regulations and criteria developed jointly with the Tennessee State Board of Education ~~(SBE)~~ and the Tennessee Higher Education Commission (THEC). TSAC shall provide the Tennessee Department of Education (TDOE) with rosters of program participants completing teacher education programs including their areas of teaching endorsements. TDOE shall use these rosters for assisting in job placement and in considering waiver requests from local education agencies.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-212.* ***Administrative History:*** *Original rule filed February 7, 1996; effective June 28, 1996. Amendment filed February 3, 2005; effective June 28, 2005. Repeal and new rule filed December 6, 2007, effective April 29, 2008.*

1640-01-17-.02 GENERAL.

(1) Definitions. As used in these regulations (Chapter 1640-01-17):

(a) ~~"~~Academic year~~"~~: ~~is~~ A~~a~~ period of time, typically nine (9) months, and is composed of two (2) semesters.

(b) ~~"~~Act~~"~~: ~~is~~ T.C.A. § 49-4-212 as found in Public Chapter 392 of the Public Acts of 1995.

(c) Default: The failure of a recipient in repayment status to make installment payments for a period of two hundred seventy (270) consecutive days.

(~~c~~d) ~~"~~Deferment~~"~~: ~~is~~ A~~a~~ period of time in which the student's payments may be postponed, pursuant to Rule 1640-01-17-.05(7).

(~~d~~e) ~~"~~Eligible schools~~"~~: ~~in which recipients may teach for credit toward their loans are those~~Tennessee public schools approved by the Tennessee State Board of Education in which recipients may teach for cancellation credit towards their loans ~~for teaching~~ at ~~the~~ a prekindergarten, kindergarten, elementary, or secondary level in Tennessee.

(ef) "Full-time teaching": ~~will be determined on the basis that A~~ a minimum of fifty percent (50%) of the recipient's weekly workload is devoted to teaching, exclusive of administrative, teaching assistance, after-school programs, counseling, or other assigned duties.

(fg) "Full year of teaching service": ~~shall be T~~two (2) semesters of full-time teaching. Recipients must teach at least ninety (90) days each semester, or one hundred eighty (180) days for the academic year.

(gh) "Grace period": ~~is A~~ a period of one (1) year that shall begin on the date the student completes his or her plan of study, in which repayment is not required, ~~and~~ but interest shall accrue on the loan from the date of each disbursement.

~~(h) "Letter of Recommendation" is a letter provided by an official of a State-approved teacher education program to which the student has been admitted attesting to the student's commitment to teaching and potential for success as a teacher.~~

~~(i) "Minority" is a person who is: African American, a person having origins in any of the black racial groups of Africa; Hispanic, a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands; or Native American, a person having origins in any of the original peoples of North America.~~

(ji) "Plan of study": ~~is A~~ a plan of enrollment ~~not to exceed four (4) academic years (the equivalent of eight (8) semesters)~~ within which the applicant may complete requirements for licensure in an eligible field of study. The plan is transferable among Tennessee higher education institutions provided such transfer is approved by the receiving institution ~~and can be completed within the four-year time period calculated from the date of original award disbursement~~.

(j) Promissory Note: A signed statement certifying the candidate's intent to become a teacher in a public school system of Tennessee at the prekindergarten, kindergarten, elementary, or secondary level and their obligation to repay the loan should they fail to fulfill the teaching requirements.

(k) "Repayment period": ~~is A~~ a period of not more than ten (10) years in which the loan will be repaid and shall begin at the end of the grace period, or when TSAC determines that the recipient has not complied with the requirements of the Act.

(l) "Satisfactory progress": ~~is A~~ a standard of progress toward completion of the pursued plan of study during which the student maintains at least a 2.75 cumulative grade point average (GPA) on a 4.0 scale or, if required by the teacher education program at the institution attended, a higher cumulative GPA.

~~(m) "Statement of Intent" is a signed statement from a candidate certifying his or her intent to become a teacher in a public school system of Tennessee at the prekindergarten, kindergarten, elementary, or secondary level.~~

(m) TSAC: Tennessee Student Assistance Corporation.

(2) To be eligible for an award all undergraduate students must attend a Tennessee college or university on a full-time basis as determined by the institution's written policies, excluding periods of internship~~/~~ and/or student teaching. During such periods, undergraduate students must be enrolled at least half-time, but may be enrolled less than full-time if mandated by the

written policies of the educational institution. Post-baccalaureate ~~students~~ recipients must attend a Tennessee college or university on at least a half-time basis as determined by the institution's written policies.

(3) Funds received from this program are considered financial assistance for purposes of determining student ~~aid~~ assistance eligibility under programs authorized by Title IV of the Higher Education Act of 1965, as amended.

(4) All such loans shall be evidenced by notes payable to TSAC.

(5) Any applications received or approved shall be subject to the availability of funds.

(6) Applications must be submitted on TSAC-approved forms by April 15, which immediately precedes the academic year for which the student is applying. The April 15 cut-off date may be extended by the TSAC Associate Executive Director for Grant and Scholarship Programs should it be determined necessary for the purpose of utilizing all available funds.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-212.* ***Administrative History:*** *Original rule filed February 7, 1996; effective June 28, 1996. Amendment filed February 3, 2005; effective June 28, 2005. Repeal and new rule filed December 6, 2007, effective April 29, 2008.*

1640-01-17-.03 ELIGIBILITY.

(1) The successful applicant must meet all of the following criteria:

(a) Be a citizen of the United States.

(b) Be a resident of Tennessee as defined by regulations promulgated by the Tennessee Board of Regents.

(c) Be admitted to or enrolled in a State-approved teacher education program at an accredited institution of higher education in Tennessee.

(d) Not be a licensed teacher, and not be employed, or previously employed, in a teaching position.

(e) Submit to TSAC a signed ~~Statement of Intent~~Promissory Note to teach full-time ~~one year for each year an award is received~~ in a Tennessee public prekindergarten, kindergarten, elementary, or secondary school one (1) year for each year an award is received, or repay the loan should they fail to fulfill the teaching requirements.

(f) Submit to TSAC a ~~l~~letter of ~~R~~recommendation attesting to the student's commitment to teaching from an official of ~~a State-approved~~the teacher education program to which the student has been admitted.

(g) Not accept any financial aid that carries with it a conflicting service obligation. For the purposes of this program, participation in the Minority Teaching Fellows Program shall be considered as accepting aid that carries a conflicting service obligation.

(h) Submit a completed TSAC-approved application to TSAC by the established deadline ~~on a TSAC-approved application~~.

(i) Submit to TSAC copies of all official college transcripts and the most recent test scores.

(j) Agree to inform TSAC in writing when any ~~significant~~ change ~~in his or her status~~ occurs in name, address, or school enrollment, and provide supporting documentation ~~to support it. This shall include, but is not limited to changes in name, address, and enrollment.~~ After obtaining teacher licensure, the recipient shall continue to notify TSAC of any change in name or address, and~~shall also inform TSAC~~ when he or she has obtained a teaching position, changed teaching assignments, or terminated teaching service.

(k) ~~Shall N~~not owe a refund or repayment on any grant, and is not in default on any loan, received at any postsecondary institution, under the provisions of Title IV of the Higher Education Act of 1965, as amended.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-212.* ***Administrative History:*** *Original rule filed February 7, 1996; effective June 28, 1996. Repeal and new rule filed December 6, 2007, effective April 29, 2008.*

1640-01-17-.04 METHOD OF SELECTION.

(1) Each year that funds are available, preliminary ratings of applications will be made by the TSAC staff based upon ~~established~~ criteria and rankings established by the Selection Committee, composed of representatives of the ~~SBE~~State Board of Education, the TDOE, THEC, a member of the Tennessee Association of Student Financial Aid Administrators (TASFAA) from a postsecondary institution, and the Executive Director of TSAC or his or her designee. The Selection Committee will then review the top rated candidates to determine the final selections.

(2) The following priority groups have been established for this program:

(a) First priority shall be given to eligible renewal applicants who have maintained a cumulative GPA of at least 2.75 on a 4.0 scale, or higher if required by the teacher education program at the student's institution of higher education.

(b) Second priority shall be given to eligible non-teachers holding a bachelor's degree or higher who pledge to become teachers and who have at least a 2.75 cumulative GPA on a 4.0 scale for the highest degree attained, or a cumulative GPA of at least 2.75 on a 4.0 scale for graduate level studies, provided they have completed at least twelve (12) semester hours or the equivalent at the graduate level. A higher GPA may be required if mandated by the teacher education program at the student's institution of higher education.

(c) Third priority shall be given to eligible college juniors and seniors who possess a college cumulative GPA of at least 2.75, or higher if required by the teacher education program at the student's institution of higher education.

(3) Until all qualified applicants from the higher priority group(s) who have submitted their applications by the deadline have been offered the ~~loan~~award, no applicants from a lower group may be considered for selection.

~~(4) The ranking of applicants must consider grade point average, minority status, and teacher shortages in subject areas. It may also include standardized test scores, evidence of commitment (experiences that would indicate an interest in teaching), and other such factors that shall be identified as relevant to meeting the goals and interests of the Act.~~

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-212.* ***Administrative History:*** *Original rule filed February 7, 1996; effective June 28, 1996. Repeal and new rule filed December 6, 2007, effective April 29, 2008.*

1640-01-17-.05 LOAN AMOUNT AND TERMS.

(1) All loans shall be evidenced by promissory notes payable to TSAC. The maximum award available to any student shall be established by the Board of Directors of TSAC. If the recipient receives other educational assistance for the same period(s), the total assistance including this award is limited to the recipient's cost of attendance, as determined by the ~~college~~ institution's financial aid office.

(a) For less than full-time study (twelve (12) semester hours), for undergraduate students in their final semester the amount of the award for one (1) academic year shall be determined based upon the following per term class load:

1. 6-8 credit hours - 50% of the academic year amount.

2. 9-11 credit hours - 75% of the academic year amount.

(b) For graduate students attending less than full-time, as determined by the institution, the amount of the award for one (1) academic year shall be determined based upon the following per term class load:

1. half-time – 50% of the academic year amount.

2. greater than half-time, but less than full-time – 75% of the academic year amount.

(2) Funds will be sent by ~~warrant or~~ Automated Clearing House (ACH) ~~one (1) term at a time~~ to the ~~financial~~ institution's financial aid office or business office in the recipient's name and shall be disbursed on a semester pro-rata basis. ~~If the institution participates in ACH, the funds will be sent by direct deposit to the institution and T~~the institution will be directed to deliver the funds to the recipient. Prior to disbursing the ~~warrant or ACH~~funds to the student, the institution shall ensure that the recipient is enrolled in a teacher education program for the number of hours for which the ~~warrant or ACH~~funds are being ~~is~~ issued for the appropriate academic term, and is making satisfactory progress in accordance with the Act. If the recipient receives other educational assistance for the same period, the total assistance including this award is limited to the recipient's cost of attendance, as determined by the institution's financial aid office.

(3) The awards may be transferred from one eligible institution of higher education to another provided that a TSAC-approved transfer form is submitted to TSAC.

(4) Cancellation

(a) For each year of full-time teaching service at an eligible school, as defined in these regulations, the recipient shall receive cancellation credit of one (1) academic year's award (the equivalent of two (2) semesters) toward repayment of the loan. If a recipient teaches in an eligible school that is high priority or on warning status as designated by the Tennessee Department of Education or the ~~SBE~~State Board of Education, the recipient's obligation will be canceled at a rate of one and one third (1 1/3) of the total annual award.

(b) Fractions of a year may be credited in one (1) semester or one-half (1/2) year

increments toward cancellation for recipients who begin or end full-time teaching in the middle of an academic year in a Tennessee public school. At the end of such period, cancellation credit will be applied upon receipt of verification of the completion of such service.

(c) A grace period of one (1) year will be granted to allow the recipient the opportunity to secure employment to begin cancellation credit. When a recipient has obtained a full-time teaching position at an eligible school, some or all of the grace period may be waived at ~~his or her~~the recipient's written request.

(d) Recipients in teaching positions that qualify them for cancellation credit must notify TSAC of that teaching status. Individuals whom TSAC has determined to be in a full-time teaching position at an eligible school shall be granted a postponement on repayment to allow them the opportunity to complete a full year of teaching. At the end of such period, cancellation credit will be applied upon receipt of the verification of such service.

(e) The debt shall be canceled ~~in case of~~due to the death of the recipient upon documentation deemed acceptable by TSAC.

(f) If a recipient is determined to be totally and permanently disabled under the standards established by T.C.A., Title 8, Chapter 36, Part 5, for determining disability for members of the Tennessee Consolidated Retirement System, the outstanding debt shall be canceled. A recipient is not considered totally and permanently disabled on the basis of a condition that existed prior to his or her application unless the recipient's condition has substantially deteriorated since he or she submitted the application. If at any time subsequent to an initial determination of disability the recipient's condition improves to the point where a total and permanent disability no longer exists, TSAC may reinstate any outstanding debt previously canceled.

(5) Repayment

(a) The loan must be repaid should the recipient choose not to honor the terms and conditions of the loan agreement. Repayment will include the full amount of the loan funds received plus interest accrued from the date of each disbursement of the ~~loan~~award~~, and shall be based upon a nine percent (9%) per annum interest rate calculated from the date of original award~~. The interest accrued is determined by an interest rate of nine percent (9%) per annum. Repayment may be in whole or in monthly installments of at least one hundred dollars ($100) over a period of not more than ten (10) years from the end of the grace period. Payments of less than the amount required to amortize the loan within ten (10) years may be made only if the recipient documents to TSAC's satisfaction his or her inability to make payments of that amount. All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized.

(b) Repayment for recipients who complete the plan of study shall begin upon demand by TSAC, or in the first month following the end of the grace period. Interest shall begin to accrue on the date of each disbursement of the award(s).

(c) Repayment for recipients who fail to complete the funded plan of study shall begin upon demand by TSAC, or in the first month after TSAC has determined that the student is no longer enrolled in a teacher education program or other failure to comply with the terms of the agreement. Repayment will include the full amount of the loan funds received plus interest accrued from the date of disbursement and shall be based upon the nine percent (9%) per annum interest rate from the date of each

disbursement. Repayment may be made in whole or monthly installments over a period of not more than ten (10) years from the date of failure to complete the plan of study. All interest shall be based upon the unpaid balance of the loan. The accrued interest may be capitalized. ~~Interest shall begin to accrue on the date of disbursement.~~ If a borrower issues a check, draft, warrant or electronic funds transfer, which is subsequently returned to TSAC for reason of insufficient funds, a stop payment order by the issuer, or any other reason, the payment to which these funds was applied shall be reversed on the borrower's account and interest shall continue to accrue from the date of the last valid payment.

(d) Repayment of principal and interest will be prorated for partial service cancellation to reflect each full academic year~~to reflect the portion of the teaching obligation not completed~~. Such repayment shall begin upon demand by TSAC, or in the first month following termination of the creditable teaching service. Repayment of the non-canceled portion of the loan may be made in whole or in monthly installments over the remaining months of the ten (10) year repayment period. All interest shall be based upon the unpaid balance of the loan. The ~~A~~accrued interest may be capitalized. Minimum monthly payments of one hundred dollars ($100) will be required unless an exception as described in (5)(a) of this rule is granted.

(e) If a recipient should re-enter teaching at an eligible school after commencing monetary repayment, the repayments already made cannot be returned to the recipient. However, any additional repayment balances that were not in arrears at the time of the reentry into teaching may be canceled by subsequent teaching service.

(6) Repayment of principal may be deferred, but interest shall accrue, during any period while the recipient is enrolled at least half-time at an accredited institution of higher learning. The recipient may also be eligible for deferment during any period he or she is enrolled part time in a State-approved teacher education program at a Tennessee institution of higher education, and is making satisfactory progress toward teacher licensure in accordance with the institution's written policy, or in other extenuating circumstances as determined by the Associate Executive Director for Grant and Scholarship Programs of TSAC. To be eligible for deferment the recipient must request a deferment in writing and complete a TSAC-approved deferment form on a semi-annual basis.

(7) Deferments must be verified on a semi-annual basis and supporting documentation shall be provided to TSAC if requested. A student may be granted a deferment based on one or more of the following reasons:

(a) ~~"~~Enrollment not seeking a teaching certificate~~":~~ ~~in which T~~the student is still enrolled in an accredited institution but is no longer seeking a teaching licensure, and shall not exceed three (3) years.

(b) ~~"~~Enrollment seeking a teaching certificate~~":~~ ~~in which T~~the student has not yet completed the requirements for a teaching licensure, ~~and~~ is still enrolled at least half-time at an accredited postsecondary institution, ~~and~~ is making satisfactory progress toward a teacher licensure, and shall not exceed four (4) years.

(c) ~~"~~Hardship~~":~~ ~~is A~~a period of time in which the ~~student~~ recipient is ~~not~~ unable to make payments due to financial, medical, or personal circumstances beyond the recipient's control, or other extenuating circumstances approved by the Associate Executive Director for Grant and Scholarship Programs. Such period of hardship~~and~~ shall not exceed two (2) years.

(d) ~~"~~Military duty~~":~~ ~~in which a~~The student has been called into active duty and shall not exceed the time of deployment.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-212.* ***Administrative History:*** *Original rule filed February 7, 1996; effective June 28, 1996. Amendment filed June 30, 2000; effective October 28, 2000. Amendment filed August 6, 2002; effective December 27, 2002. Amendments filed February 3, 2005; effective June 28, 2005. Repeal and new rule filed December 6, 2007, effective April 29, 2008.*

1640-01-17-.06 COLLECTIONS.

(1) Due diligence requirements shall consist of the following:

(a) Provide the recipient with a signed copy of the promissory note.

(b) Notify the recipient of the repayment requirements during the grace period.

(c) Notify the recipient of repayment requirements during an approved period of deferment.

(d) Attempt to contact the recipient on no less than three separate occasions during the two hundred and seventy (270) day period in which no payments are received, beginning with the thirtieth (30th) day of delinquency and subsequent contacts no less than ninety (90) days apart.

(2) TSAC's collection activity will begin when the recipient is no longer honoring the repayment obligation. TSAC will exercise due diligence to contact the student to resolve the delinquency.

(3) TSAC will consider a recipient to be delinquent if the recipient fails to make an installment payment within thirty (30) days of the due date. Upon delinquency, TSAC will attempt to contact the recipient to give notice of the delinquency, inform the recipient of the consequences of default, and encourage the recipient to make payments as provided under the promissory note.

(4) TSAC will consider a recipient to be in default if the recipient fails make a payment for a period of two hundred seventy (270) consecutive days.

(5) Once the recipient is in default, TSAC may take one or more of the following actions:

(a) Assign the defaulted loan(s) to a collection agency.

1. Collection costs may be added to the defaulted loan at a rate not to exceed twenty (20%) of the original principal balance. Payments on the combined principal, interest, and collection costs shall not exceed an amount determined to be reasonable and affordable.

(b) Report to credit bureaus the default status of each loan.

(c) Make the student ineligible for state student aid programs.

(d) Submit an order of suspension, denial, or revocation to the appropriate licensing board for any Tennessee-issued professional license held by the recipient.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-212.* ***Administrative History:***

1640-01-17-.07 REPEALED.

Authority: T.C.A. §§ 49-4-201, 49-4-204, and 49-4-212. Administrative History: Original rule filed February 7, 1996; effective June 28, 1996. Repeal of rule filed December 6, 2007; effective April 29, 2008.

1640-01-17-.068 APPEALS PROCEDURE.

(1) TSAC shall provide written notice to a student of an adverse decision relative to a student's application for scholarship or scholarship award. A student who disagrees with such decision and wants the decision reviewed must request a review of the decision in writing. The student's request for review must be received by TSAC within ten (10) business days of the date of the written notice provided by TSAC. Such request shall include a statement of the reason or reasons for the request for review and all information supporting the student's position regarding the decision.

(2) Review of the TSAC decision shall be made by the TSAC Associate Executive Director for Grants and Scholarships Programs, who shall issue a written decision to the student. A student who disagrees with such decision and wants the decision reviewed must request a further review of that decision in writing. The student's request for review must be received by TSAC within ten (10) business days of the date of the decision. Such request shall include a statement of the reason or reasons for request for review and all relevant supporting information.

(3) Review of the decision of the TSAC Associate Executive Director for Grants and Scholarships Programs shall be made by the TSAC Executive Director, who shall issue a written decision to the student. A student who disagrees with such decision and wants the decision reviewed must request a further review of that decision in writing. The student's request for review must be received by TSAC within ten (10) business days of the date of the decision. Such request shall include a statement of the reason or reasons for request for review and all relevant supporting information.

(4) Review of the decision of the TSAC Executive Director shall be made by the TSAC Appeals Committee, who shall issue a written decision to the student. The decision of the TSAC Appeals Committee is the final administrative remedy. There shall be no right to judicial review of a decision of the TSAC Appeals Committee.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-212.* ***Administrative History:*** *Original rule filed February 7, 1996; effective June 28, 1996. Repeal and new rule filed December 6, 2007, effective April 29, 2008.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam, by Mr. Mark Cate	X				
Dr. Richard Rhoda by Russ Deaton	X				
Dr. Claude Pressnell	X				
Mr. David H. Lillard, Jr., by Joy Harris	X				
Comptroller Justin P. Wilson, by Ms. Faye Weaver	X				
Commissioner Mark Emkes, by Greg Turner	X				
Commissioner Kevin Huffman, by Mr. Morgan Branch	X				
Chancellor John Morgan	X				
Dr. Joe Dipietro, by Dr. Keith Carver	X				
Betty Sue McGarvey	X				
Dr. J. Gary Adcox	X				
Mr. John Brandt	X				
Mr. William Samuel Stuard, Jr.				X	
Mr. Will Pinkston	X				
Mr. Jeff Wilson	X				
LaSimba Gray	X				
Mr. John Alexander Peek	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TSAC Board of Directors on 03/15/2012, 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: 10.11.12

Signature: [signature]

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director

Subscribed and sworn to before me on: 10/11/2012

Notary Public Signature: Constance A. [illegible]

My commission expires on: 1/7/2013

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

[signature]
Robert E. Cooper, Jr.
Attorney General and Reporter

1-31-13
Date

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Filed with the Department of State on: 3/1/13

Effective on: 8/29/13

[signature]
Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Student Assistance Corporation (TSAC)
DIVISION:	Higher Education
SUBJECT:	Procedures Affecting Professional Licenses
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 49-4-204
EFFECTIVE DATES:	August 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

This proposed rule replaces an emergency rule on the same topic.

The proposed rule acts to adopt the Procedures Affecting Professional Licenses as Chapter 1640-01-23. These rules implement the process whereby professional licenses, certificates, and registrations authorized by the state of Tennessee may be subject to disciplinary action for default on a repayment or service obligation under any Federal Family Education Loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

As these rules are proposed as new rules there are no previous regulations effectuated by such rules.

Regulatory Flexibility Addendum

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

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Rules

The Tennessee Student Assistance Corporation (TSAC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing for the new rules Chapter 1640-01-23 Procedures Affecting Professional Licenses. It is the intent of TSAC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

The proposed rules implement the process whereby professional licenses, certificates, and registrations authorized by the state of Tennessee may be subject to disciplinary action for default on a repayment or service obligation under any Federal Family Education Loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

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

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

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

   The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

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

   The proposed rules were drafted to facilitate administration of the program for all Tennessee state licensing authorities.

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

   TSAC has met with and provided a copy of these rules to the Tennessee Board of Professional Responsibility, the Tennessee Bar Association, and the Tennessee State Board of Education. No comments or concerns regarding these rules or the schedules and deadlines for compliance and/or reporting requirements have been expressed by any of these entities.

5. Consolidation or simplification of compliance or reporting requirements:

The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting requirements.

6. Performance standards for small businesses:

   TSAC expects all Tennessee state licensing authorities engaged in the administration of the procedures affecting professional licenses to comply with all applicable rules.

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

   The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

   Not Applicable. These rules affect only those Tennessee entities responsible for the issuance of professional licenses.

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

   There are no significant reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

   Not Applicable. The proposed rules implement a program whereby Tennessee state licensing authorities will implement procedures affecting professional licenses.

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

   As these proposed rules present no foreseeable cost to small businesses, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

   There will be no exemptions created by these proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments."

The rules for the Procedures Affecting Professional Licenses Chapter 1640-01-23, as proposed, shall have no projected impact on local governments.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
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For Department of State Use Only

Sequence Number: 03-04-13
Rule ID(s): 5387
File Date: 3/1/13
Effective Date: 8/29/13

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 Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy, Senior Associate Executive Director and Attorney
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
___ Repeal

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

Chapter Number	**Chapter Title**
1640-01-23	Procedures Affecting Professional Licenses
Rule Number	**Rule Title**
1640-01-23-.01	Introduction
1640-01-23-.02	Definitions
1640-01-23-.03	Determination of Default
1640-01-23-.04	Notice Prior To Issuing an Order or Notice of Default
1640-01-23-.05	Hearings and Order or Notice of Default
1640-01-23-.06	Order to Terminate Suspension or Notice of Compliance
1640-01-23-.07	Subsequent Suspensions or Defaults

Chapter 1640-01-23
Procedures Affecting Professional Licenses

New

1640-01-23-.01 INTRODUCTION.

(1) These rules implement the process whereby professional licenses, certificates, and registrations authorized by the state of Tennessee may be subject to disciplinary action for default on a repayment or service obligation under any Federal Family Education Loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.02 DEFINITIONS.

(1) Borrower: An individual who owes a balance on a federal family education loan program loan, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

(2) Default: The failure of a borrower to make installment payments when due on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan program, provided that this failure persists for the most recent period of 270 consecutive days (for a loan repayable in monthly installments) or the most recent period of 330 consecutive days (for a loan repayable in less frequent installments).

Default may also occur if a borrower has failed to enter into a payment plan, fulfill a service obligation, or comply with a payment plan previously approved by TSAC.

(3) Delinquency: A period that begins on the first day following the due date of a payment when the borrower fails to make the equivalent of one full payment as established in the approved payment agreement.

(4) Discharge: The release of a borrower from all or a portion of the borrower's loan obligation due to school closure, death, total and permanent disability, false certification, or other conditions specified by court order.

(5) Due Date: The date that payment is due as established by the lender or TSAC.

(6) Eligible Payment: A fully negotiated voluntary payment made by the borrower, which may include administrative wage garnishment, but does not include U.S. or state of Tennessee Treasury offsets.

(7) FFELP: Federal Family Education Loan Program.

(8) License: A license, certification, registration, permit, approval or other similar document issued by the state of Tennessee to an individual evidencing admission to or granting authority to engage in a profession, trade, occupation, business, or industry.

(9) Licensee: An individual who holds a license, certification, registration, permit, approval or other similar document issued by a granting authority in the state of Tennessee to engage in a profession, trade, occupation, business, or industry.

(10) Licensing Authority: A department, division, board, commission, committee, agency or other state of Tennessee governmental entity that has been established by statute or regulation to oversee the issuance and regulation of any license.

(11) Notice of Compliance: A notice issued by TSAC to the Tennessee Supreme Court or the Tennessee State Board of Education that the borrower has paid the debt in full, entered into a payment plan, complied with a payment plan previously entered into and approved by TSAC, is otherwise in satisfactory compliance, or has entered into a service obligation.

(12) Notice of Default: A notice issued by TSAC to the Tennessee Supreme Court or the Tennessee State Board of Education advising that the borrower has been determined to be in default on a repayment or service obligation under any federal family education loan program, a student loan guaranteed or administered by TSAC, or any other state or federal educational loan or service-conditional scholarship program.

(13) Notice of Intent to File an Order of Default: A notice issued to the borrower by TSAC advising the borrower of its intent to file an order with the appropriate licensing authority to suspend, deny, or revoke the borrower's license unless certain conditions are met.

(14) Notice of Intent to issue a Notice of Default: A notice issued to the borrower by TSAC advising the borrower whose license is issued by the Tennessee Supreme Court or the Tennessee Board of Education of its intent to issue a notice with the appropriate licensing authority unless certain conditions are met.

(15) Order of Default: An order issued by TSAC to the appropriate licensing authority requesting to suspend, deny, or revoke the license of the licensee determined to be in default, and, further requesting the borrower to refrain from engaging in the activity for which a license has been issued.

(16) Order to Terminate Suspension: An order issued by TSAC to the appropriate licensing authority to terminate the suspension, denial, or revocation of a license upon TSAC's determination that the borrower has paid the debt in full, entered into a payment plan, complied with a payment plan previously entered into and approved by TSAC, is otherwise in satisfactory compliance, or has entered into a service obligation.

(17) Regularly: As it relates to requesting names of licensees from licensing authorities and generating lists of those in default or eligible for reinstatement, a frequency that both TSAC and each individual licensing authority agree upon but no less than annually.

(18) Satisfactory Payment Agreement: An arrangement between the borrower and TSAC which satisfies the borrower's payment obligation, which may include voluntary payments, administrative wage garnishment, deferment, or forbearance.

(19) Service-Conditional Scholarship Program: A state or federal loan forgiveness program that requires the recipient of an educational loan to sign a promissory note stipulating a service obligation in exchange for loan forgiveness.

(20) TSAC: Tennessee Student Assistance Corporation.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640 01 23 .03 DETERMINATION OF DEFAULT.

(1) TSAC shall regularly request a list of licenses from those licensing authorities authorized by the state of Tennessee to issue any license granting an individual authority to engage in a profession, trade, or occupation.

(2) TSAC shall request that the licensing authority submit the licensee information in a format acceptable to TSAC and contain, if collected by the licensing authority, the following information:

(a) Name, (Last, First, Middle Initial);

(b) A minimum of the last four digits of the Social Security Number, provided that the Social Security Number is not a public record and shall only be used by TSAC for purposes related to the administration of these rules;

(c) Address (Street, City, State, and ZIP-Plus4-Plus2);

(d) Date of Birth (MMDDYYYY);

(e) Professional License Number;

(f) Type of license held; and

(g) Licensing Authority.

(3) TSAC shall regularly generate a list of all defaulted borrowers to match against the list of licensees to determine those licensees that are in default.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.04 NOTICE PRIOR TO ISSUING AN ORDER OR NOTICE OF DEFAULT.

(1) Following a match against the list of licenses from a licensing authority, TSAC shall serve notice to the licensee, personally or by certified mail with return receipt requested. Service of process will be considered sufficient if the return receipt requested is refused or unclaimed as noted by the postal authority. The notice shall advise the borrower of TSAC's intent to file an Order of Default with the appropriate licensing authority ninety (90) days after service to suspend, deny or revoke the borrower's license unless the borrower:

(a) Pays the entire debt as stated in the notice;

(b) Enters into a payment plan or service obligation, or complies with a payment plan previously entered into and approved by TSAC;

(c) Requests and qualifies for deferment, forbearance, or other satisfactory compliance; or

(d) Requests a hearing before TSAC.

(2) The service and compliance requirements of this Rule 1640-01-23-.04 shall apply to those borrowers whose license has been issued by the Tennessee Supreme Court or the Tennessee State Board of Education, except that upon failure to comply with the requirements stated in the notice TSAC shall issue a Notice of Default to the appropriate licensing authority, advising only that the borrower is in default.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.05 HEARINGS AND ORDER OR NOTICE OF DEFAULT.

(1) Hearing requests by the borrower must be made in writing and received by TSAC within twenty (20) days of the date the initial notice of default or delinquency is served.

(2) Upon receipt of a request for a hearing from the borrower, TSAC shall schedule a hearing to determine whether determination of delinquency or default which could result in suspension, denial, or revocation of the license is appropriate. The borrower's license may not be suspended, denied, or revoked until a determination is reached following the hearing. The issues that may be determined in the hearing are:

(a) The amount of the debt, if any;

(b) Whether the borrower is delinquent or in default; or

(c) Whether the borrower:

1. Has entered into a payment plan or service obligation approved by TSAC;

2. Is willing to enter into a payment plan or service obligation approved by TSAC;

3. Is willing to comply with a payment plan or service obligation previously entered into and approved by TSAC or the guarantee agency; or

(d) Whether the debtor is eligible for deferment, forbearance, or other satisfactory compliance.

(3) If a borrower, without good cause, fails to respond to the notice of intent, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the borrower's defenses, objections, or request for a payment plan or compliance with a payment plan may be determined to be without merit; and TSAC shall enter a final decision and order, requesting suspension, denial, or revocation of the borrower's license, and further requesting the licensing authority to order the borrower to refrain from engaging in the activity for which a license has been issued.

(4) Paragraphs (1), (2), and (3) of this rule 1640-01-23-.05 shall apply to those borrowers licensed under the Tennessee Supreme Court or Tennessee State Board of Education, except TSAC shall enter a final determination and issue a Notice of Default to the appropriate licensing authority.

(5) TSAC shall send a copy of the Order or Notice of Default to the licensing authority and the borrower.

(6) The administrative hearings shall be conducted in accordance with the rules and regulations adopted under the Uniform Administrative Procedures.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.06 ORDER TO TERMINATE SUSPENSION OR NOTICE OF COMPLIANCE.

(1) Once the debt has been paid in full, a payment plan acceptable to TSAC has been entered into and a payment has been received by TSAC, or a service obligation is fulfilled, the borrower shall be eligible for reinstatement and TSAC shall issue an Order to Terminate Suspension to the appropriate licensing authority to terminate the suspension, denial, or revocation, restoring or reinstating the license that was previously suspended, revoked, or denied, except that

(a) TSAC shall issue a Notice of Compliance to the Tennessee Supreme Court or the Tennessee State Board of Education.

(2) TSAC shall send a copy of the Order to Terminate Suspension to the borrower notifying the borrower that the suspension, denial, or revocation has been rescinded and puts the borrower on notice for actions of subsequent defaults, except that

(a) TSAC shall send a copy of the Notice of Compliance to those borrowers whose license has been issued by the Tennessee Supreme Court or the Tennessee State Board of Education.

(3) TSAC shall regularly compile a list of all borrowers determined to be eligible for reinstatement.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

1640-01-23-.07 SUBSEQUENT SUSPENSIONS OR DEFAULTS.

(1) Following an initial reinstatement, should a licensee fail to comply with the agreed payment plan or service obligation, a subsequent Order of Default shall immediately be issued to the appropriate licensing authority requesting the suspension, revocation, or denial of the borrower's license, and further requesting the licensing authority to order the licensee to refrain from engaging in the activity for which a license has been issued, except that

(a) For those licensed by the Tennessee Supreme Court or the Tennessee State Board of Education who fail to comply with the agreed payment plan or service obligation, a subsequent Notice of Default shall immediately be issued to the Tennessee Supreme Court or the Tennessee State Board of Education.

(2) A second default or delinquency by the same borrower will result in the requirement of three (3) consecutive monthly payments before the borrower can be eligible for reinstatement. All subsequent defaults or delinquencies by the same borrower will result in the requirement of four (4) consecutive monthly payments before the borrower can be eligible for reinstatement, except that

(a) For those licensed by the Tennessee Supreme Court or the Tennessee State Board of Education who have a second Notice of Default issued to the Tennessee Supreme Court or the Tennessee State Board of Education, three (3) consecutive monthly payments shall be required before TSAC will issue a Notice of Compliance. Furthermore, all subsequent Notices of Default by the same borrower will result in the requirement of four (4) consecutive monthly payments before a Notice of Compliance will be issued.

(3) The borrower shall be notified in both the initial Order or Notice of Default and the payment agreement plan that all subsequent defaults or delinquencies will result in an immediate issuance of an Order or Notice of Default to the appropriate licensing authority.

Authority: T.C.A. §§ 49-4-203, 49-4-204, 56-1-312, 63-1-141, and 2012 Public Acts, Chapter 519.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam, by Mr. Mark Cate	X				
Dr. Richard Rhoda	X				
Dr. Claude Pressnell	X				
Mr. David H. Lillard, Jr., by Joy Harris	X				
Comptroller Justin P. Wilson, by Ms. Faye Weaver	X				
Commissioner Mark Emkes, by Greg Turner	X				
Commissioner Kevin Huffman, by Mr. Morgan Branch	X				
Chancellor John Morgan by David Gregory	X				
Dr. Joe Dipietro, by Dr. Keith Carver	X				
Gary Weedman	X				
Dr. J. Gary Adcox	X				
Mr. Jeff Gerkin	X				
Mr. William Samuel Stuard, Jr.	X				
Mr. Will Pinkston	X				
Mr. LaSimba Gray	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TSAC Board of Directors on 09/27/2012, 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: 10.11.12

Signature: Richard G Rhoda

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director

Subscribed and sworn to before me on: 10/11/12

Notary Public Signature: Constance A. Alexander

My commission expires on: 1/9/2013

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

RE Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

1-16-13

Date

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Filed with the Department of State on: 3/1/13

Effective on: 8/29/13

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Tennessee Student Assistance Corporation (TSAC)
DIVISION:	Higher Education
SUBJECT:	Tennessee Student Assistance Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section
EFFECTIVE DATES:	August 29, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

The proposed rule acts to adopt changes to the Tennessee Student Assistance Program Awards (TSAA) regulated by Chapter 1640-01-01. These rules regulate a state funded program pursuant to Tennessee Code Annotated, § 49-4-301, to provide educational grants to students with financial need for the purpose of attending a postsecondary institution in Tennessee.

The proposed changes to the rules include removing the deadline to transfer an award; requiring Tennessee residency as defined by the Tennessee Board of Regents; removing a requirement that each student have a statement on file with the institution that funds will be used for expenses related to attendance; and addressing various technical corrections and housekeeping matters providing consistency within the rule and with other rules of the Tennessee Student Assistance Corporation (TSAC).

Regulatory Flexibility Addendum

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

The agency shall consider without limitation, certain methods of reducing the impact of the proposed rule on small businesses while remaining consistent with health, safety and well-being and those methods are as follows: the extent to which the proposed rule or rules may overlap, duplicate, or conflict with other federal, state, and local governmental rules; clarity, conciseness, and lack of ambiguity in the proposed rule or rules; the establishment of flexible compliance and/or reporting requirements for small businesses; the establishment of friendly schedules or deadlines for compliance and/or reporting requirements for small businesses; the consolidation or simplification of compliance or reporting requirements for small businesses; the establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule; and the unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs.

Description of Proposed Amendments

The Tennessee Student Assistance Corporation (TSAC) intends to file the proposed rules pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing to amend the current rules of Chapter 1640-01-01 Tennessee Student Assistance Program Awards (TSAA). It is the intent of TSAC to promulgate these rules without a public rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days after the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

The proposed changes to the rules include removing the deadline to transfer an award; requiring Tennessee residency as defined by the Tennessee Board of Regents; removing a requirement that each student have a statement on file with the institution that funds will be used for expenses related to attendance; and addressing various technical corrections and housekeeping matters.

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

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

   The proposed rules will not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

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

   The proposed rules were patterned to ensure clarity and conciseness of the language of the rules and to eliminate possible ambiguity in the interpretation of the rules.

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

   The proposed rules were drafted to facilitate administration of the program for all postsecondary education institutions.

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

   TSAC worked diligently with key postsecondary education institution personnel to ensure that proposed compliance and/or reporting requirements can be practically applied by institutions administering the program

5. Consolidation or simplification of compliance or reporting requirements:

   The proposed rules were drafted to ensure solid, easily interpreted, compliance and reporting

requirements.

6. Performance standards for small businesses:

   TSAC expects all education institutions engaged in the administration of the Tennessee Student Assistance Program to comply with all applicable rules.

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

   The proposed rules do not contain any foreseeable inhibitors to small business entrepreneurial activities.

Furthermore, the statute requires that the agency, as part of the rulemaking process for any proposed rule that may have an impact on small businesses, shall prepare an economic impact statement as an addendum for each rule. The statement shall include the following: the type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rules; 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; a statement of the probable effect on impacted small businesses and consumers; a description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and/or objectives of the proposed rule that may exist, and to what extent, such alternative means might be less burdensome to small businesses; a comparison of the proposed rule with any federal or state counterparts; and analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule.

Economic Impact Statement

1. Types of small businesses directly affected:

   Independent postsecondary education institutions that employ fifty (50) or fewer full-time employees that have students in attendance receiving this grant program.

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

   There are no significant changes in reporting, recordkeeping, or other administrative costs that will result from the promulgation of these proposed rules.

3. Probable effect on small businesses:

   The proposed rules were drafted to facilitate administration of the program for all postsecondary institutions and should have a positive effect on the independent postsecondary institutions employing fifty (50) or fewer full-time employees.

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

   As these proposed rules present no foreseeable cost to small businesses, there is no alternative method to propose.

5. Comparison with federal and state counterparts:

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

6. Effect of possible exemption of small businesses:

   There will be no exemptions created by these proposed rules.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments."

The rules for the Tennessee Student Assistance Program Chapter 1640-01-01, as amended, shall have no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 03-06-13
Rule ID(s): 5389
File Date: 3/1/13
Effective Date: 8/29/13

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 Student Assistance Corporation
Division:	Higher Education
Contact Person:	Peter Abernathy, Senior Associate Executive Director and Attorney
Address:	Suite 1510, Parkway Towers, 404 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615.532.6065
Email:	Peter.Abernathy@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1640-01-01	Tennessee Student Assistance Program
Rule Number	**Rule Title**
1640-01-01-.01	Definitions
1640-01-01-.02	Student Eligibility-Award Use
1640-01-01-.03	Financial Need
1640-01-01-.04	Reports and Record Access
1640-01-01-.05	Standards for Institutional Reviews and Error Resolution

RULES
OF
TENNESSEE STUDENT ASSISTANCE CORPORATION
CHAPTER 1640-01-01
TENNESSEE STUDENT ASSISTANCE PROGRAM

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1640-01-01-.02	Student Eligibility-Award Use	1640-01-01-.05	Standards for Institutional Review and Error Resolution
1640-01-01-.03	Financial Need		

1640-01-01-.01 DEFINITIONS.

(1) Academic Term: A semester, trimester, quarter, or 300 clock hours of training.

(2) Academic Year: A period of time, typically eight or nine months, in which a full-time student is expected to complete the equivalent of two semesters, two trimesters, or three quarters at an eligible postsecondary institution using credit hours, or at least 900 clock hours of training for a program using clock hours. A clock hour is a 50 to 60 minute class, lecture, recitation, or a faculty supervised laboratory, shop training, or internship.

(3) Application: The Free Application for Federal Student Aid (FAFSA).

(4) Contribution Index: The Expected Family Contribution (EFC), which is a measure of parental and/or student ability to contribute toward payment of educational expenses.

~~(5) Corporation: The Tennessee Student Assistance Corporation (TSAC).~~

(~~6~~5) Eligible Postsecondary Institution: Those institutions which are entitled to enroll student assistance award recipients as provided in T.C.A. § 49-4-301.

(~~7~~6) Financially Independent Student: A person who meets the conditions established by the U.S. Department of Education as used in the administration of student assistance programs authorized by the Higher Education Act of 1965, as amended.

(~~8~~7) Incarcerated: Currently confined to a local, state, or federal correctional institution, which would include work release or educational release facilities.

(~~9~~8) Institution of Higher Education: A public or non-profit educational institution in Tennessee ~~which~~that:

(a) A~~a~~dmits as regular students only persons who have a high school diploma, the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in Tennessee and who have the ability to benefit from the training offered;

(b) I~~i~~s legally authorized to provide an educational program beyond secondary education in Tennessee; and

(c) P~~p~~rovides an educational program for which it awards an associate or baccalaureate degree, or provides at least a two-year program which is acceptable for full credit toward a baccalaureate degree, or provides at least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation.

(Rule 1640-01-01-.01, continued)

The term "educational institution" as used in this definition shall be construed to include a hospital school of nursing which offers a diploma nursing program accredited by the National School of Nursing. Provided, however, that any postsecondary educational institution which is accredited by the Southern Association of Colleges and Schools, the Accrediting Council for Independent Colleges and Schools, or by the Council on Occupational Education or by the Accrediting Commission of Career Schools and Colleges of Technology and which meets standards specified in (a), (b), and (c) shall be deemed to be an institution of higher education, ~~provided, it~~and has been authorized to operate by the Tennessee Higher Education Commission (THEC) pursuant to the Postsecondary Education Authorization Act of 1974.

(~~10~~9) Nonprofit Institution of Higher Education: An institution of higher education owned and operated by one or more nonprofit corporations or associations whose net earnings do not benefit, and cannot lawfully benefit any private shareholder or entity.

(1~~1~~0) Pell Grant Program: The program of federal student assistance authorized by Part A, Title IV, Higher Education Act of 1965, as amended.

(11) TSAC: Tennessee Student Assistance Corporation (TSAC).

(12) Undergraduate student: Those persons enrolled in an eligible postsecondary institution as defined in T.C.A. § 49-4-301 and who have not received a baccalaureate degree.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-301.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Repeal and new rule filed July 6, 1976; effective August 5, 1976. Amendment filed October31, 1980; effective January 28, 1981. Amendment filed July 30, 1982; effective October 13, 1982. Amendment filed October 20, 1982; effective January 14, 1983. Amendment filed October 21, 1987; effective January 27, 1988.Amendment filed February 9, 1990; effective May 29, 1990. Amendment filed July 12, 1990; effective October 29, 1990. Amendment filed March 5, 1992; effective June 29, 1992. Amendment filed September 3, 1992; effective December 29, 1992. Amendment filed April 28, 1993; effective July 28, 1993. Amendment filed May 27, 1999; effective September 28, 1999. Amendment filed June 30, 2000; effective October 28, 2000.*

1640-01-01-.02 STUDENT ELIGIBILITY-AWARD USE.

(1) A person shall be eligible for a student assistance award upon submission of an application and when TSAC determines:

(a) ~~He or she~~The applicant is a resident of Tennessee, as defined by regulations promulgated by the Tennessee Board of Regents.

(b) ~~He or she~~The applicant has financial need.

(c) ~~He or she~~The applicant is enrolled or intends to enroll in an eligible postsecondary institution as an undergraduate student on at least a half-time basis as established by federal financial aid minima.

(d) ~~He or she~~The applicant has applied for a Federal Pell Grant under Title IV-A-1 of the Higher Education Act of 1965, as amended, and has been assigned an Expected Family Contribution (EFC) by the U.S. Department of Education or its contractor, and has that EFC on file at the postsecondary institution to be attended.

(e) If previously enrolled in the eligible postsecondary institution, that ~~he or she~~the applicant remains in good standing and is making satisfactory progress according to the standards and practices of the institution.

(Rule 1640-01-01-.02, continued)

(f) ~~He or she~~The applicant does not owe a refund or repayment on any grant, and is not in default on any loan, received at any institution under provisions of Title IV of the Higher Education Act of 1965, as amended.

(g) ~~He or she~~ The applicant is not incarcerated as defined in rule 1640-01-01-.01(0~~8~~7).

(2) Award recipients must use student assistance awards for educationally related expenses. A recipient to whom credit has been extended during the enrollment process should give first priority to the liquidation of that obligation before using the proceeds of the awards to defray other educational expenses. All state financial aid granted to students shall be first applied to tuition and fees, room and board, and the excess, if any, shall be distributed to the recipient according to Title IV of the Higher Education Act of 1965, as amended.

(3) Enrolled award recipients who withdraw prior to or after certification of enrollment, but prior to the completion of the term will have a portion of the award paid in accordance with the institution's published refund policies.

(4) Award recipients who desire to transfer their student assistance award from one eligible postsecondary institution to another must make a request in writing to TSAC or transmit the information by updating their FAFSA. ~~If funds are available, requests for transfers will be approved if received by TSAC on or before September 1 for the Fall Quarter or Fall Semester, on or before December 1 for the Winter Quarter or Spring Semester, and on or before March 1 for the Spring Quarter. The Executive Director may extend the deadline if written verification of late enrollment acceptance or unusual circumstances is received from the postsecondary institution.~~

(5) Award recipients may receive awards to a maximum for:

(a) ~~A~~a four-year program, up to 8 semesters or 12 quarters;

(b) ~~A~~a three-year program, up to 6 semesters or 9 quarters;

(c) ~~A~~a two-year program, up to 4 semesters or 6 quarters;

(d) ~~A~~a one-year program, up to 2 semesters or 3 quarters; and

(e) ~~A~~a six-month program, up to 1 semester or 2 quarters or until completion of the program of study, whichever comes first, assuming all other eligibility requirements are met.

Authority: *T.C.A. §§ 49-4-201, 49-4-203, 49-4-204, 49-4-209, 49-4-301, and 49-4-302.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Repeal and new rule filed July 6, 1976; effective August 5, 1976. Amendment filed January 9, 1979; effective February 23, 1979. Amendment filed October 31, 1980; effective January 28, 1981. Amendment filed July 30, 1982; effective October 13, 1982. Amendment filed July 10, 1984; effective October 14, 1984. Amendment filed September 3, 1985; effective December 14, 1985. Amendment filed April 10, 1986; effective July 14, 1986. Amendment filed December 5, 1986; effective March 31, 1987. Amendment filed January 20, 1987; effective April 29, 1987. Amendment filed October 21, 1987; effective January 27, 1988.Amendment filed February 9, 1990; effective May 29, 1990. Amendment filed May 7, 1991; effective August 28 1991. Amendment filed September 3, 1992; effective December 29, 1992. Amendment filed April 28, 1993; effective July 28, 1993. Amendment filed October 26, 1993; effective March 1, 1994. Amendment filed May 27, 1999; effective September 28, 1999. Amendment filed August 28, 2002; effective December 27, 2002.*

1640-01-01-.03 FINANCIAL NEED.

(Rule 1640-01-01-.03, continued)

(1) The parents' or students' ability to contribute to educational expenses shall be measured using the same guidelines as those used in determining eligibility for assistance under the Federal Pell Grant Program, as those guidelines may ~~from time to time~~ be changed or amended.

(2) The maximum award paid each year shall be based on available funds and shall be determined by the TSAC Board of Directors. TSAC shall develop and publish the payment table annually.

(3) ~~Should anticipated funding be insufficient to serve the expected number of eligible applicants,~~ TSAC will establish a maximum contribution index level based on anticipated appropriations. Students with a contribution index equal to or less than the maximum amount will receive award commitments on a first-come, first-serv~~ic~~ed basis until appropriated funds are exhausted.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-301.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Repeal and new rule filed July 6, 1976; effective August 5, 1976. Amendment filed January9, 1979; effective February 23, 1979. Amendment filed December 27, 1979; effective March 30, 1980. Amendment filed October 31, 1980; effective January 28, 1981. Amendment filed November 30, 1981; effective March 1, 1982.Amendment filed October 20, 1982; effective January 14, 1983. Amendment filed July 10, 1984; effective October14, 1984. Amendment filed May 7, 1991; effective August 28, 1991.*

1640-01-01-.04 REPORTS AND RECORD ACCESS.

(1) Postsecondary institutions enrolling student assistance award recipients shall ~~report~~ certify and ~~certify~~ report the following information to TSAC before payments of assistance are made:

(a) ~~Whether or not~~That the student is or was enrolled for the appropriate academic term for half-time, three-fourths, or full-time enrollment.

(b) ~~Whether or not~~That the student is in good standing and making satisfactory progress according to the standards and practices of the institution, under provisions of Title IV of the Higher Education Act of 1965, as amended.

(c) ~~Whether or not~~That the student does not ow~~es~~ a refund on any grant or is not in default on any loan received at any institution under provisions of Title IV of the Higher Education Act of 1965, as amended.

(d) The ~~S~~student's current Expected Family Contribution.

(e) ~~Whether or not~~That the student's total resources which when combined with payments by TSAC will not result in the student receiving funds in excess of his or her cost of education as determined by criteria employed by the institution in administration of other programs of student financial assistance authorized by Title IV of the Higher Education Act of 1965, as amended.

~~(f) That the student has on file with the institution, a statement that the money attributable to the grant or other Title IV programs will be used solely for expenses related to attendance or continued attendance at the institution.~~

(~~g~~f) That the student has on file with the institution a Statement of Registration Compliance for periods of instruction beginning on or after July 1, 1983 certifying that he or she is registered with Selective Service or that he or she is not required to be registered.

(Rule 1640-01-01-.04, continued)

(~~h~~g) That the student has on file with the institution a statement for the periods of instruction beginning on or after July 1, 1989 certifying that he or she is in compliance with the Anti-Drug Abuse Act.

(2) Postsecondary institutions enrolling student assistance award recipients shall furnish such reports as may be required by TSAC concerning the recipients and shall, during regular office hours, make institutional records available to TSAC concerning the recipients and shall, during regular office hours, make institutional records available to TSAC staff for the purpose of validating any information which affects the recipients' eligibility or the amount of assistance they would receive.

(3) The confidential relationship of the student shall not be violated. Student files shall be utilized only by the TSAC staff. Confidential information will not be released without written approval from the applicant ~~and/or parents~~. Statistical data may be released provided such reports do not identify individuals. Outside research projects may utilize reported statistical information, other requests will require approval by the TSAC B~~b~~oard of D~~d~~irectors; and should such requests require special computer programming, care shall be taken to protect the student's confidentiality and any expense generated by special requests shall be paid by the outside research project, provided~~,~~; however, student records shall be accessible to the Comptroller of the Treasury for audit purposes.

(4) Persons applying for awards of student assistance shall be required to furnish to TSAC or the postsecondary institution such data as is necessary to validate the information on their application. An applicant's social security number shall be furnished in all cases and is required for identity of the applicant and as an account number in order to record necessary data accurately.

(5) A student assistance award recipient who is discovered to have willingly provided false reports or information to TSAC or the postsecondary institution shall, upon evidence, have the award revoked and shall not thereafter be entitled to further payment of benefits.

Authority: *T.C.A. §§ 49-4-201, 49-4-204, and 49-4-301.* ***Administrative History:*** *Original rule filed January 23, 1976; effective April 15, 1976. Repealed and refiled July 6, 1976; effective August 5, 1976. Amendment filed January 9,1979; effective February 23, 1979. Amendment filed October 31, 1980; effective January 28, 1981. Amendment filed October 20, 1982; effective January 14, 1983. Amendment filed February 9, 1984; effective May 15, 1984.Amendment filed July 10, 1984; effective October 14, 1984. Amendment filed September 3, 1985; effective December 14, 1985. Amendment filed April 10, 1986; effective July 14, 1986. Amendment filed August 25, 1986; effective November 29, 1986. Amendment filed February 9, 1990; effective May 29, 1990. Amendment filed April28, 1993; effective July 28, 1993.*

1640-01-01-.05 STANDARDS FOR INSTITUTIONAL REVIEWS AND ERROR RESOLUTION.

(1) TSAC shall conduct periodic program reviews to evaluate the general operation of the financial aid office relative to the institution's management of the Tennessee Student Assistance Award Program:

(a) The Chief Executive Officer of the institution typically will be notified of the visit two to three weeks in advance; the exact date for the visit usually will be scheduled with the Director of Financial Aid. Extenuating circumstances such as a request from the U.S. Department of Education or the school's regulatory board may preclude TSAC from scheduling the review in advance.

(b) At the conclusion of the visit, the reviewer shall meet with the Chief Executive Officer, or his or her representative(s), and the Director of Financial Aid to discuss the

preliminary findings and recommendations resulting from the visit.

(c) Following the exit interview, a preliminary report shall be sent to the Chief Executive Officer of the institution requesting a response within thirty (30) days. One extension of up to thirty (30) days may be requested in writing by the institution.

(d) The final report of findings incorporating the institution's response shall be transmitted to the institution's Chief Executive Officer within thirty (30) days of receipt of the institution's response or within thirty (30) days of the date the response should have been received. The final report shall, when necessary, request restitution and/or corrective action.

(2) TSAC shall resolve disputes related to the final report of an institution's Program Review as noted below:

(a) The institution shall be allowed an additional thirty (30) day period to request a hearing and/or to provide additional documentation for review by ~~the~~ TSAC's Executive Director.

1. If the Executive Director's review of the additional documentation does not resolve the dispute, the institution may request a hearing within thirty (30) days of the Executive Director's decision.

2. If a hearing is requested, such hearing shall be requested in writing and sent to the Executive Director. The hearing shall be conducted in accordance with Chapter 1360-04-01, Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies, Rules of Secretary of State, by the Tennessee Student Assistance Corporation Appeals Committee. Such Appeals Committee, composed of five (5) members of the Tennessee Student Assistance Corporation Board of Directors, appointed annually by the Chairman, shall within a reasonable period of time, set a date for the hearing. The Appeals Committee shall, in consultation with U.S. Department of Education officials, when necessary, render a decision within thirty (30) days of the hearing.

(b) Final resolution, which may include financial restitution and/or a plan for corrective action to prevent recurrence, must be made within thirty (30) days of the Appeals Committee's decision.

(c) Should the institution fail to respond within forty-five (45) days of the final report or to take corrective action or to make restitution within thirty (30) days after the decision from the Appeals Committee hearing, TSAC shall begin proceedings to suspend the institution from participation in TSAC programs for sixty (60) days. This suspension will be effective twenty (20) days from receipt by the school of TSAC's notification of suspension. Notification of suspension, along with copies of all findings and responses, will be sent to the U.S. Department of Education.

(d) Should the school fail to take corrective action or to make restitution within forty-five (45) days of the suspension, TSAC shall terminate the institution by informing the institution that within twenty (20) days from receipt of notification, the institution is terminated from all TSAC programs.

(e) If an institution is suspended or terminated during a term, all enrolled students attending that institution who received Tennessee Student Assistance Award Program award letters or on whose behalf TSAC endorsed an educational loan before the effective date of the suspension or termination will be paid:

(Rule 1640-01-01-.05, continued)

(1) Ffor that term, as in the case of a grant, or

(2) Ffor "the period of the loan," as in the case of an educational loan.

(f) Reinstatement of eligibility may be requested of the Tennessee Student Assistance Corporation Board after a period of one (1) year after date of termination, but only if the institution is eligible for other Title IV programs.

Authority: *T.C.A. §§ 49-4-201 and 49-4-204.* ***Administrative History:*** *Original rule filed July 10, 1984; effective October 14,1984. Amendment filed February 9, 1990; effective May 29, 1990. Amendment filed September 3, 1992; effective December 29, 1992.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Governor Haslam, by Mr. Mark Cate	X				
Dr. Richard Rhoda by Russ Deaton	X				
Dr. Claude Pressnell	X				
Mr. David H. Lillard, Jr., by Joy Harris	X				
Comptroller Justin P. Wilson, by Ms. Faye Weaver	X				
Commissioner Mark Emkes, by Greg Turner	X				
Commissioner Kevin Huffman, by Mr. Morgan Branch	X				
Chancellor John Morgan	X				
Dr. Joe Dipietro, by Dr. Keith Carver	X				
Betty Sue McGarvey	X				
Dr. J. Gary Adcox	X				
Mr. Lester McKenzie	X				
Mr. William Samuel Stuard, Jr.				X	
Mr. Will Pinkston	X				
Mr. Jeff Wilson	X				
LaSimba Gray	X				
Mr. John Alexander Peek	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the TSAC Board of Directors on 03/15/2012, 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: 10.11.12

Signature: [signature]

Name of Officer: Richard G. Rhoda

Title of Officer: Executive Director

Subscribed and sworn to before me on: 10/11/12

Notary Public Signature: [signature]

My commission expires on: 1/7/2013

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

[signature]

Robert E. Cooper, Jr.
Attorney General and Reporter

1-31-13

Date

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Filed with the Department of State on: 3/1/13

Effective on: 8/29/13

[signature]

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Water Resources
SUBJECT:	Coal
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 59-8-201 et seq.
EFFECTIVE DATES:	June 13, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rulemaking re-numbers and updates outdated regulatory language. This rulemaking makes no substantive changes to existing rules.

Public Hearing Comments

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

There were no comments received during the public comment period.

Regulatory Flexibility Addendum

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

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

No small businesses are anticipated to be affected by this rule. At present, all coal mining operations require a permit from the federal Office of Surface Mining.

(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 additional costs identified. There were no substantive changes to the rules. The Department is re-numbering and updating outdated language in these rules.

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

There will be no effect on small businesses and consumers.

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

There are no additional costs identified. There were no substantive changes to the rules. The Department is re-numbering and updating outdated language in these rules.

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

There is no direct comparison to this re-numbering and updating rulemaking.

(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.

An exemption for small businesses is not possible for this type of rulemaking.

Impact on Local Governments

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

The Department does not anticipate an impact on local governments.

Department of State
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Nashville, TN 37243
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For Department of State Use Only

Sequence Number: 03-11-13
Rule ID(s): 5391-5392
File Date: 3/15/13
Effective Date: 6/13/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conversation
Division:	Water Resources
Contact Person:	Bruce Ragon
Address:	Knoxville Environmental Field Office 3711 Middlebrook Pike Knoxville, Tennessee
Zip:	37921-6538
Phone:	(865) 594-5547
Email:	Bruce.Ragon@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X Repeal

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

Chapter Number	**Chapter Title**
0400-03-07	Coal
Rule Number	**Rule Title**
0400-03-07-.01	Introduction
0400-03-07-.02	Access Roads
0400-03-07-.03	Backfilling and Grading
0400-03-07-.04	Vegetation

Chapter Number	**Chapter Title**
0400-42-07	Coal
Rule Number	**Rule Title**
0400-42-07-.01	Introduction
0400-42-07-.02	Access Roads
0400-42-07-.03	Backfilling and Grading
0400-42-07-.04	Vegetation

(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)

Repeal

Chapter 0400-03-07 Coal is repealed.

Authority: T.C.A. §§ 59-8-401 et seq. and 4-5-201 et seq.

New Rules

0400-42-07
Coal

Table of Contents

0400-42-07-.01 Introduction
0400-42-07-.02 Access Roads
0400-42-07-.03 Backfilling and Grading
0400-42-07-.04 Vegetation

~~0400-3-7-.01~~ 0400-42-07-.01 Introduction

In addition to fulfilling all the requirements of ~~Sections 58-1540-58-1564,~~ T.C.A. §§ 59-8-201 through 59-8-226 and all requirements in Chapters ~~0400-3-1-0400-3-6~~ 0400-42-01 through 0400-42-06, the following special provisions contained in ~~Chapter 0400-3-7~~ this Chapter are to be adhered to by all operators of surface coal mines.

Authority: T.C.A. §§ 59-8-401 et seq. and 4-5-201 et seq.

~~0400-3-7-.02~~ 0400-42-07-.02 Access Roads

(1) Definition

"Haulageway or access road" shall mean any road constructed, improved or used by the operator (except public roads) which ends at the pit or bench and which is located within the permitted area. A bench may serve as a haulageway, but a haulageway cannot serve as a bench.

(2) Location

(a) The location of the proposed haulageway shall be identified on the site by visible markings at the time the reclamation and mining plan is pre-inspected and prior to commencement of construction.

(b) No road shall be constructed in a stream or drainage channel proper or so close to its bank that material will spill into the channel during construction, use, or maintenance.

(3) Grading

(a) Maximum Grades -- New access roads shall be located and constructed so that:

1. No sustained grade shall exceed 10%.

2. The maximum grade shall not exceed 15% for 300 feet.

3. There shall not be more than 300 feet of maximum grade for each 1,000 feet of road constructed.

4. The surface shall be insloped toward the ditch line at the minimum rate of ½ inch per foot of surface width.

5. The grade on switchback curves must be reduced to less than the approach grade and shall not be greater than 10%.

6. The grade on temporary roads on or between benches, which will be destroyed within three (3) months by the mining or reclamation process shall not exceed 20%.

(b) Cut Slopes -- Cut slopes shall not be more than 45 degrees, or 1.0 horizontal to 1.0 vertical, except in stable rock.

(4) Drainage

(a) Stream or Drainage Crossings

Drainage structures shall be required in order to cross a stream or drainage channel. They shall be such so as not to affect the normal flow of the stream. Consideration will be given to the time of year the stream is crossed and the length of time the stream channel is used, but in no event, and under no condition, will the normal flow of the stream be affected or the sediment load of the stream be significantly increased during construction and/or use.

(b) Ditches

A ditch shall be provided on both sides of a through-cut and on the inside shoulder of a cut-fill section, with ditch relief cross-drains being spaced according to grade. Water shall be intercepted before reaching a switchback or large fill and led off. Water on a fill or switchback shall be released below, not over, the fill.

(c) Culverts

Ditch relief culverts shall be installed as needed to insure adequate drainage as determined by the Commissioner.

1. The suggested spacing of culverts is as follows:

Road Grade in Percent	Spacing of Culverts in Feet	
2-5	300	800
6-10	200	300
11-15	100	200

In determining culvert spacing, consideration shall be given to the area drained, and its slope, shape, cover and runoff characteristics.

2. The inlet end shall be protected by a headwall of suitable material and the outlet end shall have an apron of suitable material provided for the outflow to spill on. No water shall be allowed to flow across loose spoil. Ditches in these areas shall be lined with rock.

3. The culvert shall be covered by compact fill to a depth of one foot or half the culvert diameter, whichever is greater.

4. Culvert openings installed on access roads should not be less than one hundred (100) square inches in area, but, in any event, all culvert openings shall be adequate to carry normal runoff and shall receive necessary maintenance to function properly at all times.

(d) Removal of Drainage Structures

No bridges, culverts, stream crossings, etc., necessary to provide access to the operation, may be removed until reclamation is completed and approved by the Commissioner. The same precautions as to water quality are to be taken during removal of drainage structures as those taken during construction and use.

(5) Construction and Maintenance

(a) Surfacing

Access roads must be surfaced with an approved, non-erodible material, but shall not be surfaced with coal refuse or any acid-producing or toxic material. Approved materials include crushed stone, ~~gavel~~ gravel, "red dog," crushed slag, and chert.

(b) Seeding of Slopes

All ~~f~~ fill and cut slopes which will be left after mining shall be seeded immediately after the construction of the road in order to control erosion in accordance with ~~Rule 0400-3-7-.04(4)~~ paragraph (4) of Rule 0400-42-07-.04.

(c) Surface Drainage

No berm produced during construction, grading, or maintenance of the road shall be left on the ditch side.

(6) Abandonment of Access Road

(a) When an access road is to be abandoned and shall no longer be used as a road by the operator, the landowners, or the State or National Forest Services, vegetative cover and surface drainage to minimize erosion shall be provided. Regardless of the future use of the road, adequate surface drainage shall be provided. "Abandoned" means that the operator has ceased to use the road and has not turned the road over to another party for his use. When the road is abandoned and proper vegetative cover is provided, the bond on the road shall be released. If the road is not to be abandoned, but turned over to another party for his use, and adequate surface drainage and surfacing have been provided, the bond on the road shall be released.

(b) When the access road is to be abandoned, culverts shall be removed and replaced by water bars of the earth or rock type, open-top log culverts, or similar structures. They shall be installed according to the following table of maximum spacings:

Grade (Percent)	Maximum Spacing (Feet)
2	250
5	135
10	80
15	60

(7) Special Circumstances

Should the Division determine that modifications to this Chapter are necessary because of topography or particular watershed situations, the Commissioner may, in his discretion, make such modifications.

Authority: T.C.A. §§ 59-8-401 et seq. and 4-5-201 et seq.

~~0400-3-7-.03~~ 0400-42-07-.03 Backfilling and Grading

(1) General Provisions

(a) Application

The following provisions shall apply to all coal mining operations, in addition to other specific provisions applying to particular types of mining.

(b) Handling of Toxic Materials

All toxic or acid-producing materials shall be properly handled and segregated within the pit. After removal of the coal, the faces of coal seams, the bottom of the pit, and all toxic materials, waste coal, metal, lumber, and other mining refuse shall be covered with spoil to a compacted depth of at least four (4) feet. However, the coal seam may, instead, be covered by a permanent water impoundment if the impoundment is part of the mining and reclamation plan approved by the Commissioner. This work is to be completed as soon as possible, but not later than the time specified in this regulation.

(c) Breakthrough to Underground

Any breakthrough to an underground mine must be reported. If any water drains from the underground mine, the ~~Water Quality Control~~ Division of ~~the Department of Public Health~~ Water Resources and the Surface Mining Section in the Knoxville Office of the ~~Surface Mining~~ Division or the Inspector shall be notified as soon as possible, but at least within twenty-four (24) hours, and temporary corrective measures started immediately. Plans for permanent control of drainage must be submitted to the Knoxville Office within five (5) days, and the work shall be completed within thirty (30) days of approval. If no water drains from the breakthrough, the Knoxville Office shall be notified in writing within five (5) days. If the operator is in doubt as to whether the underground mine is wet or dry, the breakthrough shall be reported as soon as possible, but at least within twenty-four (24) hours.

(d) Protection of Streams

No mining, placement of spoil, or associated activity will be permitted within one hundred (100) feet horizontal distance of any stream, except that roads may be constructed within one hundred (100) feet of a stream where such roads are part of the approved mining and reclamation plan and in special circumstances, such as where head-of-hollow fill plans have been approved by the Commissioner.

(e) Water Control

1. The water flow from the mine area and haul roads shall be controlled to minimize soil erosion, damage to other lands, and pollution of streams or other waters. This may include construction of checks, impoundments, silt-trap dams, and water bars in conjunction with other control measures as required. All sediment control structures shall be constructed according to criteria contained in the ~~Drainage Handbook for Surface Mining provided by the Department of Conservation~~ Erosion and Sediment Control Handbook published by the Department.

2. The Tennessee Water Quality Control Act of ~~1970~~ 1977, ~~TCA 70-324~~ T.C.A. §§ 69-3-101 et seq., requires that all runoff or pumped discharges must be covered by a discharge permit from the Division of Water ~~Quality Control~~ Resources if the quality of the water is or may be altered in any way. All discharges or runoff must meet the water quality standards promulgated by the ~~Water Quality Control Division~~ Department.

(f) Special Conditions

When special unusual conditions at the site make the application of these regulations unwise, unnecessary, or impossible, deviations may be allowed with written approval of the Commissioner as long as the effects do not violate the intent of the Law.

(2) Contour Mining

(a) Application

These regulations shall apply in areas where the slope of the original ground covering the coal seam or lying below the coal seam exceeds 15 degrees.

(b) Spoil Handling- Landslides

1. The mining plan shall be devised and the mining operation conducted so as to minimize erosion and prevent all landslides. A landslide is defined as any uncontrolled earth movement which carries spoil outside the approved limits.

2. If a landslide occurs, all mining at the affected mine shall cease immediately and shall not resume until written permission is obtained from the ~~Division~~ Commissioner. Permission to resume mining shall not be granted until:

   (i) the slide is stabilized and graded or the material is recovered and replaced on the bench or other designated area, and

   (ii) the mining plan has been re-examined and amended, if necessary in the opinion of the ~~Division~~ Commissioner to prevent further slides.

(c) Fill Bench Limitation

1. (i) If the natural slope of the land for a distance of one-hundred (100) feet downslope from the coal seam outcrop is greater than 28 degrees from the horizontal, no spoil shall be placed downslope from the outcrop, temporarily or permanently. Therefore, no fill bench is permitted on slopes over 28 degrees, and no exception can be granted.

   ~~2.~~(ii) The slope below the coal seam means the average or mean slope of the ground between the cropline and one-hundred (100) feet downslope. Before surface disturbance, the slope will be determined by making readings on the ground at intervals no greater than one-hundred (100) feet along -the cropline.

   (iii) Where the slope of the land below the coal seam is less than 28 degrees, the upgraded spoil must be placed in such a way that the spoil toe will not extend more than fifty (50) feet downslope from the cropline, measured along the ground perpendicular to the contour line. This shall be the "ungraded spoil limit line", which is the maximum distance downslope that spoil may be placed during the initial mining phase, that is prior to final grading.

2. If any spoil crosses the spoil limit line, all mining shall cease immediately and shall not be resumed until proposed corrective actions are completed to the satisfaction of the inspector.

3. Prior to placing any spoil downslope from the cropline, where the slope is less than 28 degrees, tree vegetation must be cleared and grubbed (scalped) No tree vegetation shall be left to project from any spoil. This tree vegetation must be windrowed to produce a brush barrier. The brush barrier must be constructed so that the major limbs and tree trunks shall lay approximately parallel with the contour. The total disturbed area from the cropline to the downslope side of the windrowed brush barrier must not exceed one-hundred twenty-five (125) feet measured downslope from the cropline perpendicular to the contour line. The clearing and grubbing (scalping) shall not extend more than 500 feet along the cropline ahead of the active pit. In the case of multiple seam mining, this shall mean ahead of the active pit of the lowest seam. See Figure 1-Virgin cut before final grading.

4. When the approved mining and reclamation plan calls for the use of mining methods such as, but not limited to, the modified -block cut, head-of-hollow fill, or offsite storage, deviations from the above limits shall be allowed for the purpose of temporary or

permanent storage of spoil on a limited, designated area downslope from the cropline if the operator submits a plan which will prevent landslides and minimize erosion and it is approved by the ~~Division~~ Commissioner.

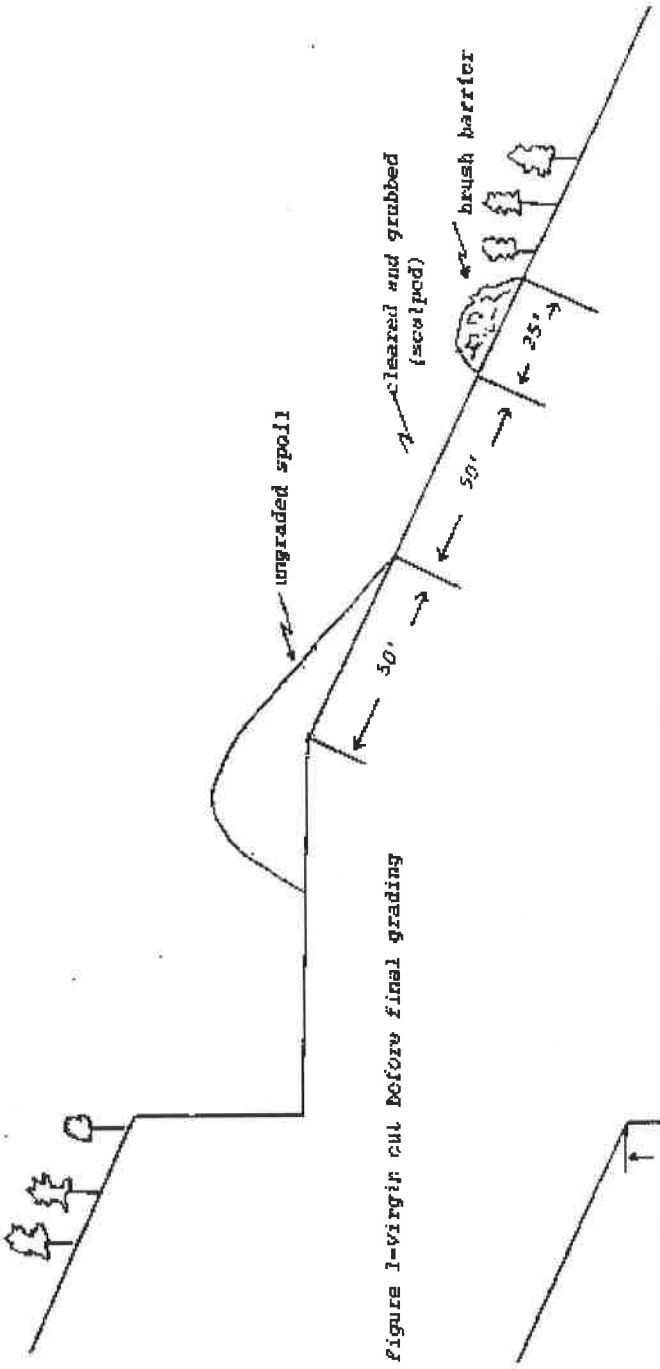

Figure 1-Virgin cut before final grading

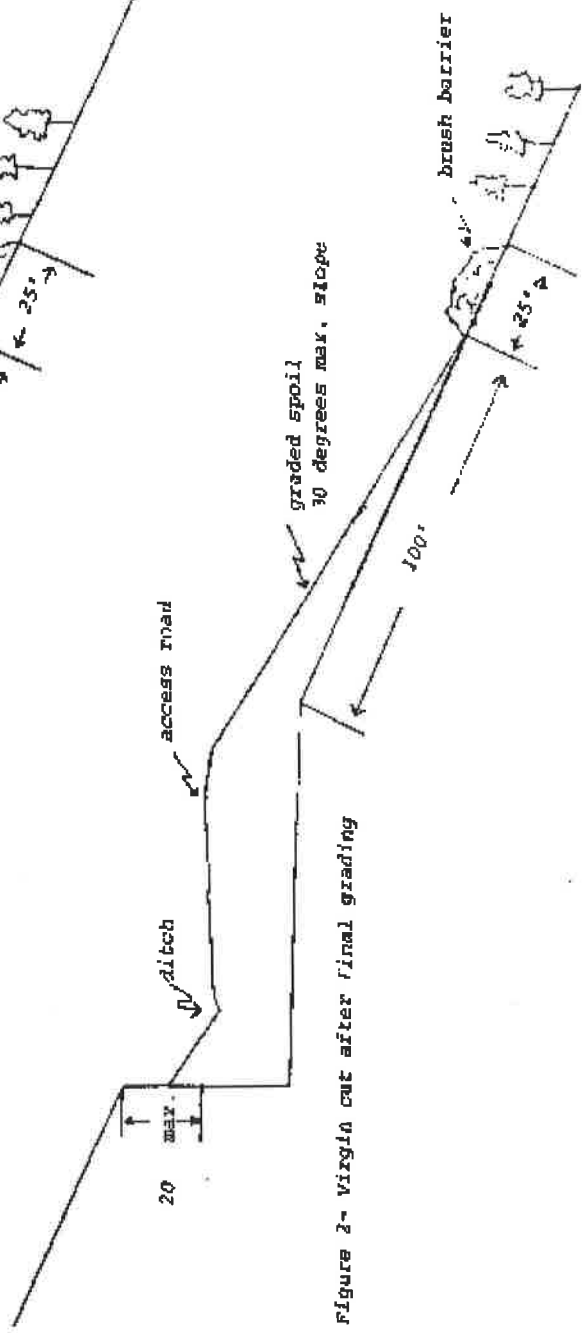

Figure 2- Virgin cut after final grading

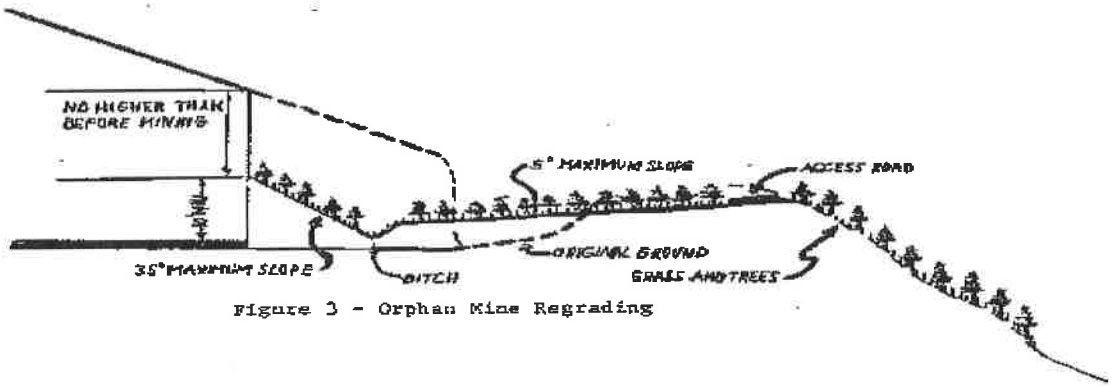

Figure 3 - Orphan Mine Regrading

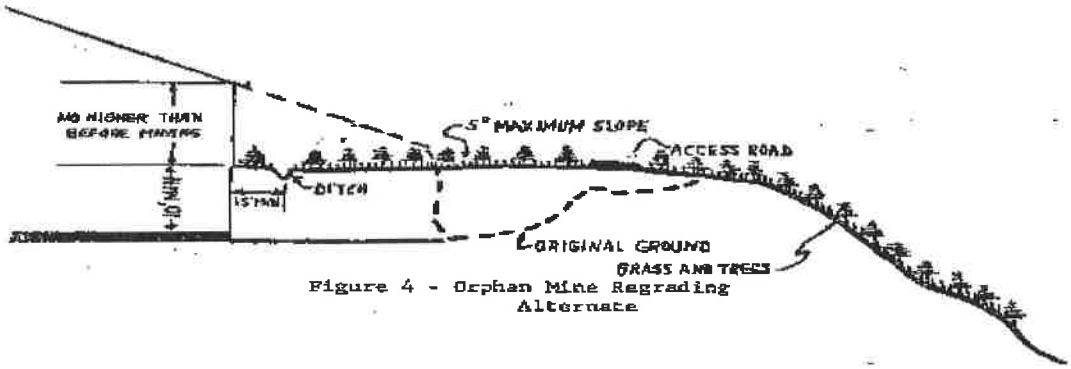

Figure 4 - Orphan Mine Regrading
Alternate

5. When the approved mining and reclamation plan calls for the use of mining methods such as, but not limited to, the modified block cut, head-of-hollow fill, or off-site storage, deviations from the above limits shall be allowed for the purpose of temporary or permanent storage of spoil on a limited, designated area downslope from the cropline if the operator submits a plan which will prevent landslides and minimize erosion and it is approved by the ~~Division~~ Commissioner.

(d) Final Grading

1. (i) The upgraded spoil shall be graded against the highwall and downward to roll gently over the outslope to blend smoothly with the surrounding land. During the final grading process, part of the ungraded spoil may be graded to a maximum distance of one-hundred (100) feet downslope from the cropline, measured along a perpendicular to the contour. The final graded outslope shall not be steeper than thirty (30) degrees from the horizontal, or that slope steepness which is accessable with earth grading equipment, whichever is less.

(ii) Spoil shall be placed against the highwall to eliminate or reduce its final height. A minimum terrace width of fifteen (15) feet shall be constructed to provide for an access road. A ditch shall be graded along the inside edge of the access road to conduct surface drainage from the fill bench to designated drainways. Such ditch shall be constructed to eliminate depressions in which water could accumulate pools. To insure proper drainage, the minimum grade of the ditch bottom shall be 1%. At least four (4) feet of compacted spoil shall be placed over the floor of the pit at all points including the bottom of all drainage ditches. The graded spoil from the terrace ditch to the highwall shall not be steeper than 30 degrees. No more than 20 feet of highwall may be left at points where no highwall existed before current mining. See Figure 2-Virgin cut after final grading.

2. When the mining operation is a second or subsequent cut on an orphan or otherwise previously mined area, the total elimination of the highwall shall not be required. All overburden not necessary to cover the floor of the pit shall be placed against the highwall so that the remaining highwall is no higher than that existing prior to the ~~cur-~~ current mining. The entire bench area, including spoil piles from previous operations which have not naturally ~~reverberated~~ revegetated to current coverage standards, shall be graded to slope toward the highwall at a slope not to exceed 5 degrees. At least four (4) feet of compacted spoil shall be placed over the floor of the pit. A ditch shall be placed along the bench at the toe of the sloping spoil, as shown in Figure 3. Other ~~or it a~~ configurations meeting the highwall and slope limitations, such as that in Figure 4, shall also be allowed.

3. No slope, except stable rock highwall as provided for in ~~subsection (2)~~ part 2 of this subparagraph, shall exceed thirty (30) degrees. All rock and boulders rolling off the permitted area shall be removed to some approved locations within the permitted area, or the permitted area shall be enlarged to include the area where they are left. Large rocks shall be buried or placed in constructed drainways as lining or in an approved manner as water-retarding structures.

(e) Natural Drainways

Natural drainways, where water flows occasionally in a well-defined channel, but less often than six months per year, shall be identified prior to mining and skipped. No mining will be allowed within twenty-five (25) feet of the centerline of a natural drain which crosses the contour. Fill or spoil placement and construction of access roads across natural drainways shall be conducted so as not to affect the normal flow of the drainway or materially increase the sediment load in the drainway. This may be accomplished by conveying the water in an adequate enclosed watertight conduit beneath the access road, or by spanning the natural drainway with a bridge, The conduit will be placed on the original drainway bed and will extend to a point ten (10) feet beyond the toe of the overburden or access road embankment.

(f) Multiple Seam Mining

When two or more seams are to be mined under any given permit, when the seams are not on the same highwall, the mining and reclamation plans will be treated as special cases and judged on their own merits. The following general guidelines shall be followed:

1. Mining Sequence-The lower seam shall be mined in advance of the seam above.

2. Overburden-Overburden from the seam being mined shall not extend beyond the solid bench of the seam below.

3. No ungraded spoil shall be allowed to extend, more than fifty (50) feet downslope from a cropline of any seam. If the distance between the cropline of the upper seam and the top of highwall of the next lower seam is greater than one-hundred (100) feet, spoil shall not be pushed across the intervening area to reach the lower bench, but must be hauled to the lower bench.

4. All requirements which apply to a single-seam mining shall apply to multiple seam mining unless the mining and reclamation plan proposes an acceptable variation and is approved in writing by the Commissioner.

(g) Highwall Access

At least one access to the lands above the highwall, suitable for passage by a four-wheel drive vehicle, shall be provided every mile along the bench, at locations approved by the inspector.

(h) Keeping Operation Current

1. All coal shall be picked up within thirty (30) days following removal of the overburden. (For the purpose of this provision, overburden shall be considered removed when less than four (4) feet remains above the coal.)

2. If the operation includes only stripping (no ~~angering~~ augering), the grading and backfilling shall follow the coal removal by not more than fifteen (15) days, but in no instance shall an area be left ungraded more than 1,500 feet behind the removal of the coal.

3. If the operation includes stripping and ~~angering~~ augering, the ~~angering~~ augering shall follow the stripping by not more than sixty (60) days or 2,500 feet, and the grading and backfilling shall follow the ~~angering~~ augering by not more than fifteen (15) days, but in no instance shall an area be left ungraded more than 1,500 feet behind the augering.

4. If the operation includes only augering, the grading and backfilling shall follow the augering by not more than fifteen (15) days, but in no instance shall an area be left ungraded more than 1,500 feet behind the augering.

5. All backfilling and necessary grading and drainage work on a given area shall be completed within one hundred eighty (180) days after the initiation of sod disturbance on that area.

6. Modifications of these requirements may be made by the Commissioner if heavy rains or wet conditions make backfilling and/or grading impractical.

(i) Augering

1. ~~Angering~~ Augering is prohibited where the coal seam rises away from the outcrop at a slope greater than 1/2 degree, except where the coal seam is below drainage.

2. "Below drainage" is defined as being below the established water table, or below the elevation of all streams or other water bodies in the vicinity of the permitted area.

3. Auger holes shall be plugged by forcing spoil into the openings by machine immediately after angering.

4. The exposed face of the coal seam at the highwall shall be covered with backbone material and compacted to at least ten (10) feet above the top of the auger holes. Backfiring and grading shall follow the ~~angering~~ augering by not more than fifteen (15) days or 1,500 feet along the bench.

5. Restored areas shall be graded so there will be no depressions to accumulate water and to facilitate rapid runoff of surface drainage from the auger area.

6. A twenty-five (25) foot barrier of coal shall be left between any underground mine and the completed auger hole. Test listings may be necessary to determine the solid depth of outcrop so as not to penetrate the underground mine.

7. Any breakthrough to an underground mine must be reported. If any water drains from the underground mine, the Knoxville office or the inspector shall be notified as soon as possible, but at least within twenty-four (24) hours, and temporary corrective measures started immediately. Plans for permanent control of drainage must be submitted to the Knoxville office within five (5) days, and the work shall be completed within thirty (30) days of approval. If no water drains from the breakthrough, the Knoxville office shall be notified in writing within five (5) days. If the operator is in doubt as to whether the underground mine is wet or dry, the breakthrough should be reported as soon as possible, but at least within twenty-four (24) hours.

(j) Head-of-Hollow Fills

1. Head-of-hollow fills shall be allowed for off-site permanent storage of excess spoil material only if the operator submits an acceptable engineered plan which is approved in writing by the Commissioner.

2. Construction of such fills shall not violate the terms of a water quality discharge permit.

3. Unless excepted by the Commissioner, plans for head-of-hollow fills shall provide for:

(i) A five-foot (5) thick drainage blanket of large rocks or boulders, extending from the toe of the fill up the hollow to the upper surface of the ~~flu~~ fill.

(ii) Spoil placement in horizontal layers above the drainage blanket, compacted to a maximum thickness of six (6) feet per layer.

(iii) Filling of the hollow from one side completely to the other, and from the downstream face to the head.

(iv) No slope of more than 30 degrees on the downstream face, with the sloping sections interspersed by terraces draining to the side for every twenty-five (25) foot difference in elevation.

(v) Crowning of the final upper surface so that no water drains over the downstream face.

(vi) Adequate surface drainage so that water will flow around the fill and not over it, with water carried in graded ditches. Ditches on slopes over 5 degrees shall be rock-lined or rock-filled.

(3) Area Mining

(a) Application

These regulations shall apply in areas where the slope of the original ground covering the coal seam is 15 degrees or less.

(b) Site Preparation

Topsoil and other soil suitable for supporting vegetation shall be separated and removed to an approved storage area for stockpiling during the mining operation. Following mining and initial grading, the topsoil and other soil suitable for supporting vegetation shall be replaced over the area affected.

(c) Final Grading

1. Complete backfilling to approximately the original contour or rolling topography shall be required, beginning at or beyond the top of the ~~highway~~ highwall and sloped to the toe of the spoil bank at a maximum angle not to exceed the approximate contour of the land

with no depressions to accumulate water, and all highwalls and spoil piles shall be eliminated.

2. Lands shall be deemed to have been completely backfilled and graded to their approximate original contour when the contour of the land conforms approximately to the contour of the original ground, but the final surface of the restored area need not necessarily have the exact elevations of the original ground surface. However, where a flat surface or a surface with less slope than the original ground surface is desired, such surface shall be deemed to comply with backfilling and grading to the approximate original contour. In addition, when a very flat surface is mined, the land may be restored to gently rolling terrain to enhance drainage.

(d) Blending With Adjacent Lands

Spoil abutting onto ~~unstrapped~~ unstripped land shall be graded so as to blend into the adjoining stripped lands. In order to prevent excessive disturbance of the adjoining unstripped lands through the placing of spoil onto already vegetated areas, spoil will be considered as blending into the unstripped lands if the angle between the spoil and the unstripped lands is twelve (12) degrees or less, except that the slope created shall not be greater than twenty-five (25) degrees.

(e) Water Diversion Ditches

Water diversion ditches or terraces shall be constructed in the final grading to control water runoff and erosion on long uninterrupted slopes and to remove surface water runoff to a safe outlet. For the purpose of this regulation, a diversion ditch shall be a channel constructed on a continuous grade of one to two percent (1%-2%) across the slope, with a supporting ridge on the lower side and the entire ditch seeded to an adaptable grass or grass-legume mixture. The depth and width of the diversion ditch may vary depending on the length and degree of slope.

(f) Water Impoundments

1. Water impoundments, as an alternative to backfilling the final pit, are encouraged and will be allowed if they are part of the approved mining and reclamation plan and if they meet the following minimum criteria:

   (i) Adequate sources of water must be available to maintain the water level at least four (4) feet above the top of the coal seam at all times.

   (ii) Proper measures must be taken to prevent undesirable seepage.

   (iii) Adequate spillways or other measures necessary to control overflow must be provided.

   (iv) Adequate means of access to the water impoundment must be left or provided.

   (v) The highwall or low wall must be reduced to a slope fifteen (15) degrees or less, sloping to the water's edge.

2. All impoundments must be designed in conformance with the criteria included in the ~~Drainage Handbook for Surface Mining provided by the Department of Conservation~~ Erosion and Sediment Control Handbook published by the Department.

(g) Keeping Operation Current

The grading and backfilling shall not be more than two (2) spoil ridges behind the pit being worked, the spoil from this pit being considered the first ridge. All backfilling and grading shall be completed within ninety (90) days after the completion of an operation or a prolonged suspension of work in the area and within one hundred eighty (180) days of initial disturbance. Modifications

to these requirements may be made by the Commissioner in connection with the backfilling of the final pit.

Authority: T.C.A. §§ 59-8-401 et seq. and 4-5-201 et seq.

~~0400-3-7-.04~~ 0400-42-07-.04 Vegetation

(1) Objective in Revegetation

The objective of revegetation is to provide a self-regenerating cover on the disturbed area as soon as possible and to minimize erosion.

(2) General Rules Governing Seeding or Planting

(a) Seasonal Feasibility

Immediately after grading, appropriate vegetation shall be planted and seeded in the proper season in accordance with accepted agricultural and reforestation practices.

(b) Plant Selection

1. Plants that give a quick, permanent, protective cover shall be used. Select plants to use after evaluating both their potential for stabilization and their use in terms of forest products, wildlife habitat, and agricultural benefits.

2. Adapted plant species and mixtures are listed in ~~0400-3-7-.04(5)j-m~~ subparagraphs (5)(j) through (m) of this rule.

(c) Direct Seeding

1. Direct seeding of trees and shrubs is encouraged on all disturbed areas to supplement planted trees.

2. Some Species Adapted to Direct Seeding:

(i) Black (Sweet) Birch
(ii) Virginia Pine
(iii) Pitch Pine
(iv) Red Maple
(v) European Black Alder
(vi) Autumn Olive

3. Species that can be direct seeded are not limited to the ~~above~~ list in part 2 of this subparagraph.

(3) Contour Mining

(a) Application

These regulations shall apply in areas where the slope of the original ground covering the coal seam or lying below the coal seam exceeds 15 degrees.

(b) Area to be Revegetated

The entire disturbed area shall be fertilized and vegetated with adapted legumes and/or perennial grasses, and adapted trees and/or adapted shrubs, except as hereinafter provided. Adapted species and mixtures are listed in ~~0400-3-7-.04(5)j-m~~ subparagraphs (5)(j) through (m) of this rule.

(c) Access Roads

Roadbeds shall be seeded to adapted legumes and perennial grasses only, no trees being required. This vegetative requirement for roads may be modified if, in the opinion of the Commissioner, the roadway will not contribute offsite damage to the public or adjacent property owners.

(d) Shrubs for Wildlife

Shrubs for wildlife may be planted to include border plantings, clump plantings, intervening strips, or area planting.

(4) Area Mining

(a) Application

These provisions shall apply where regrading to original contour as defined in ~~0400-7-03(3)(c)~~ subparagraph (3)(c) of Rule 0400-42-07-.03 is used.

(b) Area to be Revegetated

The entire disturbed area shall be fertilized and vegetated with adapted legumes and/or perennial grasses, and adapted trees and/or adapted shrubs, except as hereinafter provided. If future use of area will be agricultural grassland or crops, trees and/or shrubs may be omitted. Adapted species and mixtures are listed in ~~0400-3-7-.04(5)j-m~~ subparagraphs (5)(j) through (m) of this rule.

(c) Shrubs for Wildlife

Shrubs for wildlife may be planted to include border plantings, clump plantings, intervening strips, or area plantings.

(5) Mixture and Seed Requirements

(a) Seed Inoculation

All legume seed, except black locust, shall be inoculated.

(b) Scarifying

All black locust and sericea lespedeza seed ~~dull~~ will be scarified, except when used in fall and winter seeding.

(c) Preparation of Soil

Preparation of the seed bed by harrowing, discing, or other approved methods, prior to seeding is required, except on slopes greater ~~thin~~ than fifteen (IS) degrees.

(d) Seeding Dates and Rates

Dates of seeding and rates of seed used shall be in accord with the requirements of the adapted species selected and elevation of the site.

(e) Livestock Grazing

Protection of seeded area from grazing by livestock is required during the first two growing seasons.

(f) Fertilizer

Fertilizer shall be applied at a minimum rate of 100 pounds each of Nitrogen (N), Phosphate (~~P205~~ P_2O_5) and Potash (~~K20~~ K_2O) per acre. Agricultural lime shall be applied at a minimum of eight thousand (8,000) pounds per acre.

(g) Mulch

1. All disturbed areas shall be mulched. The approved mulch and rates are:

~~2.~~(i) Dry Wheat Straw or Hay at a rate of four thousand (4,000) pounds, approximately 80 bales per acre.

~~3.~~(ii) Wood Fiber Mulch at a rate of one thousand five hundred (1,500) pounds per acre, but not in the months of November. December, January and February.

~~4.~~(iii) Dry Wheat Straw and hay must be anchored by asphalt emulsion or by discing the straw or hay on contour ~~in mines soil~~.

(h) Planting

1. Tree species

Planting of a single species, or of two or more species, in pure blocks or strips at least thirty (30) feet wide, over the entire area, or of a single species in a block or a contour strip is required

(i) Preferred tree species are:

Virginia pine
Shortleaf pine (on light (sandy) soils only)
Black locust

(ii) Other species that may be used are:

European black alder
Red maple
Loblolly pine (~~below,, 000~~ below 1,000 ft. elevation)
Pitch pine
White pine

2. Tree seedlings shall be planted at a 6'x 7'spacing.

3. Seedlings should be planted between November ~~1~~ 1 and May 1.

(i) Wildlife Planting

1. Plantings for wildlife food and cover ~~&hall~~ shall consist of one or ~~mom~~ more of the following:

(i) Shrub Lespedeza:
Lespedeza bicolor
Lespedeza japonica

(ii) Bush Honeysuckle:
Amur - Lonicera maackii (Fall fruiting)
Tatarian - Lonicera tataric (Summer fruiting)
Autumn Olive - Elaeagnus umbellata (Fail fruiting)

2. The following type of plantings may be made:

(i) Intervening contour strips and borders. Contour strips or borders of wildlife food and cover may be substituted for the appropriate number of trees to provide space for planting one or more of the following shrub species:

(I) Bush honeysuckle - 1 to 3 rows - 6' x 6' spacing - Feb. 1 to April 15

(II) Autumn olive - 1 to 3 rows - 6'x 6' spacing - Feb. 1 to April 15

(III) Shrub lespedeza plants - 5 rows - 2'x 2'spacing - Feb. 1 to April 15

(IV) Shrub lespedeza seeded - 12 to 15 feet width - 20 lbs./ac. scarified seed March 1 to June 15.

(ii) Clumps - Clump plantings numbering not more than 2 per acre may be substituted for trees to provide space for one or more of the following shrub species:

(I) Bush honeysuckle - 25 plants - 6' x 6' spacing - Feb. 1 to April 15

(II) Autumn olive - 25 plants - 6'x 6'spacing - Feb. 1 to April 15

(III) Shrub lespedeza plants - 700 plants - 2' x 2' spacing - Feb. 1 to April 15

(IV) Shrub lespedeza - 1 lb. scarified seed 50'x 50' area - March 1 to June 15.

(iii) Rocky and Stony Areas

(I) Shrub lespedeza may be substituted for tree species using the following mixture for rocky and stony sites where planting of tree seedlings is not possible:

(II) Plant the mixture from Dec. 1 to April 15.

SPECIES	AMOUNT PER ACRE
Tall fescue	20 pounds
Shrub lespedeza (scarified seed)	10 pounds

(j) Legumes, Perennial Grasses, and Annual Grains. One of the following mixtures shall be sown on the entire disturbed area, unless an alternative mixture is proposed in the Revegetation Plan and approved by the Commissioner.

1. Mixture One: February-April

		Per Acre
(i)	Sericea Lespedeza (scarified)	25 pounds
(ii)	Ky-31 Tall Fescue	25 pounds
(iii)	Weeping Lovegrass,	10 pounds
(iv)	Kobe or Korean Lespedeza	10 pounds
(v)	Bicolor Lespedeza	5 pounds
(vi)	Millett or Sudangrass	10 pounds

2. Mixture Two: May-July

(i)	Sericea Lespedeza (scarified)	35 pounds
(ii)	Ky-31 Tall Fescue	25 pounds
(iii)	Weeping Lovegrass	10 pounds

(iv)	Bicolor Lespedeza	5 pounds
(v)	Millett or Sudangrass	10 pounds

3. Mixture Three: August-October

(i)	Sericea Lespedeza (Unscarified)	45 pounds
(ii)	Ky-31 Tall Fescue	9-5 pounds
(iii)	Weeping Lovegrass	5 pounds
(iv)	Bicolor Lespedeza	5 pounds
(v)	Balboa or English ~~Tve~~ Rye	15 pounds

4. Mixture Four: November-January

(i)	Sericea Lespedeza (unscarified)	20 pounds
(ii)	Ky-31 Tall Fescue	40 pounds
(iii)	Weeping Lovegrass*	5 pounds
(iv)	Bicolor Lespedeza	5 pounds
(v)	Balboa or English Rye	15 pounds

(k) Evaluation of Vegetation Survival

Inspection and evaluation of' vegetation for cover and survival shall be made as soon as it is possible to determine if a satisfactory stand has been established. In no instance shall this vegetative cover check be made until twelve (12) months following the planting of trees or shrubs. A revegetation evaluation report shall be prepared and filed by the inspector.

(l) Standards for Perennials

Standards for legumes and perennial grasses shall require at least an eighty percent (80%) ground cover. Bare areas shall not exceed one-fourth (¼) acre (100 feet by 100 feet) in size, nor total more than twenty percent (20%) of the area seeded unless such areas are too stony to support vegetation.

(m) Standards for Woody Plants with Perennials

Standards for woody plants with legumes and perennial grasses overseeded shall require an eighty percent (80%) establishment of ground cover of legumes and perennial grasses and six hundred (600) trees or woody plants per acre distributed more or less uniformly over the area. No fifty-foot by fifty-foot (50' x 50') area shall contain fewer than seventeen (17) surviving trees or woody plants.

(n) Performance Bond Release

After the vegetative cover has been inspected and approved, the operator shall submit his final report to the Commissioner and request release of the remaining portion of the performance bond still in force. No revegetation performance bonds will be released until the approved revegetation plan has been carried out unless the Commissioner determines that further efforts toward revegetation are impractical. No revegetation plans will be considered to have been carried out until satisfactory coverage and survival have been obtained.

Authority: T.C.A. §§ 59-8-401 et seq. and 4-5-201 et seq.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Commissioner of the Tennessee Department of Environment and Conservation on 2-8-13 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/22/12

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

Date: 2-8-13

Signature: Robert Martineau

Name of Officer: Robert J. Martineau, Jr.

Title of Officer: Commissioner

BETH B. SMITH STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

My Commission Expires JULY 6, 2015

Subscribed and sworn to before me on: February 8, 2013

Notary Public Signature: Beth B. Smith

My commission expires on: July 6, 2015

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

Robert E. Cooper, Jr.
Attorney General and Reporter

3-7-13
Date

Department of State Use Only

Filed with the Department of State on: 3/15/13

Effective on: 6/13/13

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Air Pollution Control
SUBJECT:	Reporting Requirements for Title V Facilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-201-101 et seq.
EFFECTIVE DATES:	June 19, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These proposed amendments repeal the requirement to submit certain reports on a quarterly basis, thus reconciling the State's periodic reporting requirement to that of the current federal rule that requires the same reports to be submitted on a semi-annual basis.

Public Hearing Comments

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

Comment: The Division must provide further technical analysis and information related to the potential impact of the proposed amendment to attainment, maintenance, and reasonable further progress for the National Ambient Air Quality Standards per Section 110(l) of the Clean Air Act (CAA).

Response: The rationale behind the proposed rule revision is the fact that the affected rule is very old and requires the submittal of a quarterly report of startups, shutdowns, and malfunctions for affected sources. The rule was adopted in the 1970's and represents the first requirements for sources to report to the Division. Currently the Tennessee Title V program set forth in paragraph (11) of Rule 1200-03-09-.02 specifies both the semi-annual reporting requirement and the annual compliance certification requirement for affected sources. The same rule requires the reporting of emissions from sources taking restrictions to remain below the applicability thresholds for Title V applicability. In addition, the reporting requirements of 40 CFR 63.10, which are applicable to all the source categories subject to the national emission standards for hazardous air pollutants, utilize a semi-annual reporting time period as the default value. Therefore, the quarterly reporting time frame required by paragraph (2) of Rule 1200-03-20-.04 is not consistent with current time frames for the submittal of emissions reports and the Division is proposing to remove it from the regulations to prevent a duplication of reporting requirements.

In addressing the requirements of Section 110(l) of the Clean Air Act, The Tennessee Division of Air Pollution Control declares that this proposed SIP revision will have no affect on any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement as it simply involves removing an obsolete and redundant reporting requirement from the SIP to avoid burdening sources with submitting duplicitous reports. In addressing the requirements of Section 193 of the Clean Air Act, The Tennessee Division of Air Pollution Control declares that this proposed SIP revision is not a control requirement. While the original rule was in effect prior to November 15, 1990, the original rule only addresses the reporting of emissions and does not address any emissions reduction or emissions control requirements. Given that the original regulation has been superseded by newer, federally mandated, reporting requirements, deleting the original regulation will have no affect on the emissions of any air pollutant.

Regulatory Flexibility Addendum

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

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

The revision to paragraph (2) of Rule 1200-03-20-.04 could potentially affect any permitted source located in any nonattainment area established by the EPA in the future. The benefit from the deletion of this rule would be the elimination of the requirement for the submittal of duplicate reports from many sources.

(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:

None.

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

The revisions to paragraph (2) of Rule 1200-03-20-.04 could potentially impact small businesses by eliminating the potential for requiring the submittal of duplicate reports. It should have no impact on consumers.

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

None.

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

The provisions of paragraph (2) of Rule 1200-03-20-.04 were originally required by 40 CFR 51.211 (Source Surveillance – Emission reports and recordkeeping). The deletion of paragraph (2) of Rule 1200-03-20-.04 will allow affected source to utilize current reporting time frames and avoid submitting duplicate reports.

(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.

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)

These proposed rule revisions will have no projected impact on local governments.

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Division of Publications
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For Department of State Use Only

Sequence Number: 03-14-13
Rule ID(s): 5459
File Date: 3/21/13
Effective Date: 6/19/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Jeryl W. Stewart
Address:	9th Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 532-0605
Email:	Jeryl.Stewart@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-03-20	Limits on Emissions Due to Malfunction, Startups, and Shutdowns
Rule Number	**Rule Title**
1200-03-20-.04	Logs and Reports

(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 1200-03-20
Limits on Emissions Due to Malfunction, Startups, and Shutdowns

Amendment

Paragraph (2) of rule 1200-03-20-.04 Logs and Reports is amended by deleting the paragraph in its entirety and replacing it with the word "Reserved" so that, as amended, the paragraph shall read:

(2) ~~The owner or operator of all sources located in non-attainment areas or having a significant impact on air quality in a non-attainment area (for the pollutant designated) must submit a report to the Technical Secretary within thirty (30) days after the end of each calendar quarter listing the times at which malfunctions, startups and/or shutdowns, which resulted in emissions greater than any applicable emission limits and the estimated amount of emissions discharged during such times. This report shall also include total emissions during the quarter and be reported in a format specified by the Technical Secretary. If these emissions are required to be reported under Chapter 1200-3-10 or under rules of Chapter 1200-3-16, then the report required by this paragraph is waived.~~ Reserved

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	✓				Michael Atchison
Dr. J. Ronald Bailey	✓				J. Ronald Bailey
Elaine Boyd	✓				Elaine Boyd
Dr. Brian W.Christman				✓	
Dr. Wayne T. Davis	✓				Wayne Davis
Dr. Mary English				✓	
Stephen R. Gossett				✓	
Mayor Tommy Green				✓	
Dr. Shawn A. Hawkins	✓				
Helen Hennon				✓	
Richard M. Holland	✓				Richard Holland
John Roberts	✓				
Mayor Larry Waters	✓				
Alicia M. Wilson				✓	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 08/08/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/27/09

Rulemaking Hearing(s) Conducted on: (add more dates). 10/20/09

Date: Sept. 10, 2012

Signature: Barry R. Stephens

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary

MALCOLM H. BUTLER
STATE OF TENNESSEE NOTARY PUBLIC
DAVIDSON COUNTY

Subscribed and sworn to before me on: September 10, 2012

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 2013

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

RE Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

3-19-13
Date

Department of State Use Only

Filed with the Department of State on: 3/21/13

Effective on: 6/19/13

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Air Pollution Control
SUBJECT:	New Source Performance Standards for Glass Manufacturing Plants, Synthetic Organic Chemical Manufacturing Plants, and Rubber Tire Manufacturing Plants
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-201-101 et seq.
EFFECTIVE DATES:	June 19, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This amendment repeals the prior state rule and permits the state to incorporate and enforce the language of the federal rule by the authority of the Technical Secretary granted by Tennessee Code Annotated, § 68-201-105.

Public Hearing Comments

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

There were no comments received during the public comment period.

Regulatory Flexibility Addendum

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

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

The revisions to Rules 1200-03-16-.33, 1200-03-16-.43 and 1200-03-16-.60 could potentially affect any small business that would be subject to either of the regulations. For either situation the affect would be beneficial in that they would not be subject to obsolete state regulations in addition to the current federal regulations. To quantify the number of small businesses subject t either rule would require an exhaustive research effort as affected facilities may or may not be 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:

None.

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

The revisions to Rules 1200-03-16-.33, 1200-03-16-.43 and 1200-03-16-.60 could prevent small businesses from being subject to both obsolete state and current federal regulations. There would be no affect on consumers.

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

None.

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

The provisions of Chapter 1200-03-16 are the state equivalent to federal regulations contained in 40 CFR Part 60. The deletion of Rules 1200-03-16-.33, 1200-03-16-.43 and 1200-03-16-.60 serve to allow the Division to utilize current federal language.

(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.

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)

These proposed rule revisions will have no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 03-15-13
Rule ID(s): 5460
File Date: 3/21/13
Effective Date: 6/19/13

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Jeryl W. Stewart
Address:	9th Floor L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1531
Phone:	(615) 532-0605
Email:	Jeryl.Stewart@tn.gov

Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-03-16	New Source Performance Standards
Rule Number	**Rule Title**
1200-03-16-.33	Glass Manufacturing Plants
1200-03-16-.43	Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry
1200-03-16-.60	Rubber Tire Manufacturing Industry

(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 1200-03-16
New Source Performance Standards

The Table of Contents of Chapter 1200-03-16 New Source Performance Standards is amended by deleting the words "Glass Manufacturing Plants" and adding the word "Reserved" so that, as amended, the table of contents for 1200-03-16-.33 shall read: Reserved.

Rule 1200-03-16-.33 is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200–03–16–.33 ~~GLASS MANUFACTURING PLANTS.~~ Reserved

~~(1) Applicability.~~

~~(a) Each glass melting furnace is an affected facility to which the provisions of this rule apply.~~

~~(b) Any facility under subparagraph (a) of this paragraph that commences construction or modification after March 2, 1983 is subject to the requirements of this rule.~~

~~(c) This rule does not apply to hand glass melting furnaces, glass melting furnaces designed to produce less than 4,550 kilograms of glass per day and all-electric melters.~~

~~(2) Definitions~~

~~(a) "All-electric melter" means a glass melting furnace in which all the heat required for melting is provided by electric current from electrodes submerged in the molten glass, although some fossil fuel may be charged to the furnace as raw material only.~~

~~(b) "Borosilicate recipe" means glass product composition of the following approximate ranges of weight proportions: 60 to 80 percent silicon dioxide, 4 to 10 percent total R_2O, (e.g. Na_2O and K_2O), 5 to 35 percent boric oxides, and 0 to 13 percent other oxides. (Note: R represents a metal).~~

~~(c) "Container glass" means glass made of soda-lime recipe, clear or colored, which is pressed and/or blown into bottles, jars, ampoules, and other products listed in Standard Industrial Classification 3221 (SIC 3221). (Note: All references to Standard Industrial Classification or SIC refers to the Standard Industrial Classification Manual which is available for purchase by written request to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402).~~

~~(d) "Experimental furnace" means a glass melting furnace with the sole purpose of operating to evaluate glass melting processes, technologies, or glass products. An experimental furnace does not produce glass that is sold (except for further research and development purposes) or that is used as raw material for nonexperimental furnaces.~~

~~(e) "Flat glass" means glass made of soda-lime recipe and produced into continuous flat sheets and other products listed in SIC 3211.~~

~~(f) "Flow channels" means appendages used for conditioning and distributing molten glass to forming apparatuses and are a permanently separate source of emissions such that no mixing of emissions occurs with emissions from the melter cooling system prior to their being vented to the atmosphere.~~

~~(g) "Glass melting furnace" means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems,~~

heat exchangers, melter cooling system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming apparatuses. The forming apparatuses, including the float bath used in flat glass manufacturing and flow channels in wool fiberglass and textile fiberglass manufacturing, are not considered part of the glass melting furnace.

(h) "Glass produced" means the weight of the glass pulled from the glass melting furnace.

(i) "Hand glass melting furnace" means a glass melting furnace where the molten glass is removed from the furnace by a glassworker using a blowpipe or a pontil.

(j) "Lead recipe" means glass product composition of the following ranges of weight proportions: 50 to 60 percent silicon dioxide, 18 to 35 percent lead oxides, 5 to 20 percent total R_2O (e.g. Na_2O and K_2O), 0 to 8 percent total R_2O_3 (e.g. Al_2O_3), 0 to 15 percent total RO (e.g., CaO, MgO), other than lead oxide and 5 to 10 percent other oxides (note: R represents a metal).

(k) "Pressed and blown glass" means glass which is pressed, blown, or both, including textile fiberglass, noncontinuous flat glass, noncontainer glass, and other products listed in SIC 3229. It is separated into:

1. Glass of borosilicate recipe.

2. Glass of soda-lime and lead recipes.

3. Glass of opal, fluoride, and other recipes.

(l) "Rebricking" means cold replacement of damaged or worn refractory parts of the glass melting furnace. Rebricking includes replacement of the refractories comprising the bottom, sidewalls, or roof of the melting vessel; replacement of refractory work in the heat exchanger; replacement of refractory portions of the glass conditioning and distribution system.

(m) "Soda-lime recipe" means glass product composition of the following ranges of weight proportions: 60 to 75 percent silicon dioxide, 10 to 17 percent total R_2O (e.g. Na_2O and K_2O), 8 to 20 percent total RO but not to include any PbO (e.g. CaO and MgO), 0 to 8 percent total R_2O_3 (e.g., Al_2O_3), and 1 to 5 percent other oxides (note: R represents a metal).

(n) "Textile fiberglass" means fibrous glass in the form of continuous strands having uniform thickness.

(o) "With modified processes" means using any technique designed to minimize emissions without the use of add-on pollution controls.

(p) "Wool fiberglass" means fibrous glass of random texture, including fiberglass insulation and other products listed in SIC 3296.

(3) Standards for particulate matter.

(a) On and after the date on which the performance test required to be conducted by paragraph 1200-3-16-.01(5) is completed, no owner or operator of a glass melting furnace subject to the provisions of this rule shall cause to be discharged into the atmosphere:

1. From any glass melting furnace fired exclusively with either a gaseous fuel or a liquid fuel, particulate matter at emission rates exceeding those specified in 1200-3-16-.33(3)(d) Table 1, or

2. From any glass melting furnace, fired simultaneously with gaseous and liquid fuels, particulate matter at emission rates exceeding STD as specified by the following equation:

$STD = X(1.3(Y)+(Z))$

Where:

STD = Particulate matter emission limit, g of particulate/kg of glass produced.

X = Emission rate specified in 1200-3-16-.33 (3)(d) Table 1 for furnaces fired with gaseous fuel.

Y = Decimal percent of liquid fuel heating value to total (gaseous and liquid) fuel heating value fired in the glass melting furnaces as determined in subparagraph (7)(f) of this rule (joules/joules).

Z = (1-Y).

(b) Conversion of a glass melting furnace to the use of liquid fuel is not considered a modification for the purposes of 1200-3-16-.01(9)(a).

(c) Rebricking and the cost of rebricking is not considered a reconstruction for the purposes of 1200-3-16-.01(9)(b).

(d) Table 1. Emission Rates

(g of particulate / kg of glass produced)

Glass manufacturing plant industry segment	Furnace fired with gaseous fuel	Furnace fired with liquid fuel
Container glass	0.1	0.13
Pressed and blown glass		
(a) Borosilicate Recipes	0.5	0.65
(b) Soda-Lime and Lead Recipes	0.1	0.13
(c) Other - Than Borosilicate, Soda-Lime, and Lead Recipes (including opal, fluoride, and other recipes)	0.25	0.325
Wool fiberglass	0.25	0.325
Flat glass	0.225	0.225

(e) An owner or operator of an experimental furnace is not subject to the requirements of this paragraph.

(f) During routine maintenance of add-on pollution controls, an owner or operator of a glass melting furnace subject to the provisions of subparagraph (a) of this paragraph is exempt from the provisions of subparagraph (a) of this paragraph if:

1. Routine maintenance in each calendar year does not exceed 6 days.

2. Routine maintenance is conducted in a manner consistent with good air pollution control practices for minimizing emissions; and

3. A report is submitted to the Technical Secretary 10 days before the start of the routine maintenance (if 10 days cannot be provided the report must be submitted as soon as practicable) and the report contains and explanation of the schedule of the maintenance.

(4) Standards for particulate matter from glass melting furnace with modified processes.

(a) An owner or operator of a glass melting furnace with modified processes is not subject to the provisions of 1200-3-16-.33(3) if the affected facility complies with the provisions of this paragraph.

(b) On and after the date on which the performance test required to be conducted by paragraph (5) of Rule 1200-3-16-.01 is completed no owner or operator of a glass melting furnace with modified processes subject to the provisions of this rule shall cause to be discharged into the atmosphere from the affected facility:

1. Particulate matter at emission rates exceeding 0.5 gram of particulate per kilogram of glass produced (g/kg) as measured according to subparagraph (e) of this paragraph for container glass, flat glass, and pressed blown glass with soda-lime recipe melting furnaces.

2. Particulate matter at emission rates exceeding 1.0 g/kg as measured according to subparagraph (e) of this paragraph for pressed and blown glass with a borosilicate recipe melting furnace.

3. Particulate matter at emission rates exceeding 0.5 g/kg as measured according to subparagraph (e) of this paragraph for textile fiberglass and wool fiberglass melting furnaces.

(c) The owner or operator of an affected facility that is subject to emission limits specified under subparagraph (b) of the paragraph shall:

1. Install, calibrate, maintain, and operate a continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the affected facility.

2. During the performance test required to be conducted by paragraph (5) of rule 1200-3-16-.01 conduct continuous opacity monitoring during each test run.

3. Calculate 6-minute opacity averages from 24 or more data points equally spaced over each 6-minute period during the test runs.

4. Determine, based on the 6-minute opacity averages, the opacity value corresponding to the 97.5 percent upper confidence level of a normal distribution of average opacity values.

5. For purposes of paragraph (7) of rule 1200-3-16-.01, report to the Technical Secretary as excess emissions all of the 6-minute periods during which the average opacity as measured by the continuous monitoring system installed under part (c)1. of this paragraph, exceeds the opacity value corresponding to the 97.5 percent upper confidence level determined under part (c)4. of this paragraph.

(d) The Technical Secretary may approve an application for an alternative continuous monitoring system if the owner or operator has obtained written approval for the alternative system from the Administrator of the U.S. Environmental Protection Agency.

1. After receipt and consideration of a written application and written approval from the Administrator of the U.S. Environmental Protection Agency, the Technical Secretary may approve alternative continuous monitoring systems for the measurement of one or more process or operating parameters that is or are demonstrated to enable accurate and representative monitoring of an emission limit specified in part (b)1. of this paragraph.

2. After the Technical Secretary approves an alternative continuous monitoring system for an affected facility, the requirements of parts (c)1. through (c)5. of this paragraph will not apply for that affected facility.

3. An owner or operator may redetermine the opacity value corresponding to the 97.5 percent upper confidence level as described in part (c)4. of this paragraph if the owner or operator:

(i) Conducts continuous opacity monitoring during each test run of a performance test that demonstrates compliance with an emission limit of subparagraph (b) of this paragraph.

(ii) Recalculates the 6-minute opacity averages as described in part (c)3. of this paragraph and

(iii) Uses the redetermined opacity value corresponding to the 97.5 percent upper confidence level for the purposes of part (c)5. of this paragraph.

(e) Test methods and procedures as specified in paragraph (7) of rule 1200-3-16-.33 shall be used to determine compliance with this paragraph except that to determine compliance for any glass melting furnace using modified processes and fired with either a gaseous fuel or liquid fuel containing less than 0.50 weight percent sulfur, Method 5 specified in 1200-3-16-.01(5)(g)5. shall be used with the probe and filter holder heating system in the sampling train set to provide a gas temperature of 120 ± 14°C.

(5) Reserved.

(6) Reserved.

(7) Test Methods and Procedures.

(a) Reference methods in 1200-3-16-.01(5)(g), except as provided under 1200-3-16-.01(5)(b), shall be used to determine the compliance with paragraph (3) and (4) of this rule as follows:

1. Method 1 as specified in 1200-3-16-.01(5)(g)1. shall be used for sample and velocity traverses, and

2. Method 2 as specified in 1200-3-16-.01(5)(g)2. shall be used to determine velocity and volumetric flow rate.

3. Method 3 as specified in 1200-3-16-.01(5)(g)3. shall be used for gas analysis.

4. Method 5 as specified in 1200-3-16-.01(5)(g)5. shall be used to determine the concentration of particulate matter and the associated moisture content.

(b) For Method 5, the probe and filter holder heating system in the sampling train shall be set to provide a gas temperature no greater than 177°C. The sampling time for each run shall be at least 60 minutes and the collected particulate shall weigh at least 50 mg. In sources containing SO_2 or SO_3, the filter material must be a type that is unreactive to SO_2 or SO_3.

(c) The particulate emission rate, E, shall be computed as follows:

$E = Q \times C$

Where:

1. E is the particulate emission rate (g/hr)
2. Q is the average volumetric flow rate (dscm/hr) as found from Method 2
3. C is the average concentration (g/dscm) of particulate matter as found from Method 5, modified as specified in subparagraph (7)(b) above.

(d) The rate of glass produced, P (kg/hr), shall be determined by dividing the weight of glass pulled in kilograms (kg) from the affected facility during the performance test by the number of hours (hr) taken to perform the performance test. The glass pulled, in kilograms, shall be determined by direct measurement or computed from materials balance by good engineering practice.

(e) For the purposes of these standards the furnace emission rate shall be computed as follows:

$R = E \cdot A \cdot P$

~~Where:~~

~~1. R is the furnace emission rate (g/kg)~~
~~2. E is the particulate emission rate (g/hr) from (c) above~~
~~3. A is the zero production rate correction:~~
~~A is 227 g/hr for container glass, pressed and blown (soda-lime and lead) glass, and pressed and blown (other than borosilicate, soda-lime and lead) glass~~
~~A is 454 g/hr for pressed and blown (borosilicate) glass, wool fiberglass, and flat glass~~
~~4. P is the rate of glass production (kg/hr) from (d) above.~~

~~(f) When gaseous and liquid fuels are fired simultaneously in a glass melting furnace, the heat input of each fuel, expressed in joules, is determined during each testing period by multiplying the gross calorific value of each fuel fired (in joules/kilogram) by the rate of each fuel fired (in kilograms/second) to the glass melting furnaces. The decimal percent of liquid fuel heating value to total fuel heating value is determined by dividing the heat input of the liquid fuels by the sum of the heat input for the liquid fuels and the gaseous fuels. Gross calorific values are determined in accordance with American Society of Testing and Materials (A.S.T.M.) Method D 240-76 (liquid fuels) and D 1826-77 (gaseous fuels), as applicable. The owner or operator shall determine the rate of fuels burned during each testing period by suitable methods and shall confirm the rate by a material balance over the glass melting system.~~

~~(Note: All references to ASTM in this rule refers to the American Society for Testing Materials. Copies of methods are available for purchase by writing to ASTM, 1916 Race Street, Philadelphia, PA 19103 or by writing to the Tennessee Division of Air Pollution Control, 701 Broadway, 4th Floor, Customs House, Nashville, TN 37219. Be sure and specify which method is desired.)~~

~~(g) If an owner or operator changes an affected facility from a glass melting furnace with modified processes to a glass melting furnace without modified processes or from a glass melting furnace without modified processes to a glass melting furnace with modified processes, the owner or operator shall notify the Technical Secretary 60 days before the change is scheduled to occur.~~

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

Table of Contents of Chapter 1200-03-16 New Source Performance Standards is amended by deleting the words "Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing Industry" and adding the word "Reserved" so that, as amended, the table of contents for 1200-03-16-.43 shall read: Reserved.

Rule 1200-03-16-.43 is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200–03–16–.43 ~~EQUIPMENT LEAKS OF VOC IN THE SYNTHETIC ORGANIC CHEMICALS MANUFACTURING INDUSTRY.~~ Reserved

~~(1) Applicability.~~

~~(a) 1. The provisions of this rule apply to affected facilities in the synthetic organic chemicals manufacturing industry.~~

~~2. The group of all equipment within a process unit is an affected facility.~~

~~(b) Any affected facility under subparagraph (a) of this paragraph that commences construction or modification after November 6, 1988.~~

~~(c) Addition or replacement of equipment for the purpose of process improvement which is accomplished without a capital expenditure shall not by itself be considered a modification under this rule.~~

(d) 1. If an owner or operator applies for one of the exemptions in this subparagraph, then the owner or operator shall maintain records as required in subparagraph (7)(i) of this rule.

2. Any affected facility that has the design capacity to produce less than 1,000 Mg/yr is exempt from paragraph (3) of this rule.

3. If an affected facility produces heavy liquid chemicals only from heavy liquid feed or raw materials, then it is exempt from paragraph (3) of this rule.

4. Any affected facility that produces beverage alcohol is exempt from paragraph (3) of this rule.

5. Any affected facility that has no equipment in VOC service is exempt from paragraph (3) of this rule.

(2) Definitions.

(a) "Capital expenditure" means, in addition to the definition in 1200-3-16-.01(4)(a)2., an expenditure for a physical or operational change to an existing facility that:

1. Exceeds P, the product of the facility's replacement cost, R, and an adjusted annual asset guideline repair allowance, A, as reflected by the following equation: P = R x A, where

(i) The adjusted annual asset guideline repair allowance, A, is the product of the percent of the replacement cost, Y, and the applicable basic annual asset guideline repair allowance, B, as reflected by the following equation: A = Y x (B 100);

(ii) The percent Y is determined from the following equation: Y = 1.0 - 0.575 log X, where X is 1982 minus the year of construction; and

(iii) The applicable basic annual asset guideline repair allowance, B, is as follows:

(I) 12.5 for the Synthetic Organic Chemical Manufacturing Industry.

(II) 4.5 for Onshore Natural Gas Processing Plants.

(b) "Closed vent system" means a system that is not open to the atmosphere and that is composed of piping, connections, and if necessary, flow inducing devices that transport gas or vapor from a piece or pieces of equipment to a control device.

(c) "Connector" means flanged, screwed, welded, or other joined fittings used to connect two pipe lines or a pipe line and a piece of process equipment.

(d) "Control device" means an enclosed combustion device, vapor recovery system or flare.

(e) "Distance piece" means an open or enclosed casing through which the piston rod travels, separating the compressor cylinder from the crankcase.

(f) "Double block and bleed system" means two block valves connected in series with a bleed valve or line that can vent the line between the two block valves.

(g) "Equipment" means each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, and flange or other connector in VOC service and any devices or systems required by this rule.

(h) "Existing facility" means the group of all equipment, within a process unit, in existence on November 6, 1988 and any replacements in kind of such equipment from the compliment considered to be the existing facility.

(i) "First attempt at repair" means to take rapid action for the purpose of stopping or reducing leakage of organic material to atmosphere using best practices.

(j) "In gas/vapor service" means that the piece of equipment contains process fluid that is in the gaseous state at operating conditions.

(k) "In heavy liquid service" means that the piece of equipment is not in gas/vapor service or in light liquid service.

(l) "In light liquid service" means that the piece of equipment contains a liquid that meets the conditions specified in subparagraph (6)(e) of this rule.

(m) "Liquids dripping" means any visible leakage from the seal including spraying, misting, clouding, and ice formation.

(n) "Open-ended valve or line" means any valve, except safety relief valves, having one side of the valve seat in contact with process fluid and one side open to the atmosphere, either directly or through open piping.

(o) "Pressure release" means the emission of materials resulting from system pressure being greater than set pressure of the pressure relief device.

(p) "Process improvement" means routine changes made for safety and occupational health requirements, for energy savings, for better utility, for ease of maintenance and operation, for correction of design deficiencies, for bottleneck removal, for changing product requirements, or for environmental control.

(q) "Process unit" means components assembled to produce, as intermediate or final products, one or more of the chemicals specified in paragraph (10) of this rule. A process unit can operate independently if supplied with sufficient feed or raw materials and sufficient storage facilities for the product.

(r) "Process unit shutdown" means a work practice or operational procedure that stops production from a process unit or part of a process unit. An unscheduled work practice or operational procedure that stops production from a process unit or part of a process unit for less than 24 hours is not a process unit shutdown. The use of spare equipment and technically feasible bypassing of equipment without stopping production are not process unit shutdowns.

(s) "Quarter" means a 3-month period; the first quarter concludes on the last day of the last full month during the 180 days following initial startup.

(t) "Repaired" means that equipment is adjusted, or otherwise altered, in order to eliminate a leak as indicated by one of the following: an instrument reading of 10,000 ppm or greater, indication of liquids dripping, or indication by a sensor that a seal or barrier fluid system has failed.

(u) "Replacement cost" means the capital needed to purchase all the depreciable components in a facility.

(v) "Sensor" means a device that measures a physical quantity or the change in a physical quantity such as temperature, pressure, flow rate, pH, or liquid level.

(w) "In-situ sampling systems" means nonextractive samplers or in-line samplers.

(x) "Synthetic organic chemicals manufacturing industry" means the industry that produces, as intermediates or final products, one or more of the chemicals specified in paragraph (10) of this rule.

(y) "In vacuum service" means that equipment is operating at an internal pressure which is at least 5 kilopascals (kPa) below ambient pressure.

(z) "In VOC Service" means that the piece of equipment contains or contacts a process fluid that is at least 10 percent VOC by weight. (The provisions of subparagraph (6)(d) of this rule specify how to determine that a piece of equipment is not in VOC service.)

(3) Standards:

(a) General

1. Each owner or operator subject to the provisions of this rule shall demonstrate compliance with the requirements of sub-paragraphs (3)(a) to (j) for all equipment within 180 days of initial startup.

2. Compliance with subparagraphs (3)(a) to (j) of this rule will be determined by review of records and reports, review of performance test results, and inspection using the methods and procedures specified in paragraph (6) of this rule.

3. (i) An owner or operator may request a determination of equivalence of a means of emission limitation to the requirements of subparagraphs (3)(b), (c), (e), (f), (g), (h), and (j) of this rule as provided in paragraph (5) of this rule.

(ii) If the Technical Secretary makes a determination that a means of emission limitation is at least equivalent to the requirements of subparagraphs (3)(b), (c), (e), (f), (g), (h), and (j) of this rule, an owner or operator shall comply with the requirements of that determination.

4. Equipment that is in vacuum service is excluded from the requirements of subparagraphs (3)(b) to (j) if it is identified as required in part (7)(e) 5 of this rule.

(b) Pumps in light liquid service

1. (i) Each pump in light liquid service shall be monitored monthly to detect leaks by the methods specified in subparagraph (6)(b) of this rule, except as provided in part (3)(a) 3. of this rule and parts 4., 5., and 6. of this subparagraph.

(ii) Each pump in light liquid service shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal.

2. (i) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(ii) If there are indications of liquids dripping from the pump seal, a leak is detected.

3. (i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected except as provided in subparagraph (3)(i) of this rule.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

4. Each pump equipped with a dual mechanical seal system that includes a barrier fluid system is exempt from the requirements of part 1. of this subparagraph, provided the following requirements are met:

(i) Each dual mechanical seal system is:

(I) Operated with the barrier fluid at a pressure that is at all times greater than the pump stuffing box pressure; or

(II) Equipment with a barrier fluid degassing reservoir that is connected by a closed vent system to a control device that complies with the requirements of subparagraph (3)(j) of this rule; or

(III) Equipped with a system that purges the barrier fluid into a process stream with zero VOC emissions to the atmosphere.

(ii) The barrier fluid system is in heavy liquid service or is not in VOC service.

(iii) Each barrier fluid system is equipped with a sensor that will detect failure of the seal system, the barrier fluid system, or both.

(iv) Each pump is checked by visual inspection, each calendar week, for indications of liquids dripping from the pump seals.

(v) (I) Each sensor as described in sub-part 4. (iii) of this subparagraph is checked daily or is equipped with an audible alarm, and

(II) The owner or operator determines, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

(vi) (I) If there are indications of liquids dripping from the pump seal or the sensor indicates failure of the seal system, the barrier fluid system, or both based on the criterion determined in item 4.(v)(II) of this subparagraph, a leak is detected.

(II) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in subparagraph (3)(i) of this rule.

(III) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

5. Any pump that is designated, as described in parts (7)(e)I. and 2. of this rule, for no detectable emission, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of parts 1., 3., and 4. of this subparagraph, if the pump:

(i) Has no externally actuated shaft penetrating the pump housing.

(ii) Is demonstrated to be operating with no detectable emissions as indicated by an instrument reading of less than 500 ppm above background as measured by the methods specified in subparagraph (6)(c) of this rule, and

(iii) Is tested for compliance with sub-part 5.(ii) of this subparagrah initially upon designation, annually, and at other times requested by the Technical Secretary.

6. If any pump is equipped with a closed vent system capable of capturing and transporting any leakage from the seal or seals to a control device that complies with the requirements of subparagraph (3)(j) of this rule, it is exempt from the parts 1. through 5. of this subparagraph.

(c) Compressors

1. Each compressor shall be equipped with a seal system that includes a barrier fluid system and that prevents leakage of VOC to the atmosphere, except as provided in part (3)(a)3. of this rule and parts 8. and 9. of this subparagraph.

2. Each compressor seal system as required in part 1. of this subparagraph shall be:

(i) Operated with the barrier fluid at a pressure that is greater than the compressor stuffing box pressure; or

(ii) Equipped with a barrier fluid system that is connected by a closed vent system to a control device that complies with the requirements of subparagraph (3)(j) of this rule; or

(iii) Equipped with a system that purges the barrier fluid into a process stream with zero VOC emissions to the atmosphere.

3. The barrier fluid system shall be in heavy liquid service or shall not be in VOC service.

4. Each barrier fluid system as described in part 1. of this subparagraph shall be equipped with a sensor that will detect failure of the seal system, barrier fluid system, or both.

5. (i) Each sensor as required in part 4. of this subparagraph shall be checked daily or shall be equipped with an audible alarm.

(ii) The owner or operator shall determine, based on design considerations and operating experience, a criterion that indicates failure of the seal system, the barrier fluid system, or both.

6. If the sensor indicates failure of the seal system, the barrier system, or both based on the criterion determined under sub-part 5.(ii) of this subparagraph, a leak is detected.

7. (i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in subparagraph (3)(i) of this rule.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

8. A compressor is exempt from the requirements of parts I. and 2. of this subparagraph, if it is equipped with a closed vent system capable of capturing and transporting any leakage from the seal to a control device that complies with the requirements of subparagraph (3)(j) of this rule, except as provided in part 9. of this subparagraph.

9. Any compressor that is designated, as described in parts (7)(e)l. and 2. of this rule, for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of parts 1. thru 8. of this subparagraph, if the compressor:

(i) Is demonstrated to be operating with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as measured by the methods specified in subparagraph (6)(c) of this rule; and

(ii) Is tested for compliance with sub-part 9.(i) of this subparagraph initially upon designation, annually, and at other times requested by the Technical Secretary.

10. Any existing reciprocating compressor in a process unit which becomes an affected facility under provisions of subparagraphs 1200-3-16-.01(9)(a) or (b) is exempt from parts (3)(c)1., 2., 3., 4., 5., and 8. of this rule, provided the owner or operator demonstrates that recasting the distance piece or replacing the compressor are the only options available to bring the compressor into compliance with the provisions of parts 1., 2., 3., 4., 5., and 8. of this subparagraph.

(d) Pressure relief devices in gas/vapor service

1. Except during pressure releases, each pressure relief device in gas/vapor service shall be operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as determined by the methods specified in subparagraph (6)(c) of this rule.

2. (i) After each pressure release, the pressure relief device shall be returned to a condition of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, as soon as practicable, but no later than 5 calendar days after the pressure release, except as provided in subparagraph (3)(i) of this rule.

(ii) No later than 5 calendar days after the pressure release, the pressure relief device shall be monitored to confirm the conditions of no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, by the methods specified in subparagraph (6)(c) of this rule.

3. Any pressure relief device that is equipped with a closed vent system capable of capturing and transporting leakage through the pressure relief device to a control device as described in subparagraph (3)(j) of this rule is exempted from the requirements of parts 1. and 2. of this subparagraph.

(e) Sampling connection systems

1. Each sampling connection system shall be equipped with a closed purge system or closed vent system, except as provided in part (3)(a)3. of this rule.

2. Each closed purge system or closed vent system as required in part 1. of this subparagraph shall:

(i) Return the purged process fluid directly to the process line with zero VOC emissions to the atmosphere; or

(ii) Collect and recycle the purged process fluid with zero VOC emissions to the atmosphere; or

(iii) Be designed and operated to capture and transport all the purged process fluid to a control device that complies with the requirements of subparagraph (3)(j) of this rule.

3. In-situ sampling systems are exempt from parts 1. and 2. of this subparagraph.

(f) Open-ended valves or lines

1. (i) Each open-ended valve or line shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in part (3)(a)3. of this rule.

(ii) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line.

2. Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

3. When a double block-and-bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with part 1. of this subparagraph at all other times.

(g) Valves in gas/vapor service and light liquid service.

1. Each valve shall be monitored monthly to detect leaks by the methods specified in subparagraph (6)(b) of this rule and shall comply with parts 2. through 5. of this subparagraph, except as provided in parts 6., 7., and 8. of this subparagraph, subparagraphs (4)(a) and (b) of this rule, and part (3)(a)3. of this rule.

2. If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

3. (i) Any valve for which a leak is not detected for 2 successive months may be monitored the first month of every quarter, beginning with the next quarter, until a leak is detected.

(ii) If a leak is detected, the valve shall be monitored monthly until a leak is not detected for 2 successive months.

4. (i) When a leak is detected, it shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected, except as provided in subparagraph (3)(i) of this rule.

(ii) A first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

5. First attempts at repair include, but are not limited to, the following best practices where practicable:

(i) Tightening of bonnet bolts;

(ii) Replacement of bonnet bolts;

(iii) Tightening of packing gland nuts;

(iv) Injection of lubricant into lubricated packing.

6. Any valve that is designated, as described in part (7)(e)2. of this rule, for no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background, is exempt from the requirements of part 1. of this rule if the valve:

(i) Has no external actuating mechanism in contact with the process fluid,

(ii) Is operated with emissions less than 500 ppm above background as determined by the method specified in subparagraph (6)(c) of this rule, and

(iii) Is tested for compliance with subpart 6.(ii) of this subparagraph initially upon designation, annually, and at other times requested by the Technical Secretary.

7. Any valve that is designated, as described in part (7)(f)1. of this rule, as an unsafe-to-monitor valve is exempt from the requirements of part 1. of this subparagraph if:

(i) The owner or operator of the valve demonstrates that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with part 1. of this subparagraph, and

(ii) The owner or operator of the valve adheres to a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times.

8. Any valve that is designated, as described in part (7)(f)2. of this rule, as a difficult-to-monitor valve is exempt from the requirements of part 1. of this subparagraph if:

(i) The owner or operator of the valve demonstrates that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface.

(ii) The process unit within which the valve is located becomes an affected facility through subparagraphs 1200-03-16-.01(9)(a) or (b), or the owner or operator designates less than 3.0 percent of the total number of valves as difficult-to-monitor and

(iii) The owner or operator of the valve follows a written plan that requires monitoring of the valve at least once per calendar year.

(h) Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors.

1. Pumps and valves in heavy liquid service, pressure relief devices in light liquid or heavy liquid service, and flanges and other connectors shall be monitored within 5 days by the method specified in subparagraph (6)(b) of this rule if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method.

2. If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

3. (i) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in subparagraph (3)(i) of this rule.

(ii) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

4. First attempts at repair include, but are not limited to, the best practices described under part (3)(g)5 of this rule.

(i) Delay of repair.

1. Delay of repair of equipment for which leaks have been detected will be allowed if the repair is technically infeasible without a process unit shutdown. Repair of this equipment shall occur before the end of the next process unit shutdown.

2. Delay of repair of equipment will be allowed for equipment which is isolated from the process and which does not remain in VOC service.

3. Delay of repair for valves will be allowed if:

(i) The owner or operator demonstrates that emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair, and

(ii) When repair procedures are effected, the purged material is collected and destroyed or recovered in a control device complying with subparagraph (3)(j) of this rule.

4. Delay of repair for pumps will be allowed if:

(i) Repair requires the use of a dual mechanical seal system that includes a barrier fluid system, and

(ii) Repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

5. Delay of repair beyond a process unit shutdown will be allowed for a valve, if valve assembly replacement is necessary during the process unit shutdown, valve assembly supplies have been depleted, and valve assembly supplies had been sufficiently stocked before the supplies were depleted. Delay of repair beyond the next process unit shutdown will not be allowed unless the next process unit shutdown occurs sooner than 6 months after the first process unit shutdown.

(j) Closed vent systems and control devices.

1. Owners or operators of closed vent systems and control devices used to comply with provisions of this rule shall comply with the provisions of this subparagraph.

2. Vapor recovery systems (for example, condensers and absorbers) shall be designed and operated to recover the VOC emissions vented to them with an efficiency of 95 percent or greater.

3. Enclosed combustion devices shall be designed and operated to reduce the VOC emissions vented to them with an efficiency of 95 percent or greater, or to provide a minimum residence time of 0.75 seconds at a minimum temperature of 816° C.

4. Flares used to comply with this rule shall comply with the requirements of 1200-3-16-.01(11).

5. Owners or operators of control devices used to comply with the provisions of this rule shall monitor these control devices to ensure that they are operated and maintained in conformance with their designs.

6. (i) Closed vent systems shall be designed and operated with no detectable emissions, as indicated by an instrument reading of less than 500 ppm above background and visual inspections, as determined by the methods specified in subparagraph (6)(c) of this rule.

(ii) Closed vent systems shall be monitored to determine compliance with this subparagraph initially in accordance with paragraph 1200-3-16-.01(5), annually and at other times requested by the Technical Secretary.

7. Closed vent systems and control devices used to comply with provisions of this rule shall be operated at all times when emissions may be vented to them.

8. Each owner or operator subject to the provisions of this subparagraph may apply to the Technical Secretary for determination of equivalence for any means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to the reduction in emission achieved by the methods specified in the other parts of this subparagraph.

(4) Alternative standards for valves:

(a) Allowable percentage of valves leaking

1. An owner or operator may elect to comply with an allowable percentage of valves leaking of equal to or less than 2.0 percent.

2. The following requirements shall be met if an owner or operator wishes to comply with an allowable percentage of valves leaking:

(i) An owner or operator must notify the Technical Secretary that the owner or operator has elected to comply with the allowable percentage of valves leaking before implementing this alternative standard, as specified in subparagraph (8)(d) of this rule.

(ii) A performance test as specified in part 3. of this subparagraph shall be conducted initially upon designation, annually, and at other times requested by the Technical Secretary.

(iii) If a valve leak is detected, it shall be repaired in accordance with parts (3)(g)4. and 5. of this rule.

3. Performance tests shall be conducted in the following manner:

(i) All valves in gas/vapor and light liquid service within the affected facility shall be monitored within 1 week by the methods specified in subparagraph (6)(b). of this rule.

(ii) If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(iii) The leak percentage shall be determined by dividing the number of valves for which leaks are detected by the number of valves in gas/vapor and light liquid service within the affected facility.

4. Owners and operators who elect to comply with this alternative standard shall maintain an affected facility with a leak percentage not greater than 2.0 percent.

(b) Skip period leak detection and repair:

1. (i) An owner or operator may elect to comply with one of the alternative work practices specified in sub-parts 2.(ii) and (iii) of this subparagraph.

(ii) An owner or operator must notify the Technical Secretary before implementing one of the alternative work practices, as specified in subparagraph (8)(d) of this rule.

2. (i) An owner or operator shall comply initially with the requirements for valves in gas/vapor service and valves in light liquid service, as described in subparagraph (3)(g) of this rule.

(ii) After 2 consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0, an owner or operator may begin to skip 1 of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(iii) After 5 consecutive quarterly leak detection periods with the percent of valves leaking equal to or less than 2.0, an owner or operator may begin to skip 3 of the quarterly leak detection periods for the valves in gas/vapor and light liquid service.

(iv) If the percent of valves leaking is greater than 2.0, the owner or operator shall comply with the requirements of subparagraph (3)(g) of this rule but can again elect to use this subparagraph.

(v) The percent of valves leaking shall be determined by dividing the sum of valves found leaking during current monitoring and valves for which repair has been delayed by the total number of valves subject to the requirements of subparagraph (4)(b) of this rule.

(vi) An owner or operator must keep a record of the percent of valves found leaking during each leak detection period.

(5) Equivalence of means of emission limitation:

(a) Each owner or operator subject to the provisions of this rule may apply to the Technical Secretary for determination of equivalence for any means of emission limitation that achieves a reduction in emissions of VOC at least equivalent to the reduction in emissions of VOC achieved by the controls required in this rule.

(b) Determination of equivalence to the equipment, design, and operational requirements of this rule will be evaluated by the following guidelines:

1. Each owner or operator applying for an equivalence determination shall be responsible for collecting and verifying test data to demonstrate equivalence of means of emission limitation.

2. The Technical Secretary will compare test data for the means of emission limitation to test data for the equipment, design, and operational requirements.

3. The Technical Secretary may condition the approval of equivalence on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the equipment, design, and operational requirements.

(c) Determination of equivalence to the required work practices in this rule will be evaluated by the following guidelines:

1. Each owner or operator applying for a determination of equivalence shall be responsible for collecting and verifying test data to demonstrate equivalence of an equivalent means of emission limitation.

2. For each affected facility for which a determination of equivalence is requested, the emission reduction achieved by the required work practice shall be demonstrated.

3. For each affected facility, for which a determination of equivalence is requested, the emission reduction achieved by the equivalent means of emission limitation shall be demonstrated.

4. Each owner or operator applying for a determination of equivalence shall commit in writing to work practices(s) that provide for emission reductions equal to or greater than the emission reductions achieved by the required work practice.

5. The Technical Secretary will compare the demonstrated emission reduction for the equivalent means of emission limitation to the demonstrated emission reduction for the required work practices and will consider the commitment in part (c)4. of this paragraph.

6. The Technical Secretary may condition the approval of equivalence on requirements that may be necessary to assure operation and maintenance to achieve the same emission reduction as the required work practice.

(d) An owner or operator may offer a unique approach to demonstrate the equivalence of any equivalent means of emission limitation.

(6) Test methods and procedures:

(a) Each owner or operator subject to the provisions of this rule shall comply with the test method and procedure requirements provided in this paragraph.

(b) Monitoring, as required in paragraphs (3), (4), and (5) of this rule, shall comply with the following requirements:

1. Monitoring shall comply with Reference Method 21 (as specified in 1200-3-16-.01(5)(g)21.).

2. The detection instrument shall meet the performance criteria of Reference Method 21.

3. The instrument shall be calibrated before use on each day of its use by the methods specified in Method 21.

4. Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane.

5. The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

(c) When equipment is tested for compliance with no detectable emissions as required in parts (3)(b)5., (c)9., (g)6., and (j)5. and subparagraph (3)(d) of this rule, the test shall comply with the following requirements:

1. The requirements of parts (b)1. thru 4. of this paragraph shall apply.

2. The background level shall be determined, as set forth in Reference Method 21.

3. The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible as described in Reference Method 21.

4. The arithmetic difference between the maximum concentration indicated by the instrument and the background level is compared with 500 ppm for determining compliance.

(d) 1. Each piece of equipment within a process unit is presumed to be in VOC service unless an owner or operator demonstrates that the piece of equipment is not in VOC service. For a piece of equipment to be considered not in VOC service, it must be determined that the percent VOC content can be reasonably expected never to exceed 10 percent by weight. For purposes of determining the percent VOC content in the process fluid that is contained in or contacts equipment, procedures that conform to the general methods described in ASTM E-260, E-168, E-169 shall be used.

(Note: All references to ASTM in this rule refers to the American Society for Testing Materials. Copies of methods are available for purchase by writing to ASTM, 1916 Race Street, Philadelphia, PA 19103 or by writing to the Tennessee Division of Air Pollution Control, 701 Broadway, 4th Floor, Customs House, Nashville, TN 37219. Be sure and specify which method is desired).

2. If an owner or operator decides to exclude non-reactive organic compounds from the total quantity of organic compounds in determining the percent VOC content of the process fluid, the exclusion will be allowed if:

(i) Those substances excluded are those considered as having negligible photochemical reactivity by the Technical Secretary; and

(ii) The owner or operator demonstrates that the percent organic content, excluding non-reactive organic compounds, can be reasonably expected never to exceed 10 percent by weight.

3. (i) An owner or operator may use engineering judgment rather than the procedures in parts (d)1. and 2. of this paragraph to demonstrate that the percent VOC content does not exceed 10 percent by weight, provided that the engineering judgment demonstrates that the VOC content clearly does not exceed 10 percent by weight. When an owner or operator and the Technical Secretary do not agree on whether a piece of equipment is not in VOC service, however, the procedures in parts (d)1. and 2. of this paragraph shall be used to resolve the disagreement.

(ii) If an owner or operator determines that a piece of equipment is in VOC service, the determination can be revised only after following the procedures in parts (d)l. and 2. of this paragraph.

(e) Equipment is in light liquid service if the following conditions apply:

1. The vapor pressure of one or more of the components is greater than 0.3 kPa at 20° C. Vapor pressures may be obtained from standard reference texts or may be determined by ASTM D-2879.

2. The total concentration of the pure components having a vapor pressure greater than 0.3 kPa at 20° C is equal to or greater than 20 percent by weight and

3. The fluid is a liquid at operating conditions.

(f) Samples used in conjunction with subparagraphs (d), (e), and (g) of this paragraph shall be representative of the process fluid that is contained in or contacts the equipment or the gas being combusted in the flare.

(g) 1. Reference Method 22 shall be used to determine the compliance of the flares with the visible emission provisions of this rule.

2. The presence of a flare pilot flame shall be monitored using a thermocouple or any other equivalent device to detect the presence of a flame.

3. The net heating value of the gas being combusted in a flare shall be calculated using the following equation:

$$HT = K\sum_{i=1}^{n} H_i C_i$$

Where:

HT = Net heating value of the sample, MJ/ scm; where the net enthalpy per mole of offgas is based on combustion at 25°C and 760 mm Hg, but the standard temperature for determining the volume corresponding to one mole is 20.

$$K = Constatn,\ 1.740 \times 10^{7} \left(\frac{1}{ppm}\right)\left(\frac{gmole}{scm}\right)\left(\frac{MJ}{kcal}\right)$$

where

standard temperature for g mole is 20°C scm

Ci = Concentration of sample component i in ppm, as measured by Reference Method 18 and ASTM D2504-67 (reapproved 1977).

Hi = Net heat of combustion of sample component i, kcal/g mole. The heats of combustion may be determined using ASTM D2382-76 if published values are not available or cannot be calculated.

4. The actual exit velocity of a flare shall be determined by dividing the volumetric flowrate (in units of standard temperature and pressure), as determined by Reference Method 2 or 2A as appropriate, by the unobstructed (free) cross sectional area of the flare tip.

5. The maximum permitted velocity, Vmax for air-assisted flares shall be determined by the following equation:

Vmax = 8.706 + 0.7084 (HT)

Vmax = Maximum permitted velocity, m/sec.

8.706 = Constant.

0.7084 = Constant,

HT = The net heating value as determined in part (g)3. of this paragraph.

(7) Record-keeping requirements.

(a) 1. Each owner or operator subject to the provisions of this rule shall comply with the record-keeping requirements of this paragraph.

2. An owner or operator of more than one affected facility subject to the provisions of this rule may comply with the record-keeping requirements for these facilities in one record-keeping system if the system identifies each record by each facility.

(b) When each leak is detected as specified in subparagraphs (3)(b), (c), (g), (h), and (4)(b) of this rule, the following requirements apply:

1. A weatherproof and readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

2. The identification on a valve may be removed after it has been monitored for 2 successive months as specified in part (3)(g)3. of this rule and no leak has been detected during those 2 months.

3. The identification on equipment, except on a valve, may be removed after it has been repaired.

(c) When each leak is detected as specified in subparagraphs (3)(b), (c), (g), (h), and (4)(b) of this rule, the following information shall be recorded in a log and shall be kept for 2 years in a readily accessible location.

1. The instrument and operator identification numbers and the equipment identification number.

2. The date the leak was detected and the dates of each attempt to repair the leak.

3. Repair methods applied in each attempt to repair the leak.

4. "Above 10,000" if the maximum instrument reading measured by the methods specified in subparagraph (6)(a) of this rule after each repair attempt is equal to or greater than 10,000 ppm.

5. "Repair delayed" and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

6. The signature of the owner or operator (or designate) whose decision it was that repair could not be effected without a process shutdown.

7. The expected date of successful repair of the leak if a leak is not repaired within 15 days.

8. Dates of process unit shutdown that occur while the equipment is unrepaired.

9. The date of successful repair of the leak.

(d) The following information pertaining to the design requirements for closed vent systems and control devices described in subparagraph (3)(j) of this rule shall be recorded and kept in a readily accessible location:

1. Detailed schematics, design specifications, and piping and instrumentation diagrams.

2. The dates and descriptions of any changes in the design specifications.

3. A description of the parameter or parameters monitored, as required in part (3)(j)5. of this rule, to ensure that control devices are operated and maintained in conformance with their design and an explanation of why that parameter (or parameters) was selected for the monitoring.

4. Periods when the closed vent systems and control devices required in subparagraphs (3)(b), (c), (d), and (e) of this rule are not operated as designed, including periods when a flare pilot light does not have a flame.

5. Dates of startups and shutdowns of the closed vent systems and control devices required in subparagraphs (3)(b), (c), (d), and (e) of this rule.

(e) The following information pertaining to all equipment subject to the requirements in subparagraphs (3)(a) thru (j) of this rule shall be recorded in a log that is kept in a readily accessible location:

1. A list of identification numbers for equipment subject to the requirements of this rule.

2. (i) A list of identification numbers for equipment that are designated for no detectable emissions under the provisions of parts (3)(b)5., (c)9. and (g)6. of this rule.

(ii) The designation of equipment as subject to the requirements of parts (3)(b)5., (c)9., and (g)6. of this rule shall be signed by the owner or operator.

3. A list of equipment identification numbers for pressure relief devices required to comply with subparagraph (3)(d) of this rule.

4. (i) The dates of each compliance test as required in parts (3)(b)5. and (c)9., subparagraph (3)(d), and part (3)(g).6 of this rule.

(ii) The background level measured during each compliance test.

(iii) The maximum instrument reading measured at the equipment during each compliance test.

5. A list of identification numbers for equipment in vacuum service.

(f) The following information pertaining to all valves subject to the requirements of parts (3)(g)7. and 8. of this rule shall be recorded in a log that is kept in a readily accessible location:

1. A list of identification numbers for valves that are designated as unsafe-to-monitor, an explanation for each valve stating why the valve is unsafe-to-monitor, and the plan for monitoring each valve.

2. A list of identification numbers for valves that are designated as difficult-to-monitor, an explanation for each valve stating why the valve is difficult-to-monitor, and the schedule for monitoring each valve.

(g) The following information shall be recorded for valves complying with subparagraph (4)(b) of this rule:

1. A schedule of monitoring.

2. The percent of valves found leaking during each monitoring period.

(h) The following information shall be recorded in a log that is kept in a readily accessible location:

1. Design criterion required in sub-parts (3)(b)4.(v) and (3)(c)5.(ii) of this rule and explanation of the design criterion; and

2. Any changes to this criterion and the reasons for the changes.

(i) The following information shall be recorded in a log that is kept in a readily accessible location for use in determining exemptions as provided in subparagraph (1)(d) of this rule:

1. An analysis demonstrating the design capacity of the affected facility,

2. A statement listing the feed or raw materials and products from the affected facilities and an analysis demonstrating whether these chemicals are heavy liquids or beverage alcohol, and

3. An analysis demonstrating that equipment is not in VOC service.

(j) Information and data used to demonstrate that a piece of equipment is not in VOC service shall be recorded in a log that is kept in a readily accessible location.

(k) The provisions of subparagraphs 1200-3-16-.01(7)(b) and (d) do not apply to affected facilities subject to this rule.

(l) The Technical Secretary may specify alternate record-keeping requirements if the provisions of paragraph (5) of this rule are availed of.

(8) Reporting requirements:

(a) Each owner or operator subject to the provisions of this rule shall submit semiannual reports to the Technical Secretary beginning six months after the initial start-up date.

(b) The initial semiannual report to the Technical Secretary shall include the following information:

1. Process unit identification.

2. Number of valves subject to the requirements of subparagraph (3)(g) of this rule, excluding those valves designated for no detectable emissions under the provisions of part (3)(g)6. of this rule.

3. Number of pumps subject to the requirements of subparagraph (3)(b) of this rule, excluding those pumps designated for no detectable emissions under the provisions of part (3)(b)5. of this rule and those pumps complying with part (3)(b)6. of this rule.

4. Number of compressors subject to the requirements of subparagraph (3)(c) of this rule, excluding those compressors designated for no detectable emissions under the provisions of part (3)(c)9. of this rule and those compressors complying with part (3)(c)8. of this rule.

(c) All semiannual reports to the Technical Secretary shall include the following information, summarized from the information in paragraph (7) of this rule:

1. Process unit identification.

2. For each month during the semiannual reporting period,

(i) Number of valves for which leaks were detected as described in part (3)(g)2. or subparagraph (4)(b) of this rule,

(ii) Number of valves for which leaks were not repaired as required in sub-part (3)(g)4.(i) of this rule,

(iii) Number of pumps for which leaks were detected as described in part (3)(b)2. and item (3)(b)4.(vi)(I) of this rule,

(iv) Number of pumps for which leaks were not repaired as required in sub-part (3)(b)3.(i) and item (3)(b)4.(vi)(II) of this rule,

(v) Number of compressors for which leaks were detected as described in part (3)(c)6. of this rule,

(vi) Number of compressors for which leaks were not repaired as required in sub-part (3)(c)7.(i) of this rule, and

(vii) The facts that explain each delay of repair and, where appropriate, why a process unit shutdown was technically infeasible.

3. Dates of process unit shutdowns which occurred within the semiannual reporting period.

4. Revisions to items reported according to subparagraph (b) of this paragaraph if changes have occurred since the initial report or subsequent revisions to the initial report.

(d) An owner or operator electing to comply with the provisions of subparagraphs (4)(a) and (b) of this rule shall notify the Technical Secretary of the alternative standard selected 90 days before implementing either of the provisions.

(e) An owner or operator shall report the results of all performance tests in accordance with paragraph1200–3–16–.01(5)(g). The provisions of subparagraph 1200–3–16–.01(5)(d) do not apply to affected facilities subject to the provisions of this rule except that an owner or operator must notify the Technical Secretary of the schedule for the initial performance tests at least 30 days before the initial performance tests.

(f) The Technical Secretary may specify alternate reporting requirements if the provisions of paragraph (5) of this rule are availed of.

(9) Reconstruction

(a) The cost of the following frequently replaced components of the facility shall not be considered in calculating either the "fixed capital cost of the new components" or the "fixed capital costs that would be required to construct a comparable new facility" under subparagraph 1200–3–16–.01(9)(b): pump seals, nuts and bolts, rupture disks, and packings.

(b) Under subparagraph 1200–3–16–.01(9)(b), the "fixed capital cost of new components" includes the fixed capital cost of all depreciable components (except components specified in subparagraph (a) of this paragraph) which are or will be replaced pursuant to all continuous programs of component replacement which are commenced within any 2-year period following November 6, l988. For purposes of this subparagraph, "commenced" means that an owner or operator has undertaken a continuous program of component replacement or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of component replacement.

(10) List of chemicals produced by affected facilities:

(a) The chemicals listed in Federal Register, Vol. 48, No. 202, pages 48342-48344, are produced, as intermediates or final products, by process units covered under this rule. The applicability date for process units producing one or more of these chemicals is November 6, l988.

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

Table of Contents of Chapter 1200-03-16 New Source Performance Standards is amended by deleting the words "Rubber Tire Manufacturing" and adding the word "Reserved" so that, as amended, the table of contents for 1200-03-16-.60 shall read: Reserved.

Rule 1200-03-16-.60 is amended by deleting the rule in its entirety and replacing it with the word "Reserved" so that, as amended, the rule shall read:

1200–03–16–.60 RUBBER TIRE MANUFACTURING INDUSTRY. (A new rule to limit emissions from the manufacture of rubber tires) Reserved

(1) Applicability

(a) The provisions of this rule apply to the following affected facilities in rubber tire manufacturing plants: each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation.

(b) The provisions of this rule apply to each facility identified in subparagraph (a) of this paragraph that commences construction or modification after (the effective date of this rule).

(c) Although the affected facilities listed under subparagraph (1)(a) are defined in reference to the production of components of a "tire," as defined under part (2)(a)16., the percent emission reduction requirements and VOC use cutoffs specified under subparagraph (3)(a) parts 1, 2, 6, 7(iii), 7(iv), 8, 9, and 10 refer to the total amount of VOC used (the amount allocated to the affected facility), including the VOC used in cements and organic solvent-based green tire spray materials for the tire types not listed in the part (2)(a)16. definition of "tire."

(2) Definitions

(a) All terms that are used in this rule and are not defined below are given the same meaning as in chapter 1200-3-2.

1. "Bead" means rubber-covered strands of wire, wound into a circular form, which ensures a seal between a tire and the rim of the wheel onto which the tire is mounted.

2. "Bead cementing operation" means the system that is used to apply cement to the bead rubber before or after it is wound into its final circular form. A bead cementing operation consists of a cement application station, such as a dip tank, spray booth and nozzles, cement trough and roller or swab applicator, and all other equipment necessary to apply cement to wound beads or bead rubber and to allow evaporation of solvent from cemented beads.

3. "Component" means a piece of tread, combined tread/sidewall, or separate sidewall rubber, or other rubber strip that is combined into the sidewall of a finished tire.

4. "Drying area" means the area where VOC from applied cement or green tire sprays is allowed to evaporate.

5. "Enclosure" means a structure that surrounds a VOC (cement, solvent, or spray) application area and drying area, and that captures and contains evaporated VOC and vents it to a control device. Enclosures may have permanent and temporary openings.

6. "Green tire" means an assembled, uncured tire.

7. "Green tire spraying operation" mean the system used to apply a mold release agent and lubricant to the inside and/or outside of green tires to facilitate the curing process and to prevent rubber from sticking to the curing press. A green tire spraying operation consists of a booth where spraying is performed, the spray application station, and related equipment, such as the lubricant supply system.

8. "Michelin-A operation" means the operation identified as Michelin-A in the Emission Standards and Engineering Division confidential file as referenced in Docket A-80-9, Entry II-B-12.

(Note: Docket A-80-9 is available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday, at the EPA's Central Docket Section, South Conference Center, Room 4, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.)

9. "Michelin-B operation" means the operation identified as Michelin-B in the Emission Standards and Engineering Division confidential file as referenced in Docket A-80-9, Entry II-B-12.

10. "Michelin-C-automatic operations" means the operation identified as Michelin-C-automatic in the Emission Standards and Engineering Division confidential file as referenced in Docket A-80-9, Entry II-B-12.

11. "Month" means a calendar month or a prespecified period of 28 days or 35 days (utilizing a 4-4-5 week record keeping and reporting schedule).

12. "Organic solvent-based green tire spray" means any mold release agent and lubricant applied to the inside or outside of green tires that contains more than 12 percent, by weight, of VOC as sprayed.

13. "Permanent opening" means an opening designed into an enclosure to allow tire components to pass through the enclosure by conveyor or other mechanical means, to provide access for permanent mechanical or electrical equipment, or to direct air flow into the enclosure. A permanent opening is not equipped with a door or other means of obstruction of air flow.

14. "Sidewall cementing operation" means the system used to apply cement to a continuous strip of sidewall compenent or any other continuous strip component (except combined tread/sidewall component) that is incorporated into the sidewall of a finished tire. A sidewall cementing operation consists of a cement application station and all other equipment, such as the cement supply system and feed and takeaway conveyors, necessary to apply cement to sidewall strips or other continuous strip component (except combined tread/sidewall component) and to allow evaporation of solvent from the cemented rubber.

15. "Temporary opening" means an opening into an enclosure that is equipped with a means of obstruction, such as a door, window, or port, that is normally closed.

16. "Tire" means any agricultural, airplane, industrial, mobile home, light-duty truck and/or passenger vehicle tire that has bead diameter less than or equal to 0.5 meter (m) (19.7 inches) and a cross section dimension less than or equal to 0.325 m (12.8 in.), and that is mass produced in an assembly-line fashion.

17. "Tread end cementing operation" means the system used to apply cement to one or both ends of the tread or combined tread/sidewall component. A tread end cementing operation consists of a cement application station and all other equipment, such as the cement supply system and feed and takeaway conveyors, necessary to apply cement to tread ends and to allow evaporation of solvents from the cemented tread ends.

18. "Undertread cementing operation" means the system used to apply cement to a continuous strip of tread or combined tread/sidewall component. An undertread cementing operation consists of a cement application station and all other equipment, such as the cement supply system and feed and takeaway conveyors, necessary to apply cement to tread or combined tread/sidewall strips and to allow evaporation of solvent from the cemented tread or combined tread/sidewall.

19. "VOC emission control device" means equipment that destroys or recovers VOC.

20. "VOC emission reduction system" means a system composed of an enclosure, hood, or other device for containment and capture of VOC emissions and a VOC emission control device.

21. "Water-based green tire spray" means any mold release agent and lubricant applied to the inside or outside of green tires that contains 12 percent or less, by weight, of VOC as sprayed.

(b) Notations used under this rule are defined as follows:

Bc = total number of beads cemented at a particular bead cementing affected facility for a month

Ca = concentration of VOC in gas stream in vents after a control device (parts per million by volume)

Cb = concentration of VOC in gas stream in vents before a control device (parts per million by volume)

Cf = concentration of VOC in each gas stream vented directly to the atmosphere from an affected facility or from a temporary enclosure around an affected facility (parts per million by volume)

Dc = density of cement or spray material (grams per liter)

Dr = density of VOC recovered by an emission control device (grams per liter)

E = emission control device efficiency, inlet versus outlet (fraction)

Fc = capture efficiency, VOC captured and routed to one control device versus total VOC used for an affected facility (fraction)

Fo = fraction of total mass of VOC used in a month by all facilities served by a common cement or spray material distribution system that is used by a particular affected facility served by the common distribution system

G = monthly average mass of VOC used per tire cemented or sprayed with a water-based green tire spray for a particular affected facility (grams per tire)

Gb = monthly average mass of VOC used per bead cemented for a particular bead cementing affected facility (grams per bead)

Lc = volume of cement for spray material used for a month (liters)

Lr = volume of VOC recovered by an emission control device for a month (liters)

M = total mass of VOC used for a month by all facilities served by a common cement or spray material distribution system (grams)

Mo = total mass of VOC used at an affected facility for a month (grams)

Mr = mass of VOC recovered by an emission control device for a month (gram)

N = mass of VOC emitted to the atmosphere per tire cemented or sprayed with a water-based green tire spray for an affected facility for a month (grams per tire)

Nb = mass of VOC emitted per bead cemented for an affected facility for a month (grams per bead)

Qa = volumetric flow rate in vents after a control device (dry standard cubic meters per hour)

Qb = volumetric flow rate in vents before a control device (dry standard cubic meters per hour)

Qf = volumetric flow rate of each stream vented directly to the atmosphere from an affected facility or form a temporary enclosure around an affected facility (dry standard cubic meters per hour)

R = overall efficiency of an emission reduction system (fraction)

Td = total number of days in monthly compliance period (days)

To = total number of tires cemented or sprayed with water-based green tire sprays at a particular affected facility for a month

Wo = weight fraction of VOC in a cement or spray material

(3) Standard for Volatile Organic Compounds

(a) On and after the date on which the initial performance test, required by rule 1200-3-16-.01(5)(g), is completed, but no later than 180 days after initial startup, each owner or operator subject to the provisions of this rule shall comply with the following conditions:

1. For each undertread cementing operation:

(i) Discharge into the atmosphere no more than 25 percent of the VOC used (75 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified below, depending upon the duration of the compliance period:

(I) 3,870 kilograms of VOC per 28 days,

(II) 4,010 kilograms of VOC per 29 days,

(III) 4,150 kilograms of VOC per 30 days,

(IV) 4,280 kilograms of VOC per 31 days, or

(V) 4,840 kilograms of VOC per 35 days.

2. For each sidewall cementing operation:

(i) Discharge into the atmosphere no more than 25 percent of the VOC used (75 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified below, depending upon the duration of the compliance period:

(I) 3,220 kilograms of VOC per 28 days,

(II) 3,340 kilograms of VOC per 29 days,

(III) 3,450 kilograms of VOC per 30 days,

(IV) 3,570 kilograms of VOC per 31 days, or

(V) 4,030 kilograms of VOC per 35 days.

3. For each tread end cementing operation: Discharge into the atmosphere no more than 10 grams of VOC per tire (g/tire) cemented for each month.

4. For each bead cementing operation: Discharge into the atmosphere no more than 5 grams of VOC per bead (g/bead) cemented for each month.

5. For each green tire spraying operation where only water-based sprays are used:

(i) Discharge into the atmosphere no more than 1.2 grams of VOC per tire sprayed with an inside green tire spray for each month; and

(ii) Discharge into the atmosphere no more than 9.3 grams of VOC per tire sprayed with a water-based outside green tire spray for each month; and either

6. For each green tire spraying operation where only organic solvent-based sprays are used:

(i) Discharge into the atmosphere no more than 25 percent of the VOC used in the organic solvent-based green tire sprays (75 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified below, depending upon the duration of the compliance period:

(I) 3,220 kilograms of VOC per 28 days,

(II) 3,340 kilograms of VOC per 29 days,

(III) 3,450 kilograms of VOC per 30 days,

(IV) 3,570 kilograms of VOC per 31 days, or

(V) 4,030 kilograms of VOC per 31 days, or

7. For each green tire spraying operation where both water-based and organic solvent-based sprays are used:

(i) Discharge into the atmosphere no more than 1.2 grams of VOC per tire sprayed with a water-based inside green tire spray for each month; and

(ii) Discharge into the atmosphere no more than 1.2 grams of VOC tire sprayed with a water-based outside green tire spray for each month; and either

(iii) Discharge into the atmosphere no more than 25 percent of the VOC used in the organic solvent-based green tire sprays (75 percent emission reduction) for each month; or

(iv) Maintain total (uncontrolled) VOC use for all organic solvent-based green tires sprays less than or equal to the levels specified under subpart (ii) of part 6 of this paragraph.

8. For each Michelin-A operation:

(i) Discharge into the atmosphere no more than 35 percent of the VOC used (65 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified below, depending upon the duration of the compliance period:

(I) 1,570 kilograms of VOC per 28 days,

(II) 1,630 kilograms of VOC per 29 days,

(III) 1,690 kilograms of VOC per 30 days,

(IV) 1,740 kilograms of VOC per 31 days, or

(V) 1,970 kilograms of VOC per 35 days.

9. For each Michelin-B operation:

(i) Discharge into the atmosphere no more than 25 percent of the VOC used (75 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC used less than or equal to the levels specified below, depending upon the duration of the compliance period:

(I) 1,310 kilograms of VOC per 28 days,

(II) 1,360 kilograms of VOC per 29 days,

(III) 1,400 kilograms of VOC per 30 days,

(IV) 1,450 kilograms of VOC per 31 days, or

(V) 1,640 kilograms of VOC per 35 days.

10. For each Michelin-C-Automatic operation:

(i) Discharge into the atmosphere no more than 35 percent of the VOC used (65 percent emission reduction) for each month; or

(ii) Maintain total (uncontrolled) VOC use less than or equal to the levels specified under subpart (ii) of part 8 of this paragraph.

(4) Performance Test and Compliance Provisions.

(a) Rule 1200–3–16–.01(5)(d) does not apply to the monthly performance test procedures required by this rule. Rule 1200–3–16–.01(5)(d) does not apply to initial performance tests and to the performance tests specified under subparagraphs (b)2 and (b)3 of this paragraph. Rule 1200–3–16–.01(5)(f) does not apply when Method 24 is used.

(b) Performance tests shall be conducted as follows:

1. The owner or operator of an affected facility shall conduct an initial performance tests, as required under rule 1200–3–16–.01(5)(a), except as described under subparagraph (j) of this paragraph. The owner or operator of an affected facility shall thereafter conduct a performance test each month except as described under subparagraphs (g)1 and (j) of this paragraph. Initial and monthly performance tests shall be conducted according to the procedures in this paragraph.

2. The owner or operator of an affected facility who elects to use a VOC emission reduction system with a control device that destroys VOC (e.g., incinerator), as described under subparagraphs (f) and (g) of this paragraph, shall repeat the performance test when directed by the Technical Secretary or when the owner or operator elects to operate the capture system or control device at conditions different from the most recent determination of overall reduction efficiency. The performance test shall be conducted in accordance with the procedures described under subparts (f)2(i) through (iii) of this paragraph.

3. The owner or operator of an affected facility who seeks to comply with the equipment design and performance specifications as described under subparagraph (j) of this paragraph, shall repeat the performance test when directed by the Technical Secretary or when the owner or operator elects to operate the capture system or control device at conditions different from the most recent determination of control device efficiency or measurements of capture system retention time or face velocity. The performance test shall be conducted in accordance with the procedures described under subparagraph (f)2(ii) of this paragraph.

(c) For each untreated cementing operation, each sidewall cementing operation, each green tire spraying operation where organic solvent-based sprays are used, each Michelin-A operation,

each Michelin-B operations, and each Michelin-C-automatic operation where the owner or operator seeks to comply with the uncontrolled monthly VOC use (kg/mo) limits, the owner or operator shall use the following procedures to determine compliance with the applicable (depending upon duration under subparagraph (3)(a) subparts 1(ii), 2(ii), 6(ii), 7(iv), 8(ii), 9(ii), and 10(ii) of this paragraph. If both undertread cementing and sidewall cementing are performed at the same affected facility during a month, then the kg/mo limit specified under subparagraph (3)(a) subparts 1(ii) shall apply for that month.

1. Determine the density and weight fraction VOC (including dilution VOC) for each cement or green tire spray from its formulation or by analysis of the cement or green tire spray using Method 24 (as specified in rule 1200–3–16–.01(5)(g)). If a dispute arises, the Technical Secretary may require an owner or operator who used formulation data to analyze the cement or green tire spray using Method 24 (as specified in rule 1200–3–16–.01(5)(g)).

2. Calculate the total mass of VOC used at the affected facility for the month (Mo) by the following procedure:

(i) For each affected facility for which cement or green tire spray is delivered in batch or via a distribution system that serves only the affected facility:

$$M_o = \sum_{i=1}^{a} L_{ci} D_{ci} W_{oi}$$

where: "a" equals the number of different cements or green tire sprays used during the month that are delivered in batch or via a distribution system that serves only a single affected facility.

(ii) For each affected facility for which cement or green tire spray is delivered via a common distribution system that also serves other affected or existing facilities:

(I) Calculate the total mass of VOC used for all of the facilities served by the common distribution system for the month (M):

$$M = \sum_{i=1}^{b} L_{ci} D_{ci} W_{oi}$$

where: "b" equals the number of different cements or green tire sprays used during the month that are delivered via a common distribution system that also serves other affected or existing facilities.

(II) Determine the fraction (Fo) of M used at the affected facility by comparing the production records and process specifications for the material comented or sprayed at the affected facility for the month to the production records and process specifications for the material cemented or sprayed at all other facilities served by the common distribution system for the month.

(III) Calculate the total monthly mass of VOC used at the affected facility for the month (Mo):

Mo = MFo

3. Determine the time duration of the monthly compliance period (Td).

(d) For each tread end cementing operation and each green tire spraying operation where water-based sprays are used (inside and/or outside) that do not use a VOC emission reduction system, the owner or operator shall use the following procedure to determine compliance with the g/tire limit specified under subparagraph (3)(a) subparts 3, 5(i), 5(ii), 7(i), and 7(ii).

1. Determine the density and weight fraction VOC as specified under subparagraph (c)1 of this paragraph.

2. Calculate the total mass of VOC used at the affected facility for the month (Mo) as specified under subparagraph (c)2 of this paragraph.

3. Determine the total number of tires cemented or sprayed at the affected facility for the month (To) by the following procedure:

(i) For a tread end cementing operation, To equals the number of tread or combined tread/sidewall components that receive an application of tread end cement for the month.

(ii) For a green tire spraying operation that uses water-based inside green tire sprays, To equals the number of green tires that receive an application of water-based inside green tire spray for the month.

(iii) For a green tire spraying operation that uses water-based outside green tire sprays, To equals the number of green tires that receive an application of water-based outside green tire spray for the month.

4. Calculate the mass of VOC used per tire cemented or sprayed at the affected facility for the month (G):

$$G = \frac{Mo}{To}$$

5. Calculate the mass of VOC emitted per tire cemented or sprayed at the affected facility for the month (N):

$$N = G$$

(e) For each bead cementing operation that does not use a VOC emission reduction system, the owner or operator shall use the following procedure to determine compliance with the g/bead limit specified under part 4 of subparagraph (3)(a).

1. Determine the density and weight fraction VOC as specified under subparagraph (c)1 of this paragraph.

2. Calculate the total mass of VOC used at the affected facility for the month (Mo) as specified under subparagraph (c)2 of this paragraph.

3. Determine the number of beads cemented at the affected facility during the month (Bo) using production records; Bo equals the number of beads that receive an application of cement for the month.

4. Calculate the mass of VOC used per bead cemented at the affected facility for the month (Gb):

$$Gb = \frac{Mo}{Bo}$$

5. Calculate the mass of VOC emitted per bead cemented at the affected facility for the month (Nb):

$$Nb = Gb$$

(f) For each tread end cementing operation and each bead cemented operation that uses a VOC emission reduction system with a control device that destroys VOC (e.g., incinerator), the owner or operator shall use the following procedure to determine compliance with the emission limit specified under subparagraph (3)(a) parts 3 and 4 of this paragraph.

1. Calculate the mass of VOC used per tire cemented at the affected facility for the month (G), as specified under subparagraphs (d)1 through 4 of this paragraph, or mass of VOC used per bead cemented at the affected facility for the month (Gb), as specified under subparagraph (3) parts 1 through 4 of this paragraph.

2. Calculate the mass of VOC emitted per tire cemented at the affected facility for the month (N) or mass of VOC emitted per bead cemented for the affected facility for the month (Nb):

N = G (1-R)

Nb = Gb (1-R)

For the initial performance test, the overall reduction efficiency (R) shall be determined as prescribed under subparagraph (f) subparts 2(i) through (iii) of this paragraph. In subsequent months, the owner or operator may use the most recently determined overall reduction efficiency (r) for the performance test except during conditions described under subparagraph (b)2 of this paragraph.

(i) The owner or operator of an affected facility shall construct a temporary enclosure around the application and drying areas during the performance test for the purpose of capturing fugitive VOC emissions. The enclosure must be maintained at a negative pressure to ensure that all evaporated VOC are measurable. Determine the fraction (Fc) of total VOC used at the affected facility that enters the control device:

$$F_c = \frac{\sum_{i=1}^{m} C_{bi} Q_{bi}}{\sum_{i=1}^{m} C_{bi} Q_{bi} + \sum_{i=1}^{n} C_{fi} Q_{fi}}$$

where: "m" is the number of vents from the affected facility to the control device, and "n" is the number of vents from the affected facility to the atmosphere and from the temporary enclosure.

(ii) Determine the destruction efficiency of the control device (E) by using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the control device:

$$E = \frac{\sum_{i=1}^{m} C_{bi} Q_{bi} - \sum_{i=1}^{p} C_{ai} Q_{ai}}{\sum_{i=1}^{m} C_{bi} Q_{bi}}$$

where: "m" is the number of vents from the affected facility to the control device, and "p" is the number of vents after the control device.

(iii) Determine the overall reduction efficiency (R):

R = EFc

(g) For each undertread cementing operation, each sidewall cementing operation, each green tire spraying operation where organic solvent-based sprays are used, each Michelin-A operation, each Michelin-B operation, and each Michelin-C-automatic operation that use a VOC emission

reduction system with a control device that destroys VOC (e.g., incinerator), the owner or operator shall use the following procedure to determine compliance with the percent emission reduction requirement specified under subparagraph (3)(a) subparts 1(i), 2(i), 6(i), 7(iii), 8(i), 9(i) and 10(i).

1. For the initial performance test, the overall reduction efficiency (R) shall be determined as prescribed under subparagraph (f) subparts 2(i) through (iii) of this paragraph. The performance test shall be repeated during conditions described under subparagraph (b)2 of this paragraph. No monthly performance tests are required.

(h) For each tread end cementing operation and each bead cementing operation that uses a VOC emission reduction system with a control device that recovers VOC (e.g., carbon adsorber), the owner or operator shall use the following procedure to determine compliance with the emission limit specified under subparagraph (4)(a) parts 3 and 4.

1. Calculate the mass of VOC used per tire cemented at the affected facility for the month (G), as specified under subparagraphs (d)1 through 4 of this paragraph, or mass of VOC used per bead cemented at the affected facility for the month (Gb), as specified under subparagraph (e) parts 1 through 4 of this paragraph.

2. Calculate the total mass of VOC recovered from the affected facility for the month (Mr):

$$Mr = Lr \cdot Dr$$

3. Calculate the overall reduction efficiency for the VOC emission reduction system (R) for the month:

$$R = \frac{Mr}{\overline{Mo}}$$

4. Calculate the mass of VOC emitted per tire cemented at the affected facility for the month (N) or mass of VOC emitted per bead cemented at the affected facility for the month (Nb):

$$N = G(1 - R)$$

$$Nb = Gb(1 - R)$$

(i) For each undertread cementing operation, each sidewal cementing operation, each green tire spraying operation where organic solvent-based sprays are used, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation that use a VOC emission reduction system with a control device that recovers (VOC) (e.g., carbon adsorber), the owner or operator shall use the following procedure to determine compliance with the percent reduction requirement specified under subparagraph (3)(a) subparts 1(i), 2(i), 6(i), 7(iii), 8(i), 9(i) and 10(i).

1. Determine the density and weight fraction VOC as specified under subparagraph (c)1 of this paragraph.

2. Calculate the total mass of VOC used at the affected facility for the month (Mo) as described under part (c)2 of this paragraph.

3. Calculate the total mass of VOC recovered from the affected facilitiy for the month (Mr) as described under part (h)2 of this paragraph.

4. Calculate the overall reduction efficiency for the VOC emission reduction system (R) for the month as described under subparagraph (h)3 of this paragraph.

(j) Rather than seeking to demonstrate compliance with the provisions of subparagraph (3)(a) subparts 1(i), 2(i), 6(i), 7(iii), or 9(i) of this paragraph using the performance test procedures

described under subparagraphs (g) and (i) of this paragraph, and owner or operator of an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation that use a VOC emission reduction system may seek to demonstrate compliance by meeting the equipment design and performance specifications listed under subparagraph (j) parts 1, 2, and 4 through 6 or under subparagraph (j) parts 1 and 3 through 6 of this paragraph, and by conducting a control device efficiency and performance test to determine compliance as described under part (j)7 of this paragraph. The owner or operator shall conduct this performance test of the control device efficiency no later than 180 days after initial startup of the affected facility, as specified under rule 1200–3–16–.01(5)(g). Meeting the capture system design and performance specifications, in conjunction with operating a 95 percent efficient control device, is an acceptable means of demonstrating compliance with the standard. Therefore, the requirement for the initial performance test on the enclosure, as specified under rule 1200–3–16–.01(5)(g), is waived. No monthly performance test required.

1. For each undertread cementing operation, each sidewall cementing operation, and each Michelin-B operation, the cement application and drying area shall be contained in an enclosure that meets the criteria specified under subparagraph (j) parts 2, 4, and 5 of this paragraph; for each green tire spraying operation where organic solvent-based sprays are used, the spray application and drying area shall be contained in an enclosure that meets the criteria specified under subparagraph (j) parts 3, 4, and 5 of this paragraph.

2. The drying area shall be enclosed between the application area and the water bath or to the extent necessary to contain all tire components for at least 30 seconds after cement application, whichever distance is less.

3. Sprayed green tires shall remain in the enclosure for a minimum of 30 seconds after spray application.

4. A minimum face velocity of 100 feet per minute shall be maintained continuously through each permanent opening into the enclosure when all temporary enclosure openings are closed. The cross-sectional areas of each permanent opening shall be divided into at least 12 equal areas, and a velocity measurement shall be performed at the centroid of each equal area with an anemometer or similar velocity monitoring device; the face velocity of each permanent opening is the average value of the velocity measurements taken. The monitoring device shall be calibrated and operated according to the manufacturer's instructions. Temporary enclosure opening shall remain closed at all times except when worker access is necessary.

5. The total area of all permanent openings into the enclosure shall not exceed the area that would be necessary to maintain the VOC concentration of the exhaust gas stream at 25 percent of the lower explosive limit (LEL) under the following conditions:

   (i) The facility is operating at the maximum solvent use rate;

   (ii) The face velocity through each permanent opening is 100 feet per minute; and

   (iii) All temporary openings are closed.

6. All captured VOC ducted to a VOC emission control device that is operated on a continuous basis and that achieves at least 95 percent destruction or recovery efficiency.

7. The efficiency of the control device (E) for the initial performance test is determined by using values of the volumetric flow rate of each of the gas streams and the VOC content (as carbon) of each of the gas streams in and out of the control device as described under subpart (f)2(ii) of this paragraph. The control device efficiency shall be redetermined during conditions specified under subpart (b)3 of this paragraph.

(k) Each owner or operator of an affected facility who initially elected to be subject to the applicable percent emission reduction requirement specified under subparagraph (3)(a) subparts 1(i), 2(i),

6(i), 7(iii), 8(i), 9(i) and 10(i) of this paragraph and who later seeks to comply with the applicable total (uncontrolled) monthly VOC use limit specified under subparagraph (3)(a) subparts 1(ii), 2(ii), 6(ii), 7(iv), 8(ii), 9(ii) or 10(ii) shall demonstrate, using the procedures described under subparagraph (c) of this paragraph, that the total VOC use at the affected facility has not exceeded the applicable total (uncontrolled) monthly VOC use limit during each of the last 6 months of operation. The owner or operator shall be subject to the applicable percent emission reduction requirement until the conditions of this subparagraph and subparagraph (7)(h) are satisfied.

(l) In determining compliance for each undertread cementing operation, each sidewall cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C-automatic operation, the owner or operator shall include all the VOC used, recovered, or destroyed from cements or sprays used for tires other than those defined under subparagraph (2)(a).

(m) In determining compliance for each tread end cementing operation, each bead cementing operation, and each green tire spraying operation, the owner or operator shall include only those tires defined under subparagraph (2)(a) when determining To and Bo.

(5) Monitoring of Operations.

(a) Each owner or operator subject to the provisions of this rule shall install, calibrate, maintain, and operate according to manufacturer's specifications the following equipment, unless alternative monitoring procedures or requirements are approved for that facility by the Technical Secretary:

1. Where a thermal incinerator is used for VOC emission reduction, a temperature monitoring device equipped with a continuous recorder for the temperature of the gas stream in the combustion zone of the incinerator. The temperature monitoring device shall have an accuracy of 1 percent of the temperature being measured in 0°C or ± 0.5°C, whichever is greater.

2. Where a catalytic incinerator is used for VOC emission reduction, temperature monitoring devices, each equipped with a continuous recorder, for the temperature in the gas stream immediately before and after the catalyst bed of the incinerator. The temperature monitoring devices shall have an accuracy of 1 percent of the temperature being measured in 0°C or ± 0.5°C, whichever is greater.

3. For an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation where a carbon adsorber is used to meet the performance requirements specified under part 6 of subparagraph (4)(j), an organics monitoring device used to indicate the concentration level of organic compounds based on a detection principle such as infrared, photoionization, or thermal conductivity, equipped with a continuous recorder, for the outlet of the carbon bed.

(b) An owner or operator of an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation where a VOC recovery device other than a carbon adsorber is used to meet the performance requirements specified under part 6 of subparagraph (4)(j), shall provide to the Technical Secretary information describing the operation of the control device and the process parameter(s) which would indicate proper operation and maintenance of the device. The Technical Secretary may request further information and will specify appropriate monitoring procedures or requirements.

(6) Record Keeping Requirements.

(a) Each owner or operator of an affected facility that uses a thermal incinerator shall maintain continuous records of the temperature of the gas stream in the combustion zone of the incinerator and records of all 3-hour periods of operation for which the averge temperature of the gas stream in the combustion zone was more than 28°C (50°F) below the combustion zone

temperature measured during the most recent determination of the destruction efficiency of the thermal incinerator that demonstrated that the affected facility was in compliance.

(b) Each owner or operator of an affected facility that uses a catalytic incinerator shall maintain continuous records of the temperature of the gas stream both upstream and downstream of the catalyst bed of the incinerator, records of all 3-hour periods of operation for which the average temperature measured before the catalyst bed is more than 28°C below the gas steam temperature measured before the catalyst bed during the most recent determination of destruction efficiency of the catalytic incinerator that demonstrated that the affected facility was in compliance, and records of all 3-hour periods for which the average temperature difference across the catalyst bed is less than 80 percent of the temperature difference measured during the most recent determination of the destruction efficiency of the catalytic incinerator that demonstrated that the affected facility was in compliance.

(c) Each owner or operator of an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation that uses a carbon adsorber to meet the requirements specified under part 6 of subparagraph (4)(j) shall maintain continuous records of all 3-hour periods of operation during which the average VOC concentration level or reading of organics in the exhaust gases is more than 20 percent greater than the exhaust gas concentration level or reading measured by the organics monitoring device during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the affected facility was in compliance.

(d) Each owner or operator of an untread cementing operation, sidewall cementing operation, green tires spraying operation where organic solvent-based sprays are used, Michelin-A operation, Michelin-B operation, or Michelin-C-automatic operation who seeks to comply with a specified kg/mo uncontrolled VOC use limit shall maintain records of monthly VOC use and the number of days in each compliance period.

(e) Each owner or operator that is required to conduct monthly performance tests, as specified under part 1 of subparagraph (4)(b), shall maintain records of the results of all monthly tests.

(7) Reporting Requirements.

(a) Each owner or operator subject to the provisions of this rule at the time of notification of the anticipated initial startup of an affected facility pursuant to rule 1200–3–16–.01(7)(a)2, shall provide a written report to the Technical Secretary declaring for each undertread cementing operation, each sidewall cementing operation, each green tires spraying operation where organic solvent-based spray are used, each Michelin-A operation, each Michelin-B operation, and each Michelin-C-automatic operation the emission limit he intends to comply with and the compliance method (where subparagraph (4)(j) is applicable) to be employed.

(b) Each owner or operator subject to the provisions of this rule at the time of notification of the anticipated initial startup of an affected facility pursuant to rule 1200–3–16–.01(7)(a)2, shall specify the monthly schedule (each calendar month or 4-4-5 week schedule) to be used in making compliance determinations.

(c) Each owner or operator subject to the provisions of this rule shall report the results of all initial performance tests, as required under rule 1200–3–16–.01(8)(a), and the results of the performance test required under subparagraph (4)(b) parts 2 and 3. The following data shall be included in the report for each of the above performance tests:

1. For each affected facility for which the owner or operator seeks to comply with a kg/mo uncontrolled VOC use limit specified under subparagraph (3)(a). The monthly mass of VOC used (Mo) and the number days in the compliance period (Tdd).

2. For each affected facility that seeks to comply with a g/tire or g/bead limit specified under subparagraph (3)(a) without the use of a VOC emission reduction system: the mass of VOC used (Mo), the number of tires cemented or sprayed (To), the mass of VOC emitted

per tire cemented or sprayed (N), the number of beads cemented (Bo), and the mass of VOC emitted per bead cemented (Nb).

3. For each affected facility that uses a VOC emission reduction system with a control device that destroys VOC (e.g., incinerator) to comply with a g/tire or g/bead limit specified under subparagraph (3)(a): The mass of VOC used (Mo), the number of tires cemented or sprayed (To), the mass of VOC emitted per tire cemented or sprayed (N), the number of beads cemented (Bo), the mass of VOC emitted per bead cemented (Nb), the mass of VOC used per tire cemented or sprayed (G), the mass of VOC per bead cemented (Gb), the emission control device efficiency (E), the capture system efficiency (Fc), the face velocity through each permanent opening for the capture system with the temporary openings closed, and the overall system emission reduction (R).

4. For each affected facility that uses a VOC emission reduction system with a control device that destroys VOC (e.g., incinerator) to comply with a percent emission reduction requirement specified under subparagraph (3)(a): The emission control device efficiency (E), the capture system efficiency (Fc), the face velocity through each permanent opening in the capture system with the temporary openings closed, and the overall system emission reduction (R).

5. For each affected facility that uses a carbon adsorber to comply with a g/tire or g/bead limit specified under subparagraph (3)(a): The mass of VOC used (Mo), the number of tires cemented or sprayed (To), the mass of VOC used per tire cemented or sprayed (G), the number of beads cemented (Bo), the mass of VOC used per bead (Gb), the mass of VOC recovered (Mr), the overall system emission reduction (R), the mass of VOC emitted per tire cemented or sprayed (N), and the mass of VOC emitted per bead cemented (Nb).

6. For each affected facility that uses a VOC emission reduction system with a control device that recovers VOC (e.g., carbon adsorber) to comply with a percent emission reduction requirement specified under subparagraph (3)(a): The mass of VOC used (Mo), the mass of VOC recovered (Mr), and the overall system emission reduction (R).

(d) Each owner or operator of an undertread cementing operation, sidewall cementing operation, green tire spraying operation where organic solvent-based sprays are used, or Michelin-B operation who seeks to comply with the requirements described under subparagraph (4)(j) shall include in the initial compliance report a statement specifying, in detail, how each of the equipment design and performance specifications has been met. The initial compliance report also shall include the following data: The emission control device efficiency (E), the face velocity through each permanent enclosure opening with all temporary enclosure openings closed, the total area of all permanent enclosure openings, the total area of all temporary enclosure openings, the maximum solvent use rate (kg/hr), the type(s) of VOC used, the lower explosive limit (LEL) for each VOC used, and the length of time each component is enclosed after application of cement or spray material.

(e) Each owner or operator of an affected facility shall include the following data measured by the required monitoring device(s), as applicable, in the report for each performance test specified under subparagraph (c) of this paragraph.

1. The average combustion temperature measured at least every 15 minutes and averaged over the performance test period of incinerator destruction efficiency for each thermal incinerator.

2. The average temperature before and after the catalyst bed measured at least every 15 minutes and averaged over the performance test period of incinerator destruction efficiency for each cayalytic incinerator.

3. The concentration level or reading indicated by the organics monitoring device at the outlet of the adsorber, measured at least every 15 minutes and averaged over the performance test period of carbon adsorber recovery efficiency while the vent stream is normally routed and constituted.

4. The appropriate data to be specified by the Technical Secretary where a VOC recovery device other than a carbon adsorber is used.

(f) Once every six (6) months each owner or operator subject to the provisions of paragraph six (6) shall report, as applicable:

1. Each monthly average VOC emission rate that exceeds the g/tire or g/bead limit specified under subparagraph (3)(a), as applicable for the affected facility.

2. Each monthly average VOC use rate that exceeds the kg/mo VOC use limit specified under subparagraph (3)(a), as applicable for the affected facility.

3. Each monthly average VOC emission reduction efficiency for a VOC recovery device (e.g., carbon adsorber) less than the percent efficiency limit specified under subparagraph (3)(a), as applicable for the affected facility.

4. Each 3-hour period of operation for which the average temperature of the gas stream in the combustion zone of a thermal incinerator, as measured by the temperature monitoring device, is more than 28°C (50°F) below the combustion zone temperature measured during the most recent determination of the destruction efficiency of the thermal incinerator that demonstrated that the affected facility was in compliance.

5. Each 3-hour period of operation for which the average temperature of the gas stream immediately before the catalyst bed of a catalytic incinerator, as measured by the temperature monitoring device, is more than 28°C (50°F) below the gas stream temperature measured before the catalyst bed during the most recent determination of the destruction efficiency of the catalyst incinerator that demonstrated that the affected facility was in compliance, and any 3-hour period for which the average temperature difference across the catalyst bed (i.e., the difference between the temperatures of the gas stream immediately before and after the catalyst bed), as measured by the temperature monitoring device, is less than 80 percent of the temperature difference measured during the most recent determination of the destruction efficiency of the catalytic incinerator that demonstrated that the affected facility was in compliance.

6. Each 3-hour period of operation during which the average concentration level or reading of VOC's in the exhaust gases from a carbon adsorber is more than 20 percent greater than the exhaust gas concentration level or reading measured by the organics monitoring device during the most recent determination of the recovery efficiency of the carbon adsorber that demonstrated that the affected facility was in compliance.

(g) Each owner or operator of an affected facility who initially elected to be subject to the applicable percent emission reduction requirement specified under subparagraph (3)(a) and who later seeks to comply with the applicable total (uncontrolled) monthly VOC use limit specified under subparagraph (3)(a) and who has satisfied the provisions specified under subparagraph (4)(k) shall furnish the Technical Secretary written notification no less than 30 days in advance of the date when he intends to be subject to the applicable VOC use limit instead of the applicable percent emission reduction requirement.

(8) Test Methods and Procedures

(a) The test methods as referenced in rule 1200-3-16-.01(5)(g), except as provided under rule 1200-3-16-.01(8)(b), shall be used to determine compliance with subparagraph (3)(a) as follows:

1. Method 24 (as referenced in rule 1200-3-16-.01(5)(g)), or formulation data for the determination of the VOC content of cements or green tire spray materials. In the event of dispute, Method 24 shall be the reference method. For Method 24, the cement or green spray sample shall be a 1-liter sample collected in a 1-liter container at a point where the sample will be representative of the material as applied in the affected facility.

2. Method 25 (as referenced in rule 1200-3-16-.01(5)(g)) as the reference method for the determination of the VOC concentrations in each stack, both entering and leaving an emission control device. The owner or operator shall notify the Technical Secretary 30 days in advance of any test by Method 25. For Method 25, the sampling time for each of three runs shall be at least one (1) hour. Method 1 shall be used to select the sampling site, and the sampling point shall be the centroid of the duct or at a point no closer to the walls than one (1) meter. The minimum sample volume shall be 0.003 dry standard cubic meter (dscm) except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Technical Secretary.

3. Methods 2, or 2A (as referenced in rule 1200-3-16-.01(5)(g), as appropriate, as the reference method for determination of the flow rate of the stack gas. The measurement site shall be the same as for the Method 25 sampling. A velocity traverse shall be made once per run within the hour that the Method 25 sample is taken.

4. Method 4 (as referenced in rule 1200-3-16-.01(5)(g) for determination of stack gas moisture.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	✓				Michael Atchison
Dr. J. Ronald Bailey	✓				
Elaine Boyd	✓				
Dr. Brian W.Christman				✓	
Dr. Wayne T. Davis	✓				
Dr. Mary English				✓	
Stephen R. Gossett				✓	
Mayor Tommy Green				✓	
Dr. Shawn A. Hawkins	✓				
Helen Hennon				✓	
Richard M. Holland	✓				
John Roberts	✓				
Mayor Larry Waters	✓				
Alicia M. Wilson				✓	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 08/08/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/14/12

Rulemaking Hearing(s) Conducted on: (add more dates). 08/06/12

Date: Sept. 10, 2012

Signature: Barry R Stephens

Name of Officer: Barry R. Stephens, P.E.

Title of Officer: Technical Secretary

MALCOLM H. BUTLER NOTARY PUBLIC STATE OF TENNESSEE DAVIDSON COUNTY

Subscribed and sworn to before me on: September 10, 2012

Notary Public Signature: Malcolm H. Butler

My commission expires on: May 6, 2013

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

Robert E. Cooper, Jr.
Attorney General and Reporter

3-19-13
Date

Department of State Use Only

Filed with the Department of State on: 3/21/13

Effective on: 6/19/13

Tre Hargett
Secretary of State

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G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Environment and Conservation
DIVISION:	Water Resources
SUBJECT:	Fracturing Practices for Oil and Gas Wells
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 60-1-201 et seq.
EFFECTIVE DATES:	June 18, 2013 through June 30, 2014
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

The primary purposes of these rule changes are to address large-volume hydraulic fracturing practices, to incorporate existing casing and blowout prevention policies into the rules, and to update some other specifications for all oil and gas wells, including those for siting restrictions, pits, and tanks. The most significant provisions are as follows:

Adding requirements for public notice and public chemical disclosure registry for water-based fractures using more than 200,000 gallons. Includes trade secret protection process for proprietary chemical information.

Adding an option for drinking water well owners within a ½ mile radius of a proposed well to request the operator to collect and analyze a sample to establish baseline water quality of the water well prior to drilling. This would only apply if the proposed oil/gas well will be fractured using more than 200,000 gallons of water-based liquids.

Adding a requirement to monitor well pressures during water-based fracturing treatments using more than 200,000 gallons.

Adding requirements for operators to notify inspectors at least 24 hours prior to fracturing or other well treatment activities, and to maintain personnel on-site during those activities.

Additional well siting restrictions, prohibiting well sites in wetlands or flood-prone areas, and increasing the setback from Outstanding National Resource Waters to 330 feet.

Incorporation of the Division's Casing and Blowout Prevention Policies into rule language, and clarifying revisions to casing and blowout prevention language. This includes minimum standards for integrity testing and documentation of casing and cementing.

Adding a requirement for well integrity testing for wells that are proposed to be placed into Temporary Abandonment, if the well has not been produced or tested in the last 15 years.

Increasing the standard requirement for surface casing to be extended below aquifers from 50 feet to 100 feet.

Additional minimum specifications for pits and pit liners, including a minimum standard of 10 mil thickness for synthetic liners and a new section of requirements for pits associated with mud drilling. Includes the requirement for containment pits around all tanks, regardless of location.

Addition of and revisions to several definitions.

Moving the rules from Rule Divisions 1040-01 through 1040-08 to Rule Divisions 0400-51 through 0400- 58.

Public Hearing Comments

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

A public hearing was held on July 10, 2012 at the Knoxville Environmental Field Office, 3711 Middlebrook Pike Knoxville, Tennessee. Approximately 35 people attended this public hearing. Sixteen (16) people offered oral comments during the hearing. The initial public comment period ended at 4:30 p.m. on July 20, 2012.

The public comment process for the draft rules was extended until 5:30 p.m. August 3, 2012. The extension was granted as a result of overwhelming public participation. The hearings were attended by interested citizens, government agencies, local media, and representatives of numerous groups, institutions, and public and private organizations. The list of attendees represented the following organizations:

American Petroleum Institute (API)
America's Natural Gas Alliance (ANGA)
Atlas Energy LP
CONSOL Energy Inc. (CNX)
Environmental Standards
Knoxville Activist Collective
League of Women Voters of Tennessee (LWV)
Sierra Club
Statewide Organizing for Community eMpowerment (SOCM)
SOCM E3 Committee (Energy, Ecology, and Environmental Justice)
Southern Environmental Law Center
Spectra Energy
Tennessee Citizens for Wilderness Planning (TCWP)
Tennessee Clean Water Network (TCWN)
United Mountain Defense (UMD)

One hundred and eleven (111) private citizens responded with written comments. The following organizations also responded with written comments regarding the proposed rule changes:

American Petroleum Institute (API)
Atlas Energy, LP
Beverage & Diamond for Halliburton Energy Services, Inc.
CONSOL Energy Inc. (CNX)
Harpeth River Watershed Association
Historic Rugby
League of Women Voters of Tennessee (LWV)
LightWave Solar
Natural Resource Services
Perkins & Trotter, PLLC
Plugmill Systems, Inc.
Saint Joseph Petroleum, LLC
Sierra Club
Southern Environmental Law Center
SOCM E3 Committee (Energy, Ecology, and Environmental Justice)
Swan Conservation Trust
Tennessee Citizens for Wilderness Planning (TCWP)
Tennessee Clean Water Network (TCWN)
Tennessee Oil and Gas Association (TOGA)
TMD Energy
Walden Resources, LLC

A number of comments (both written and oral) are not included in this document because: 1) they were not directly related to the proposed rules, 2) stated a belief, opinion or request that did not specifically ask for a response, 3) required a response that would be speculative or unrelated to the rules or 4) requested information or involved matters subject to control or regulation by other government agencies.

Comments and Responses

Subjects included in the comments or questions follow: (Several of the public comments that represent similar concerns and issues are grouped together under specific categories).

A. General Issues about Fracturing (Fracking)

Comment: **A-1) The most common comments received in this process were many variations of the following:**

Why does Tennessee need to allow fracking at this time?

Please do not allow fracking to come to our beautiful state.

The environmental risks of fracking are well known, therefore fracking should be banned.

A moratorium should be placed on all fracking until the effects can be further studied.

Response: Fracturing involves using high pressure to create fissures or fractures in a rock formation to allow oil or gas to flow more easily up a well. It has been practiced in many forms since the 1940s. Currently, in Tennessee the methods used for well fracturing are one of the following: CO_2, N_2, mixed with sand and some water as a surfactant, or HCL. These recorded methods for fracturing have been in place and used extensively since 1969 so fracturing is not a new process in Tennessee. All oil and gas wells are fractured one way or another, and have been for decades. In Tennessee we have no record of any groundwater contamination or safety issues associated with the fracturing process. To ban all fracturing would be not only unwarranted, but would be in effect the same as making oil and gas production illegal in our state without any evidence of harm caused.

TDEC recognizes that the current public concerns over fracturing began with the advent of large-scale hydraulic fracturing in the Marcellus Shale in Pennsylvania and Ohio in the last decade, as well as in other deep shale formations in other parts of the country. The advent of horizontal drilling techniques combined with new methods of hydraulic fracturing made these deep shales viable sources of natural gas. These fracturing methods use large amounts of liquids (as much as 1 to 5 million gallons per well) to fracture, along with some chemical additives, and create issues with chemical handling, wastewater disposal, and water withdrawals from streams.

No hydraulic fracturing of this type and volume has yet occurred in Tennessee; these methods are counter-productive in the Chattanooga Shale. However, we share the commenters' concerns that a more robust regulatory structure may be desirable in the event that hydraulic fracturing methods like those practiced in the Marcellus Shale were to ever be attempted in Tennessee. Our intent with this rulemaking is to provide a regulatory framework for future fracturing using large amounts of water without introducing unnecessary regulatory burdens on those operators using current methods that have not been proven harmful.

Comment: **A-2) Several commenters asked for the 200,000 gallon number to be removed from Rule 0400-52-02-.01(10) and fracking regulations to cover all amounts of fluid.**

Response: As stated above, the intent of this rulemaking is to be able to adequately regulate large volume hydraulic fracturing should it ever be attempted here without affecting current methods of fracturing using nitrogen gas or small water volumes. The amount of 200,000

gallons was initially proposed by environmental groups as part of a 2011 legislative initiative. Here it is used as a trigger for applying new requirements for such fracturing, such as public notice.

TDEC well history information indicated that two wells in the state have been fractured with large volumes of a water-based treatment. One well was treated with 145,000 gallons of water and another well was treated with 175,000 gallons of water. Accordingly, TDEC agreed that the 200,000 gallon threshold, while not a technically derived number, was a logical and reasonable boundary for distinguishing between the acceptable existing practices and large hydraulic fractures that represent a change in methods that the public should be made aware of.

B. Board Makeup

Comment: **How many people who represent the general public service are on the regulatory board and how many people are actually on it?**

Response: The make-up of the Oil and Gas Board is set by legislative statute, and TDEC cannot alter this by the process of rulemaking.

The current Oil and Gas Board is made of six members. Three members are Ex Officio that represent environment, conservation and economic and community development; one member represents the oil and gas industry; one member represents mineral test hole industry; and one member represents landowners with oil and gas wells located on their property. All members are appointed by the Governor's office and are given four year terms.

Effective October 1, 2012 Public Chapter 986 of 2012 merged the Tennessee Oil and Gas Board into the Water Quality Control Board to form the Board of Water Quality Oil and Gas. This will add an Oil and Gas industry representative and a landowner representative to create a twelve member board.

C. American Petroleum Institute (API) standards

Comment: **Many commenters want to know why the proposed regulations do not adopt the standards of the American Petroleum Institute:**

The use of these industry accepted standards is the minimum needed and a foundation from which to create more specific rules.

From what I understand, the proposed regulations fall short of reaching the standards of the American Petroleum Institute. Why would you discuss fewer regulations for this practice which is just now beginning to be studied?

Why in the world would we want to adopt something that is even below these standards [API]?

Response: The American Petroleum Institute (API) publishes guidance on all aspects of oil and gas drilling activities, and TDEC recognizes and depends on their excellent standards and recommendations. Our regulations are indeed consistent with API guidance. API in their comments state that "Tennessee itself already references API standards 26 times in their state regulations..."

However, no states have adopted API standards universally into their rules, nor does API itself recommend that states do so. Their standards are broadly based to cover all kinds of drilling in a variety of geologies, depths, and pressures. To adopt all API guidance would be to impose significant costs on the industry with little additional environmental protection. For example, this might require an operator to spend 5 times as much for a certain grade of steel casing pipe, when a much cheaper pipe would be more than adequately protective for a shallow, low pressure well.

Accordingly, TDEC has chosen to adopt API **performance-based best practices** as a solid foundation for Tennessee field operations. These performance-based practices allow the flexibility to implement the appropriately protective methods and materials based upon the real depths and pressures that will be encountered at a well site. For example, rather than specify a strength of casing pipe that must always be used in every situation, we have adopted performance based-language: "The casing shall have a minimum internal pressure rating of 110% of the maximum formation pressure reasonably expected based upon the depth and location of the well."

D. Definitions

Comment: **D-1) Several suggestions were submitted for revision of definitions.**

Response: We agree with many of the comments made regarding definitions by American Petroleum Institute (API), America's Natural Gas Alliance (ANGA), Consol Energy, TMD Energy, Tennessee Clean Water Network (TCWN) and the Tennessee Oil and Gas Association (TOGA). Accordingly, we have added definitions for or revised our definitions for:

Aquifer
Base Fluid
Blooey Line
Chemical Abstract Service
Chemical Abstract Service Number
Chemicals
Chemical Disclosure Registry
Chemical Family
Conductor Pipe
Flow Lines
Fracturing
Health Professional
Hydraulic Fracturing Additive
Hydraulic Fracturing Fluid
Intermediate Casing
Production Casing
Proppant
Surface Casing
Total Volume Storage
Trade Secret
Well Integrity

Comment: **D-2) In your document when you refer to fracturing, are you including vertical wells treated by fluid volumes less than 200,000 gallons per treatment?**

Response: The definition of fracturing refers to any kind of fracturing methodology, liquid or gas, of any volume. Under the proposed rules, wells to be fractured using greater than 200,000 gallons of water-based liquids will require public notice and other new requirements, and this will include both vertical and horizontal wells.

E. Public Disclosure

Comment: **E-1) A commenter expressed a specific concern that citizens, especially those living near oil and gas operations, have access to timely information about these activities, such as pre-drilling water quality data, geologic infrastructure, the timing and nature of any chemicals that will be pumped into the ground or disposed of in their communities and the procedure and results for ongoing monitoring of surface and groundwater. This presumes that such data is being collected in the first place?**

Response: We concur with the commenter that our draft language concerning disclosure was non-specific. Commenters from both industry and environmental groups referenced the State of Colorado's regulations for fracturing chemical disclosure. Accordingly we have incorporated language adapted from the State of Colorado's regulations on disclosure for water volumes and chemical additives for hydraulic fracturing of any well to use greater than 200,000 gallons of liquid. The rules will specify the use of the website *FracFocus* as the chemical disclosure registry site, which is accessible free on the internet. See subparagraphs (1)(b), (1)(c), (1)(d) and paragraph (3) of Rule 0400-53-01-.03.

Comment: **E-2) Notify the land owner of the well location property, surrounding land owners, TDEC and local news media when the fracking operation is complete. This must be done within 30 days of the completion.**

Response: While there have been occasions when environmental or safety issues have occurred at oil or gas well sites in Tennessee (fires, significant oil spills), no impacts have been documented from the fracturing activities themselves. Fracturing of oil and gas wells in the State of Tennessee has been a common practice with no reported contamination or unsafe event since permitting began in 1969. Accordingly TDEC believes this level of notification for fracturing activities requested by the commenter to be unwarranted.

Currently all operators are required to submit a Well History to report the condition of the well and what type of fracturing treatment has taken place at the permitted well site. The information from a fracture can be obtained from the files of the oil and gas program in approximately 60 to 90 days after the fracturing event.

In addition, the new rules specify that any fracture using greater than 200,000 gallons of water-based liquids must be advertised in a 30-day public notice period prior to drilling and fracturing.

Comment: **E-3) Prescribe a time limit to have the post drilling information entered into the public website by the operator.**

Response: We concur with the commenter that a time limit is needed. These revised regulations will require an operator to enter information onto a national chemical disclosure registry if the operator performs a hydraulic water based fracture using greater than 200,000 gallons of liquid within 60 days of the conclusion of fracturing activity. For all other fracturing activities, existing rules require the operator to submit to the Tennessee Oil and Gas Program a Well History demonstrating what kind of treatment, if any, was conducted on a well within 60 days.

F. Geology

Comment: **F-1) Several commenters asked about the safety of drilling through karst geology as it relates to changing groundwater flows and contaminate transport.**

Drilling karst, whether it is in close proximity to a surface water body or not, should not be permitted. An arbitrary distance from a surface water area will not necessarily be a protective measure in karst environments.

Response: The karst features known as sinkholes, caves, swallets, and collapse features generally occur within the first two hundred feet of the surface. There are some recorded instances where some cave systems extend to as deep as six hundred feet beneath the surface, but not in areas where our oil and gas drilling occurs. In areas where oil and gas deposits and extensive karst features overlap such as Overton, Pickett, Clay and Western Fentress Counties, these karst features occur within the first two hundred feet of the surface.

We believe that the rules we are proposing will continue to be effective in protecting the groundwater in karst areas from contamination. The rules require all oil and gas operators to have a casing program that includes steel pipe to be placed in the boring and cement placed from the bottom of the casing to the surface of the ground. The cement must come back to the surface to ensure that groundwater is protected. In all cases 7 inch steel casing is placed in the boring down to the Chattanooga Shale to insure that all shallow aquifers are isolated.

There are some instances where the operator may drill through a void. In these cases, the operator must cement up to the void with excess cement and then place cement down between the steel casing and the boring and place cement from the cement basket to the surface, thus sealing off both holes bored into the void. All operators are required

to have a cement basket and centralizers on their 7 inch casing to ensure proper placement of the casing and cement. This process has and does protect the ground water that occurs within the karst area.

Comment: **F2) A commenter asked about the relationship between fracturing and earthquake activity.**

Response: Drilling in karst is not related to any earthquake activity in Tennessee. While some earthquakes in other parts of the country have been tentatively linked to the long-term use of underground injection wells for waste disposal along fault zones, extraction of oil and gas deposits is unrelated to earthquake activity.

Comment: **F-3) Several comments were submitted about why TDEC will allow fracturing west of the plateau if there are no viable gas deposits in the shallow Chattanooga shale.**

The proposed rules need to include a prohibition on any drilling in the Chattanooga Shale west of the Cumberland Plateau because according to TDEC's information, the formation does not and will not contain gas because a confining layer does not exist.

Response: In general, the Chattanooga Shale in Middle Tennessee is not worthwhile for oil or gas extraction - there are only limited areas east of Nashville that have any productive potential in the Chattanooga Shale Formation. For most of the state, a geologic structure known as the Nashville Dome uplifted these older rocks so that the Chattanooga Shale was completely eroded away in the area from Monteagle, Tennessee to the southeast of Nashville to Celina, Tennessee (northeast of Nashville) in a band over 60 miles across. The Chattanooga Shale either outcrops or is too shallow to contain producible quantities of natural gas in a wide swath beyond the edges of the Dome.

West of Nashville, natural gas from the Chattanooga Shale has no real commercial potential, as demonstrated by the small number of wells drilled between Nashville and Memphis since permitting began in 1969. The Chattanooga Shale and younger formations west of Nashville are too shallow to be sustainably productive. Without an impermeable rock layer above to seal in the volatile hydrocarbons under pressure, there cannot be any viable hydrocarbons trapped in the shale to recover.

However, there could be small localized areas that contain oil deposits that could conceivably be produced. Because of that remote possibility, TDEC will not impose a ban that would take away a landowner's right to develop their mineral rights. It is also possible that mineral right owners in the future may attempt drilling down to much deeper shale layers than the Chattanooga Shale.

TDEC does not intend to ban all such future exploration with no environmental or safety basis to do so.

Comment: **F-4) A specific, major question for us is whether or not the rock layers above and below the shale gas formations can contain the methane and any unrecovered fracturing fluids to the shale.**

Response: The presence of producible hydrocarbons in a shale layer demonstrates that the surrounding rock layers are sufficient to prevent the hydrocarbons and any other potential pollutants (naturally occurring brine, fracturing fluids) from migrating upward thousands of feet to drinking water aquifer formations. Otherwise the volatile hydrocarbons would have escaped eons ago. Our regulations are designed specifically to prevent migration or leakage of hydrocarbons, brine or other pollutants to other formations via the well bore itself.

Comment: **F-5) A commenter asked about requiring pre-drilling geologic surveys.**

Response: The term "geologic survey" is broad and we are not clear about the intent of the commenter in this context. Certainly the geologic characteristics from the surface to the Chattanooga Shale are well understood in Tennessee. If the commenter is referring to a survey for caves, voids, the exact location of fractures that will be encountered, etc., then there is no way to survey for these features other than to drill an exploratory test hole. This is sometimes done, and this activity is permitted by TDEC under Mineral Test Hole permits (T.C.A. § 60-1-501 et seq.). Therefore we do not see a need for this requirement.

G. Permitting, Penalties

Comment: **G-1) Several comments were submitted asking why there is not a 30 day notice on permits much like other Water Pollution Control permits.**

The 30 day public notice for a fracking permit should be required with no exceptions. Permitting the fracking process should have no less a public process than what is established for an individual ARAP.

I do think the comment period must be more than 15 days..... while there may be other ways for people to follow this complex issue, I think many do still depend on traditional media and we often need more time to consider issues.

Response: TDEC utilizes different lengths of public notice and comment period for different kinds of permits, and the sole intent of this particular public notice is to insure that no fractures of greater than 200,000 gallons of liquid can occur in Tennessee without the public being made aware. However, in the interests of consistency with the most common notices utilized by the Division (NPDES and ARAP), we agree to change the notice period to 30 days. See subparagraph (10)(b) of Rule 0400-52-02-.01.

Comment: **G-2) The term fluid should be changed to liquid to avoid gas (also referred to as fluid in physics).**

Response: We concur with changing the term 'fluid' to 'liquid' to avoid regulatory ambiguity. Our original intent was to apply the new public notice and disclosure rules only to water-based liquid fracturing using greater than 200,000 gallons. Accordingly, the wording has been changed to 'water-based liquids'.

Comment: **G-3) Several commenters stated: There should be very substantial fines/penalties above the current ones applicable that MUST be paid for each offense. These fines/penalties must be paid immediately upon finding of guilt of the infraction.**

Response: The assessment of civil penalties is a discretionary function of the Department. Because of the broad range of scenarios and variables that can occur relating to a violation, penalties are assessed on a case-by-case basis. This policy is consistent with all the other regulatory programs in TDEC.

Comment: **G-4) Several commenters asked about storm water plans:**

Approved storm water and wastewater plans are to be submitted, available to the public, reviewed and adopted by TDEC prior to any site preparation or hydrofracking activity is initiated.

Establish comprehensive construction storm water runoff permit requirements to protect surface water runoff during well construction.

Response: The Federal Government exempted the oil and gas industry from the requirement to apply for coverage under NPDES Construction Storm water permits, and Tennessee has followed the federal lead in not requiring such permit coverage or storm water pollution prevention plans (SWPPPs) associated with those permits. However, the Tennessee Oil and Gas Rules require erosion controls and best management practices to control storm

water runoff from well sites. In addition, discharges of sediment from a well site are regulated under the Tennessee Water Quality Control Act.

Comment: **G-5) The amendment as written below, designated in red, in paragraph (1) of Rule 0400-52-02-.02 are not clear that they are intended for fracturing volumes greater than 200,000 gallons of water based liquids as listed in Rule 0400-52-02-.01(10). They would not be practical and would be a burden to normal operations in Tennessee for volumes equal to or smaller than 200,000 gallons.**

(1)..... Information submitted with the application shall include the intent to fracture the well, if known, as well as an estimate of the volume of fluids to be used in the fracture..... The plan shall also include identification of all drinking wells within ½ mile radius of the proposed wellhead.....

Response: We concur with the commenter that the draft wording was not completely clear. It was our original intention to limit the new rules concerning public notice, disclosure, water well sampling, etc. to apply only to wells to be fractured using greater than 200,000 gallons of water-based liquids. The rule language has been changed to eliminate the ambiguity.

H. Blowout Prevention (BOP)

Comment: **H-1) The addition of a 3000 psi working pressure is well above levels adequate for many shallow O&G and CBM wells and may create an undue hardship. Recommend minimum of 1500 psi or 110% of maximum anticipated surface pressure.**

Response: We concur with the commenter. The rule language has been changed to "a minimum of 110% of the maximum surface pressure that would be reasonably expected based on the depth and location of the well" instead of the 3000 psi working pressure requirement, as per the recommendation of API.

Comment: **H-2) The casing policy requiring only one BOP, should be expanded to include wells on the parts of the plateau known to have low pressure formations.**

Response: We agree with the commenter that the draft rule language differentiates wells requiring a single BOP from those requiring redundant BOP on the basis of geographical descriptions written in legislation rather than by actual pressures that would be encountered. Accordingly, we have changed the rule language to read "For non-Cumberland Plateau wells in areas of known lower pressures" instead of referencing by county.

In addition, the rules provide operators the option to apply for a variance to the blowout prevention on the plateau area if warranted, provided there is an established pressure associated to the depth to be drilled. For wells drilled in areas of unknown pressures and below the Chattanooga Shale, variances for blowout prevention will not be granted.

Comment: **H-3) The addition of paragraph (2) of Rule 0400-52-06-.02 requiring secondary closing systems do not address intrinsically safe electrical pumps that should be required for gas drilling.**

Response: We concur with the commenter. Rule language has been changed accordingly, inserting the words "intrinsically safe" before all references to electric pumps.

I. Environmental Protection, Safety

Comment: **I-1) Flow-back after shale gas well fractures may be several days to several weeks in duration. Suggest change to the operator shall maintain personnel on-site during fracturing activity and beginning of flow back activity.**

Response: We concur with the commenters. The rule language has been changed to read "The operator shall maintain personnel on-site during the fracturing or other treatment activity, and during the initial flow back period, until such time as the well pressure returns to near pre-fracturing reservoir pressure. Unmanned flow back operations shall be checked routinely."

Comment: **I-2) There needs to be a definite plan for closure of the well when gas extraction is complete.**

Response: The closure for any oil and gas well is addressed under the rules, depending on the condition and intended use of that well. For example, the operator may desire to leave the well open for a period of time and has the option to place the well on temporary abandonment. If an operator plans to close the site, closure is addressed under plugging requirements and environmental protection.

Comment: **I-3) The used waste water from the fracking process must be contained such that it cannot run off into adjacent water sources or seep into underground water tables. If the used waste water does run off into surface or underground water sources then TDEC, surrounding land owners and the local news media must be notified within 24 hours.**

Response: Currently all operators are required to obtain the proper permits prior to releasing any liquids that may have any elevated contaminates. All fluids are required to be contained and then placed in an underground injection well or other disposal arranged. These activities must be reported as part of well history reporting requirement, and in the case of fractures using greater than 200,000 gallons of water-based liquids, the disposal plans for wastewater must be submitted as part of the application and included on the public notice. We have also added a requirement under "Environment" that the Supervisor must be notified within 12 hours of knowledge of any spill. TDEC would then notify the media and surrounding landowners if warranted.

Comment: **I-4) A commenter suggested the addition of: Rule 0400-53-03-.02(5)..... If spills of oil, saltwater or chemicals occur the operator shall contact a representative of the Oil and Gas Board. In addition, if a spill of oil and/or chemicals occurs, the National Response Center at 1-800-424-8802 must be contacted. This notification must be in the form of a phone call, e-mail and/or fax and must occur within 12 hours upon knowledge of the spill.**

Response: We concur with the commenter. Language will be placed into the regulations to address the reporting of spills to TDEC, see item I-3 above. Notification to the National Response Center is a federal requirement not administered by the state.

Comment: **I-5) Several commenters expressed concern about wastewater and if it can be land applied.**

Response: Drilling water produced during the drilling activities associated with a permitted well can be land applied if the fluids do not contain excessive brine or salt water. Any wastewater produced at a site that cannot be land applied must be disposed of by underground injection, meeting all applicable requirements, or other regulated methods.

J. Casing Requirement

Comment: **J-1) We received various comments about casing depths:**

Setting surface casing more than 50 feet below fresh water can create a control problem in air drilled wells. Recommend the following: Surface casing shall be set a minimum of 50 feet below the lowest known fresh water aquifer.

In some cases oil or gas zones occur less than 100' below fresh water zones. I would recommend that the wording (unless production zones occur less than 100' from freshwater zones.

Response: We concur with the commenters that when air-drilling in some Tennessee formations, the aquifer water encountered is often difficult to control in order to set casing at 50 feet below the water level, and that attempting to set it at 100 feet below could prove to be impractical given the volumes and pressures of water to handle. It was also pointed out that in some locations west of the Plateau, there can be less than 100 feet depth between the aquifer water and the producing formation. We agree that provisions must be made to deal with these situations.

Accordingly, rule language under Casing Requirements has been changed to read as follows: "The operator shall set surface casing at 100 feet below the lowest known fresh water aquifer with class A cement only. The Supervisor shall have the authority to require distances of less than 100 feet upon specific request of the operator if adequate technical justification can be made." This request can be made directly to the Supervisor in the application; no appeal or presentation to the board will be required.

We also restructured the provisions on casing requirements that apply on and off the Plateau to make them clearer.

Comment: **J-2) We propose a change in surface casing with a change in pressure rating to cover shallow depths associated with many wells in Tennessee (110% of maximum anticipated formation pressure).**

Response: We concur with the commenter. Rule language has been altered to read "Casing shall have a minimum internal pressure rating of 110% of maximum formation pressure reasonably expected based on the depth and location of the well", as per API recommendations.

Comment: **J-3) Production casing: This proposed rule is unclear as to whether it includes casing on packers and/or tubing production strings.**

Response: We concur with the commenter that this issue is unclear in the rule. Accordingly we have added language stating that where production casing is used, all production casing for vertical wells shall be cemented in place and through the zone being produced. A well with tubing or production casing on a packer will be considered an open-hole completion and not a completely cased boring. In these cases a variance must be applied for and received prior to conducting such activity.

Comment: **J-4) Production casing is defined as casing set through the producing formation. In some cases production casing is set and cemented in place above the producing formation.**

Response: While the definition of production casing does not include mention of cementing, the commenter is correct that in horizontal drilling the cement is set at a point above where the bore turns horizontally into the producing formation. The rule language under Production Casing has been changed to address cementing into the production formation for vertical wells. Language has also been added under the section on Horizontal Drilling that addresses cementing in horizontal wells.

K. Cement Bond Logs (CBL)

Comment: **K-1) We propose this be restricted to wells fractured with greater than 200,000 gallons of water based liquids or wells being temporary abandoned where Mechanical Integrity Tests cannot be performed to establish isolation.**

Response: We have reconsidered the use of cement bond logs as a well integrity standard. See response under K-2 below.

Comment: **K-2) The state received several comments not in favor of making cement bond logs a requirement:**

Cement bond logs are subject to interpretation and the state should not be in a position of analyzing them. What constitutes a good bond; 90% bond over 10' or 80% bond over 20' etc.?

Bond logging results can vary based on actual well conditions and in most circumstances a mechanical integrity test would yield a higher degree of integrity and be the preferred method.

The cost of running a CBL outweighs the cost of plugging a well.

Response: We concur with the commenters that a CBL is not the best choice for a well integrity standard. API guidance 10TRI section 5.5 is very specific: "This practice (CBL) is not recommended as a best practice for cement evaluation". Accordingly we have elected to use the pressure testing of casing proposed under "Blowout Prevention" and the documentation of the cement job required under "Casing Requirements" as the minimum standard for well integrity testing.

After consideration of comments and consulting with API guidance, we have decided to use the following language for our minimum well integrity standard, under the section on Isolation of Oil, Gas, and Fresh-Water-Bearing Strata: "Pressure testing of casing as specified in Rule 0400-52-06-.02, and documentation of cementing as required in Rule 0400-52-07-.01 shall constitute the minimum requirements for maintaining isolation through well integrity."

In addition, we have added a section under Temporary Abandonment that will require operators to conduct a Mechanical Integrity Test or other pressure testing on any well proposed to be placed into Temporary Abandonment, if that well has not been tested or produced within the last 15 years.

L. Pit and Tank Batteries

Comment: **L-1) A commenter needs clarification on the definition of a "public road" or a reduction in the spacing of 100 feet.**

Response: TDEC concurs that clarification is needed. Rule language has been changed from 'public road' to 'any state highway or county road'.

Comment: **L-2) A commenter stated that the addition subparagraph (2)(e) of Rule 0400-52-06-.02 requiring flowlines to be constructed in a straight line to a pit would circumvent the use of a closed loop system or use of mud tank.**

Response: TDEC concurs that the use of closed systems and mud tanks are acceptable. Rule language has been changed accordingly to state this. In addition, subparagraph (2)(e) of Rule 0400-52-06-.02 has been changed to read 'flow lines or blooey lines' to be more accurate and definitions for these terms have been added.

Comment: **L-3) Several commenters expressed concern that lining tank battery pits is not realistic due to animal destruction and environmental degradation and asked for no liner to be required.**

Response: While TDEC acknowledges the difficulties of maintaining synthetic liners in some situations, all tank battery pits should be lined with a synthetic liner. The need for containing drips and spills in the pits and preventing soil and groundwater contamination applies everywhere.

M. Water Wells, Lakes, Streams, Floodplains

Comment: **M-1) There is no time limit specified for the water well owner to comply with the request for a sample analysis and there is no requirement that any notification be in writing leaving no documented history for the process.**

Response: TDEC concurs with the commenter. Accordingly a time deadline of "within 14 days of the date of the Public Notice" has been added to the rule language and a requirement that the water well owner/landowner must submit a written request to the applicant for the water well to be tested.

Comment: **M-2) The industry should only have to identify wells in the public record within the proposed ½ mile radius of a proposed well. This is all the EPA requires for injection wells.**

Response: The ½ mile radius in the draft rule language applies only to hydraulic fractures using greater than 200,000 gallons of water-based liquids. The operator's responsibility to identify those wells is limited to those wells available in TDEC records. However, if an unrecorded water well owner comes forward, that individual may request his or her well to be tested.

Comment: **M-3) Prohibiting all drilling locations in flood plains is too broad. I suggest the well site and tank batteries be sited above the 50 year floodplain.**

Response: No regulations have been written to specifically address flood plains. The revised regulations state that no oil or gas wells or associated equipment shall be located in a flood prone area. This language, although not as specific as "flood plain", was necessary due to the fact that floodplains are not often calculated or designated in the areas where most drilling occurs.

Comment: **M-4) The terms wetlands and floodplains can be ambiguous and lead to conflict. A better wording could be: Wells shall be drilled only on sites approved by oil and gas inspectors and any that are subject to dispute may be brought before the proposed committee of geoscientists/engineers assigned to arbitrate such things.**

Response: The term wetland is not an ambiguous term; it is well-defined in both federal and state regulation. The term 'flood plain' has not been used in the current revised regulations. Only flood prone areas are mentioned to address the areas that are very susceptible to flooding and should be evaluated by operators and our inspectors on a case by case basis prior to receiving a permit to drill. The intent of this clause is simply to avoid placing wells, pits, storage, etc. in an area where it could be damaged in a flash flood and cause spill. We consider the creation of a professional committee to be unnecessary at this time, but an operator always has the option to appeal a disputed call to the Board. We do not anticipate this being a significant issue; we believe operators and inspectors have been working together effectively to avoid wetlands and flood prone areas.

Comment: **M-5) Identification of water wells should be limited to those within 1500' and only for wells that are to be fractured with more than 200,000 gallons of fluid. Testing of water wells should be left up to the well operator. Multiple commenters have suggested varying distances.**

Response: This half mile radius will apply only to wells proposed to be fractured using greater than 200,000 gallons of liquid. A search of the data base within a half mile of the well head of the hydraulic fracture is consistent with other states implementing these types of regulations such as Pennsylvania, New York, Texas, Arkansas, Colorado, etc. For all other wells a ¼ mile radius will be used.

Comment: **M-6) Several commenters suggested a greater spacing from streams and other water bodies to match the greater distances other states use.**

Response: There is a high density of numerous small intermittent streams on the Cumberland Plateau, Ridge and Valley, and Highland Rim areas in Tennessee. To compare states with differences in rainfall, topography, and Eco region characteristics is therefore inappropriate. To require a greater set back than 100 feet would unnecessarily limit the number of drilling locations in the most active areas of drilling in the state, and may eliminate the ability for some land owners to develop their mineral rights.

However, we have added rule language that increases the setback distance from Outstanding National Resource Waters from 100 feet to 330 feet.

Comment: **M-7) Several commenters asked about procedures and results for ongoing monitoring of surface and groundwater:**

Baseline monitoring of wells, surface waters and groundwater must be a preliminary safeguard established in the permitting process and performed before issuance of a fracking permit. This is a good and necessary scientific process which will establish some track record for the fracking method process and could be an assurance established for those proposing to use the fracking process as a safe method.

I think it is very important to establish a baseline so that the chemical composition of soil and water in the area can be tested and compared.

Test the water quality of all water sources adjacent to and on the property where the Fracking operation is to be performed. This would include creeks, streams, rivers, lakes, underground aquifers, ponds and wells. The test results must be provided to the owners of the well location property, surrounding land owners, TDEC and the local newspapers.

Comment: We agree that a baseline sample of an adjacent landowner's drinking water well is appropriate, and we have provided for this in Rule 0400-52-02-.01 Permit Required. This language will require an applicant to collect and analyze a sample from any drinking wells within a ½ mile radius of any well proposed to be fractured using greater than 200,000 gallons of liquids, if the landowner so requests.

We can find no examples of any states that require pre-, during- and post-drilling monitoring of groundwater and surface waters around all wells. States monitor surface water quality via non-oil and gas related programs. Tennessee's surface water monitoring programs have not shown water bodies to be impaired by hydrocarbons or fracturing chemicals from oil and gas drilling. The state of Texas, for example, has groundwater aquifer monitoring programs, but they are designed to monitor the aquifers as a whole resource, and not targeted at detecting potential contaminants from individual wells.

The concentrations of chemical additives used in large-volume hydraulic fracturing in other parts of the country are low enough that detection of such additives in surface water or groundwater would be unlikely even if a subsurface leak were to occur. In addition, the potential sources to surface and groundwater of petroleum and other chemicals are ubiquitous in a watershed such that tying any 'hit' back to a given well would be problematic. Given the difficulty of achieving any meaningful results from such monitoring, TDEC cannot justify the cost imposed by such requirements.

N. Spacing, Forced Pooling

Comment: **N-1) We received numerous comments to repeal the forced pooling option.**

Response: It was clear that many commenters believed that the force pooling rules are a way for an operator to 'steal' a portion of their mineral rights, or force them to sign an agreement against their will. In reality the force pooling requirement is intended as a protection for the minerals owner when the surrounding mineral owners have leased their property for

development for extraction of oil and gas. If drilling occurs adjacent to your property, this rule prevents them from extracting the resource that you share without paying you for your share.

If a minerals owner desires to lease and permit their minerals and the adjacent minerals owner declines to enter into an agreement, the force pooling option provides an avenue for development. This prevents an adjoining mineral rights owner from "blocking" your ability to drill on your land. To develop a field for oil and gas production the operator (leasor) has to have greater than 50% of the leases to receive a permit to drill; has to go before the oil and gas board to receive approval and meet certain requirements for notification to all affected adjacent mineral owners. The mineral owner who chooses not to sign a lease does not have to, but may be force pooled with their minerals. However, the minerals owner who chooses not to sign can receive more for his produced oil and gas minerals based on current law.

All decisions are based on current spacing requirements for oil and gas wells permitted in the state. Because force pooling requirements are mandated by a statute, any change to this would have to be made by the General Assembly.

Comment: **N-2) I suggest this addition; Special spacing of 5 acres and wells drilled not closer than 466 ft. can be permitted if approved by regulatory authorities.**

Response: This is a former spacing requirement that is no longer considered due to the current geologic information available. However, different spacing requirements can be considered by the board and staff if compelling scientific information is presented for review.

O. Chemical Additives, Waste Water

Comment: **O-1) Where is the list of approved chemical additives that may be used in fracking?**

Response: At this point we have chosen not to promulgate such a list. The EPA is currently studying the issue and is expected to pass down minimum rules for fracturing to the states in the near future. We have elected to wait to see what the EPA does on this issue before we put a list into the rules.

However, the Supervisor does have the authority to consider the chemical additives proposed in a fracturing treatment and request modifications if warranted before issuing a permit.

Comment: **O-2) A commenter wants clarification of dealing with wastewater, there needs to be wording separating water produced during drilling operations that is uncontaminated freshwater and water produced from well treatments or production operations.**

Response: We concur with the commenter and clarification has been added to the regulations to distinguish uncontaminated freshwater and water produced from well treatments or production operations, under subparagraph (2)(f) of Rule 0400-53-03-.02 Environment.

Comment: **O-3) Several commenters wanted clarification of the phrase the actual materials and volumes used to fracture, [and] the amounts and concentrations of any additive used" that is reported on the Well History, example: should it be hand written, Chemical Abstract Number, MSDS, etc.**

Response: We concur with the commenters that the draft rule language was not specific enough. Rule language has been added to address specifically what should be reported on the Well History and on an internet disclosure registry.

Comment: **O-4) Several commenters want protection of trade secrets in respect to additives used in the fracking process.**

Response: Clarification on trade secret protection has been added using wording adapted from the Colorado Oil and Gas regulations for disclosure of chemical additives for a hydraulic fracture.

Comment: **O-5) Several commenters want disclosure of the timing and nature of any chemicals that will be pumped into the ground or disposed of in their communities.**

Response: The rule language specifies that the operator must include as part of their application their plan for disposal of wastewater if they propose to fracture using greater than 200,000 gallons of water-based liquids. This information will also be made part of the public notice for such a fracturing activity. The timing of such disposal is not addressed since the date of disposal will not be known at the time of application and public notice. However, if wastewater were to be disposed of via underground injection well, this activity would be permitted by the Division of Water Resources under UIC regulations, and this information would be available in that permitting process.

P. Tennessee Clean Water Network (TCWN) proposed regulatory language

The Tennessee Clean Water Network submitted suggested regulatory language that will be responded to within the context of the proposed language. The TCWN suggestions are designated by "{ }" at the beginning and end of the proposed language and will underlined if it is to be added and struck through if proposed to be deleted. The Department's response will be designated by "[ ]" at the beginning and end of the response and in bold.

To 0400-51-01-.01:

{( ) "API" shall mean the American Petroleum Institute.}

[This definition will not be needed because the term API will not be utilized in the rule language.]

{( ) "Aquifer" shall mean a geologic formation, portion thereof, or group of formations (including overlying unconsolidated material) which contains and is capable of yielding a sufficient quantity of ground water to serve as a domestic or public water supply or other use.}

[TDEC concurs that a definition is needed. A definition very similar to this one has been added as suggested.]

{( ) "Well Integrity" means the containment of subsurface zone(s) or formation(s) containing hydrocarbons produced into a well, and the containment of that production within the well all the way to the surface for the life of that well.}

[We concur with the need for this definition, and have incorporated it into the rules as requested.]

To 0400-52-02-.01:

{~~1040-02-02-.01~~ 0400-52-02-.01 Permit Required} **[We appreciate the identification of this typo, and have made the correction as suggested.]**

To 0400-52-02-.01(10):

(10) In the case of any well that is proposed to be fractured {~~using a cumulative total of >200,000 gallons of liquids~~:} **[We propose to keep the 200,000 gallon threshold. See TDEC response under Comment A-2) of the Response to Comments document.]**

{(a)} The Supervisor shall give notice to the public by e-mail {to a list of interested persons who have requested TDEC notify them of Oil and Gas permit applications} **[We concur and have added this clause as requested]** and posting on the department web site, and the public shall be allowed to submit comments for {~~15~~ 30} **[We concur. See TDEC response to comment G-1 in the Response to Comments document]** days from the date of notification. Any comments

received shall be considered by the Supervisor, and the Supervisor shall provide written responses to those comments. {~~Prior to Public Notice, the Supervisor may require additional information from the applicant in these cases, including but not limited to information on water sources, fracturing methodologies, and methods of wastewater disposal~~}. **[We believe this clause has definite regulatory value, allowing the Supervisor to take additional review time as needed for fracturing proposals that are new to TN, and using that time to steer the applicant towards safer methods.]**

{(b)} The public notice shall contain the following information:

a. Name, address, and telephone number of the applicant;
b. Name, address, email, and telephone number of TDEC contact person;
c. A brief description of the proposed activity;
d. The purpose of the proposed activity;
e. The location of the well proposed to be fractured;
f. A map of the proposed location including in which watershed the activity would take place and all state waters within a 1 mile radius of the well;
g. Information regarding the sources of water, fracturing methods to be used, and amounts and methods of wastewater disposal
h. The procedure to submit comments on the proposed activity;
i. The procedure for requesting a public hearing; and
j. A brief description of the procedure for the Supervisor to make a final determination of whether to issue the permit.}

[We concur that our draft language was not specific concerning the content of the public notice. Accordingly, we have inserted language under subparagraph (a) of this paragraph that is consistent with TDEC Public Notice rules for NPDES Permits, and very similar to your suggested language above.]

{(c)} The applicant shall provide the Department's public notice of the proposed well to the owners of any residence that have any {~~active domestic~~} **[We concur that our term was awkward, and have adjusted the language to read "drinking water wells'.]** water well{~~s~~} within a ½ mile radius of the proposed wellhead at least 60 days {~~2 weeks~~} **[The commenter provides no justification for such an expanded notification period. We have changed the wording to '14 days', which is consistent with other oil and gas landowner notifications, which have worked well to date.]** prior to the beginning of drilling operations. In the case of a horizontal well, the ½ mile radius shall be measured from the terminus of the horizontal well bore. The determination of the presence of any such domestic wells shall include at a minimum the information available on the Division of Water Supply's Water Log Tracking System {and door-to-door surveys where owner or occupants are contacted in person}. **[The Department has no program currently that requires door-to-door surveys, and we see no no need to implement one in this case.]** The applicant shall collect a sample of any such well at the request of the owner in accordance with the requirements in Rule 0400-52- -.05 Baseline Assessment.} ~~and have the sample analyzed for Total Petroleum Hydrocarbons (TPH), BTEX (benzene/toluene/xylene) and Total Dissolved Solids, to demonstrate the condition of the water well prior to the drilling of the well to be fractured.~~ **[See TDEC response under Baseline Assessment. The intent of the baseline well monitoring was to collect enough water quality indicator information to allow for detection of any significant changes to well quality that could be associated with drilling. If an indicator parameter suggests possible contamination, then the well owner can collect more detailed information as needed. We have, however, added pH, TOC, and chlorides to this list of parameters.]** Sampling results shall be provided to the Supervisor and domestic well owner as soon as results are obtained. Sample analyses shall be conducted by a certified laboratory utilizing standard methods and minimum detection levels consistent with Tennessee Department of Health laboratories.

{(d)} The applicant shall publish a copy of the Department's Public Notice required by subsection (b) above in a newspaper of general circulation local to the proposed well site. The text of the Notice shall be in at least 12 point type. **[We find this proposed requirement to be impractical and of dubious value – many areas where drilling occurs have no local distribution newspaper nearby, and others only publish at infrequent intervals. We believe that the digital public**

notice and notification to adjacent landowners will be adequate.]

{(e)} Permit applicants shall notify the public of the application by posting a sign containing the information in the Public Notice required by subsection (b) above near the point of entrance to the proposed well site and within view (or adjacent to the right shoulder) of a public road. Where possible, the sign must be located so that a vehicle may safely stop to allow the sign to be read and to record information. In any case, the sign must be within ten (10) feet of the nearest edge of the public right of way. The sign must be perpendicular to the road and be readable from either direction. The letter size of the first line, "PUBLIC NOTICE" shall be at least 7 inches high. The remainder of the lettering shall be at least 3" high. Letter width should be at least one-fifth the height of the letter. The typeface shall be sans serif (block type) and one of the following color combinations: black type on yellow background, black on white, yellow on black, or white on blue. The minimum sign size shall be sufficient to allow all required information to be presented in the minimum allowable type size with a boarder of not less than 3 inches around the lettered portion of the sign. The sign shall be maintained for at least thirty (30) days following distribution of the approved Public Notice. The applicant shall provide certification to the Supervisor of compliance with this requirement. **[We believe that a sign posting at the proposed well location is unlikely to be seen by many in the remote areas where most drilling is done. In some cases the point of entrance from the nearest public road will be so far from the actual well site that it may create a false impression about the location. The well location will be indicated in the public notice.]**

{(f)} A copy of the Public Notice shall be sent to any person who specifically requests one. **[The Public Notice is part of the public record. TDEC will of course provide a copy of the public notice to any who request it, but there is no need to state it in rule language.]**

{(g)} By the time of Public Notice issuance the Department will have posted the permit application and draft permit in the Division's existing online permit database. **[Such a requirement would be more appropriate in a TDEC internal procedural document.]**

{(h)} The Supervisor will notify the public of permit issuance or denial through the Division's website and e-mail. All interested parties will be notified directly. Interested parties include anyone who provided written comments during the public comment period or as testimony during a public hearing, water well owners within a ½ mile radius of the wellhead to be fractured, and any other person known by the Division to be directly affected by the permit. **[We concur with the first statement that the Supervisor will notify the public of our decision via the website and e-mail, and have added this clause to subparagraph (b) of this paragraph.]**

To 0400-52-02-.02(5):

(c) If, within ~~ten ({10}~~{60}~~)~~ days after the notice, there are no objections to issuing the permit, then the Supervisor shall issue the permit, provided all other requirements have been complied with. **[The commenter provides no justification for such an extension of the notification. The current 10 day period has functioned without complaint or incident to date.]**

(d) If there is an objection or objections to issuing the permit, the objector or objectors ~~must~~ shall furnish the applicant and the Supervisor the basis of the objection and support his contentions with documents, etc., within ~~ten ({10}~~{60}~~)~~ days after the date of the notice. **[The commenter provides no justification for such an extension of the notification. The current 10 day period has functioned without complaint or incident to date.]**

To 0400-52-04-.01(1):

(a) Wells drilled in search of oil or gas to a depth of less than ~~one thousand (~~1,000~~)~~ feet shall be drilled on {~~10~~} {40} -acre spacing, and shall not be located closer than ~~six hundred sixty (~~660~~)~~ feet from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool; and not closer than ~~three hundred thirty (~~330~~)~~ feet from any property or unit line. **[The commenter provides no justification for increasing the spacing requirement from 10 acres to 40 acres. The current spacing requirement has worked well to date without incident or complaint. A forty acre spacing could limit the ability of some**

landowners to develop their mineral rights.]

~~{(l) Any drilling being conducted in Overton, Clay, Pickett or Fentress Counties (this is portions of Fentress County that are west of Hwy 127 and North and West of State Hwy 154) is based on 400 feet to another well and 200 feet to the unit or property line down to a depth of 2500 feet. This is an exception to the current state wide drilling requirements.}~~ **[We disagree that we have the authority to delete the statutory spacing requirements.]**

To Chapter 0400-52-04:

{NOTE: Specific authority to regulate well spacing is at T.C.A. § 60-1-202(a)(4)(L). Specific authority to delete (1)(l) is at T.C.A. § 60-1-106 and 2010 census data for Overton (22,083), Clay (7,861), Pickett (5,077), and Fentress (17,959) Counties.} **[We disagree that we have the authority to delete the statutory spacing requirements.]**

To Chapter 0400-52-06:

{0400-52-06-.01 General Requirements}
{0400-52-06-.02} Drilling Equipment
{0400-52-06-.03 Well Logging}
{0400-52-06-.04 Cased Hole Logging}
{0400-52-06-.05} Blowout Prevention
{0400-52-06-.06} Casingheads
{0400-52-06-.07} Environmental Protection

{0400-52-06-.01 - General Requirements

Oil and gas wells shall be drilled and completed in a manner that protects the geologic formations and aquifers from material inside the well bore during subsequent drilling operations and, in combination with other steel casing and cement sheaths that are subsequently installed:

1. protects the groundwater with multiple layers of protection for the life of the well;
2. maintains well integrity for the life of a well;
3. ensures that operations proceed within established parameters and in accordance with the well design, well plan, and permit requirements; and
4. includes testing prior to well construction, during well construction, and over the life of a well to ensure its integrity is maintained.}

[This language consists of general statements of intent, but provides no specific regulatory value. However, we have added similar general language under Rule 0400-52-06-.04, as a lead-in to the section on 'Environmental Protection'.]

0400-52-06-.0{2} Drilling Equipment

All drilling equipment shall be designed, constructed, and operated in such a manner so as to prevent accidents and insure safe operating practices. It is recommended that each operator require the drilling contractor to comply with the general rules and safety procedures of the industry.

{0400-52-06-.03 Well Logging

(a) General

Well logs shall be completed to log subsurface conditions noted during drilling and mechanical integrity tests and hydraulic pressure tests shall be used to assess well integrity during the construction of the well.

(b) Open-hole Well Logging

After drilling of the hole is completed, and before casing is installed and cementing operations begin, open hole well logging shall be completed prior to setting casings to: locate and evaluate the hydrocarbon producing formations; achieve the well design objectives; and properly achieve the isolation benefits of the casing and cement. Logging tools shall include one or more of the following log types: Gamma Ray; Resistivity; Density; and/or Caliper.}

[We do not see any value in testing the borehole prior to setting casing and cement.]

{1040-02-06-.04 Cased Hole Logging

After cementing the casing, "cased-hole" logs shall be run inside the casing to know the exact location of the casing, casing collars, and quality of the cement job relative to each other and relative to the subsurface formation locations. These logs shall include the gamma ray, a collar locator, and a cement bond log that measures the presence of cement and the quality of the cement bond or seal between the casing and the formation.}

[We believe that the casing integrity testing and cement documentation that we have proposed under Rule 0400-52-06-.02 Blowout Prevention and Chapter 0400-52-07 Casing Program are adequate to assure isolation of strata. See TDEC response in the Response to Comments document to comment K-2) concerning the use of cement bond logs and well integrity testing.]

0400-52-06-.~~02~~{.05} Blowout Prevention

{(1)} All wells shall be equipped and operated in such a manner as to prevent the uncontrolled emission of oil, gas, and water from the well.

{(2) Any applicant for a permit for a gas well proposed for drilling less than 1,000 feet deep that is proposed within two (2) miles of an outcrop of a gas formation shall survey the outcrop prior to drilling to determine whether there are gas seeps and springs or water seeps that discharge from the gas formation in the area. The potential for a blowout of fracturing fluids and gases shall be addressed in the Drilling Plan submitted during the permit application.}

[This Colorado requirement is intended to prevent fracturing that occurs near the edge of an escarpment from 'blowing out' the side of the hill or mountain in places where the producing formation is elevated enough to be exposed on a hill or mountainside. This language is unnecessary in Tennessee. The elevations and topography of our state are such that none of the formations that would be fractured or otherwise pressurized from the surface are exposed on the side of a mountain or escarpment where a 'blow out' could occur.]

{~~(2)~~(3)} Blowout prevention for regular state spacing requirements for all wells shall be equipped with a minimum of the following equipment:

(a) A blowout prevention system with 2 separate units capable of closing with the drill pipe in the hole or other equivalent control system as approved by the supervisor or authorized representative of the supervisor. A minimum of 3000 psi working pressure is required;

(b) Accessible controls both in the rig and at a safe remote location of at least 50 feet from wellhead;

(c) An annular choke valve;

(d) A drill pipe or power head valve capable of pump truck connection;

(e) A flow line of the proper size and working pressure shall be installed in a straight line to pit and shall be anchored securely; and

(f) Blowout prevention equipment that has a rated minimum working pressure of 3000 psi. In unknown or expected higher pressures a 5000 psi working pressure shall be required.

1. The blowout preventers shall be installed above ground level if possible but if a cellar is dug, the equipment shall be accessible during drilling operations. The entire control

equipment shall be in good working condition at all times. All outlets, fittings, and connections on the casing, blowout preventers, choke manifold, and auxiliary wellhead equipment that may be subjected to wellhead pressure shall be of a material and construction that shall withstand the anticipated pressure and shall be resistant to fire. The lines from outlets on or below the blowout preventers shall be securely installed, anchored, and protected from damage.

2. Blowout preventers, accumulators, and pumps shall be used in accordance with the product manufacturer's rating and minimum operational specifications. The permittee is responsible for seeing that the blowout prevention equipment is in proper working order. This includes the proper operation of the closing unit valving, proper operation of the pressure gauges, and the presence of the manufacturer's recommended accumulator fluids. A combination of any 2 of the following secondary closing systems is acceptable:

   (i) Electric-operated pump.

   (ii) Air-operated pump.

   (iii) Hand-operated pump.

   (iv) Nitrogen-operated pump.

   Blowout preventer rams shall be of a proper size for the drill pipe being used or production casing being run in the well or shall be variable-type rams that are of the proper size range. Blowout Prevention shall be installed before passing through any known production or high pressure zone in the well boring path.

3. Blowout prevention equipment and intermediate casing shall be tested to a pressure of 1,500 psi at surface for not less than 30 minutes. This shall be done prior to drilling the plug on the intermediate casing or at other intervals as approved or requested by the supervisor. If, at the end of 30 minutes, the pressure shows a drop of 10% or more from the original test pressure, the casing shall be condemned until the leak is corrected. A pressure test demonstrating less than a 10% pressure drop after 30 minutes is proof that the condition has been corrected. A record of each test, including test pressures, times, failures, and each mechanical test of the casings, blowout preventers, surface connections, surface fittings, and auxiliary wellhead equipment shall be entered in the logbook, signed by the driller, and kept available for inspection by the supervisor or authorized representative of the supervisor.

4. With the understanding that all permitting procedures have been followed, a well may be deepened to 200' below the bottom of the Chattanooga Shale without initiating other than the usual well control procedures. The casing shall withstand at least 1,500 psi with no more than 10% loss of pressure in 30 minutes.

{~~(3)~~}{(4)} Blowout prevention for wells in accordance with special well spacing requirements as per subparagraph (1)(l) of Rule 0400-52-04-.01. All wells shall be equipped with a minimum of the following equipment:

(a) An annular-type blowout preventer or other equivalent control system as approved by the supervisor or authorized representative of the supervisor;

(b) Accessible controls both on the rig floor and at a safe remote location at least 50 feet from wellhead;

(c) An Annular choke valve;

(d) A drill pipe or power head valve capable of pump truck connection;

(e) A flow line of the proper size and working pressure; and

(f) Blowout prevention equipment that has a rated minimum working pressure of 1500 psi.

1. The Blowout preventers shall be installed above ground level if possible but if a cellar is dug, the equipment shall be accessible during drilling operations. The entire control equipment shall be in good working condition at all times. All outlets, fittings, and connections on the casing, blowout preventers, choke manifold, and auxiliary wellhead equipment that may be subjected to wellhead pressure shall be of a material and construction that shall withstand the anticipated pressure and shall be resistant to fire. The lines from outlets on or below the blowout preventers shall be securely installed, anchored, and protected from damage.

2. Blowout preventers, accumulators, and pumps shall be used in accordance with the product manufacturer's rating and minimum operational specifications. The permittee is responsible for seeing that the blowout prevention equipment is in proper working order. This includes the proper operation of the closing unit valving, proper operation of the pressure gauges, and the presence of the manufacturer's recommended accumulator fluids. Any of the following closing systems.is acceptable:

   (i) Electric-operated pump.

   (ii) Air-operated pump.

   (iii) Hand-operated pump.

   (iv) Nitrogen-operated pump.

   Blowout preventer shall be of a proper size for the drill pipe being used or production casing being run.

3. Blowout prevention equipment and Surface casing shall be tested to a pressure of 400 psi at surface for not less than 30 minutes before drilling the plug on the surface casing and at other intervals as approved or requested by the supervisor. If at the end of 30 minutes the pressure shows a drop of 10% or more from the original test pressure, the casing shall be condemned until the leak is corrected. A pressure test demonstrating less than a 10% pressure drop after 30 minutes is proof that the condition has been corrected. A record of each test, including test pressures, times, failures, and each mechanical test of the casings, blowout preventers, surface connections, surface fittings, and auxiliary wellhead equipment shall be entered in the logbook, signed by the driller, and kept available for inspection by the supervisor or authorized representative of the supervisor. If the casing is to be tested at the time of surface casing, cementing 150 psi for a period of ten minutes may be used. The annulus shall be filled with fluid and the plug shall have been landed prior to the test beginning. If a drop of over 10% or more from the original test pressure is found the casing shall be condemned until the leak is corrected. The previous criteria concerning recording of the test shall be followed.

4. The casing shall withstand at least 400 psi with no more than 10% loss of pressure in 30 minutes.

All wells shall be equipped and operated in such a manner as to prevent the uncontrolled emission of oil, gas, and water from the well.

~~1040-02-06-.03~~ 0400-52-06-.03 Casingheads.

All wells shall be equipped with casingheads with a test pressure in conformance with conditions to be anticipated in wells in which they are used. Casinghead body shall be equipped with proper connections and valves accessible to the surface as soon as installed. Reconditioning shall be required on any well leaking gas or oil.

~~1040-02-06-.04~~ 0400-52-06-.04 Environmental Protection.

(1) All oil and gas operations shall be conducted in a manner that ~~will~~ shall prevent or mitigate adverse environmental impacts such as soil erosion and water pollution. All areas disturbed by the operations,

including access roads, shall be reclaimed as prescribed in ~~rule 1040-02-09-.05~~ Rule 0400-52-09-.05. Access roads shall be constructed in such a manner as to reduce erosion to a practical minimum. Sediment ponds, berms, diversion ditches, hay bales, and other measures designed to prevent erosion and discharge from well sites shall be taken to prevent or minimize soil erosion and pollution of surface waters.

{(2) Oil and gas wells shall be drilled and operated in a manner that protects aquifers and surface waters.

(3) Wells shall be designed to ensure the environmentally sound, safe production of hydrocarbons by containing them inside the well, protecting groundwater resources, isolating the productive formations from other formations, and properly executing hydraulic fractures and other stimulation operations. The well design and construction must ensure no leaks occur through or between any casing strings. The fluids produced from the well (oil, water, and gas) must travel directly from the producing zone to the surface inside the well conduit.}

[We concur with this language as a general lead-in to Environmental Protection. Accordingly we have inserted this language as the new paragraph (1) of this rule, and moved the old paragraph (1) to paragraph (2) of this rule.]

{(4) All well designs and well plans shall include contingency plans to mitigate and eliminate the risk of failure due to unplanned events to ensure the protection of people and the environment.}

[We concur with this addition, and have incorporated this language into paragraph (1) of Rule 0400-53-03-.02 Environment.]

{(5) Erosion prevention and sediment controls at all oil and gas operations shall meet or exceed the following requirements:} **[We agree that this is a wording improvement and have made this change as suggested, under paragraph (2) of this rule.]**

(a) The erosion prevention controls shall be designed {and implemented} to minimize the dislodging and suspension of soil in water. Sediment controls shall be designed {and implemented} **[We agree that this is a wording improvement, and have made this change as suggested.]** to retain mobilized sediment on site. {These erosion prevention and sediment controls shall be developed and submitted to the Supervisor in a site-specific Stormwater Prevention and Sediment Control Plan ("SWPPP"), which shall be prepared in accordance with good engineering practices and the latest edition of the Tennessee Erosion and Sediment Control Handbook.} **[We do not intend to require SWPPPs for oil and gas facilities at this time. See TDEC response in the Response to Comments document to comment G-4).]**

(b) All control measures ~~must~~ shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications (where applicable) and standard engineering practices. All control measures selected ~~must~~ shall be able to slow runoff so that rill and gully formation is prevented. When steep slopes and/or fine particle soils are present at the site, additional physical or chemical treatment of storm water runoff may be required. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the operator ~~must~~ shall replace or modify the control for relevant site situations.

(b) If sediment escapes the drilling, production, and or roadway areas, off-site accumulations of sediment that have not reached a stream ~~must~~ shall be removed at a frequency sufficient to minimize offsite impacts. Fugitive sediment that has escaped the drill area and has collected in a drainage ditches or roadways ~~must~~ shall be removed so that it is not subsequently washed into culverts and streams by the next rain and/or so that it does not pose a safety hazard. Permittees shall not initiate remediation/restoration of a stream without consulting the Department first. {Discharged water must not cause an objectionable color contrast with the receiving stream. The storm water discharge must result in no materials in concentrations sufficient to be hazardous or otherwise detrimental to humans, livestock, wildlife, plant life, or fish and aquatic life in the receiving stream.} **[This language is already part of TDEC rules, as part of narrative water quality standards. Any such discharge would be regulated under the TN Water Quality Control Act, and repeating this language in the oil and gas rules is redundant.]**

(d) Sediment shall be removed from sediment traps, silt fences, sedimentation ponds, and other sediment controls as necessary.

(e) Upon attainment of stability, materials used for erosion prevention and sediment control should be removed or otherwise prevented from becoming a pollutant source for storm water discharges.

(f) Pre-construction vegetative ground cover shall not be destroyed, removed or disturbed more than ~~thirty (30)~~ days prior to grading or earth moving unless the area is seeded and/or mulched or other temporary cover is installed.

(g) Clearing and grubbing ~~must~~ shall be held to the minimum necessary for drilling and or production activities.

(h) Construction ~~must~~ shall be sequenced to minimize the exposure time of graded or denuded areas.

(i) Erosion prevention and sediment control measures ~~must~~ shall be in place and functional before drilling activities begin, and ~~must~~ shall be properly maintained throughout the drilling and production phase.

(j) Permanent stabilization with perennial vegetation (using native herbaceous and woody plants where practicable) or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable.

{~~(3)~~(5)} The operator shall notify the oil and gas inspector at least {14 days ~~24 hours~~} prior to beginning fracturing activities. The operator shall maintain personnel on-site during the fracturing activity and during the back flow period. **[Oil and gas site notifications to the inspectors are consistently either 12 hours or 24 hours, and are intended solely to allow the inspector to be on-site if they choose. This time frame has worked well in the past. Furthermore, the operator will not usually know 14 days in advance the exact day that the fracturing activity will begin.]**

To Chapter 0400-52-07:

{0400-52-07-.01 Casing Program, General Requirements}
{0400-52-07-.02 Casing Program, Prior Approval Required}
{0400-52-07-.03 Cement Selection}
(0400-52-07-.04 Casing Centralizers}
{0400-52-07-.05} Casing Requirements
{0400-52-07-.06} Conductor Pipe
{0400-52-07-.07 Surface Casing Construction}
{0400-52-07-.08 Intermediate Casing Construction}
{0400-52-07-.09} Production Casing
{0400-52-07-.10 Completion Reports}
{0400-52-07-.11} Isolation of Oil, Gas and Fresh-Water bearing Strata, and Potential Minable Coal and Other Mineral Deposits

{0400-52-07-.01 Casing Program, General Requirements

(1) Well Design.

Each well design and construction shall address each casing string used, including conductor, surface, intermediate, and production. Groundwater protection through zone isolation shall be maintained. All casing setting depths shall be determined in advance as part of the Drilling Plan to assure isolation, meet regulatory requirements, achieve a well system with integrity to support the rest of the drilling operation, and contain any pressures that might occur inside the well. The actual length of the casing strings should adjusted as the well is drilled based on measurements and data from the drilling process, including the results of logs, drill cuttings analysis, and analysis of pressures and drilling loads while drilling.

(2) Casing used in oil and gas wells that will be hydraulically fractured shall meet API standards, including

API Spec 5CT - including requirements for compression, tension, collapse, and burst resistance, quality, and consistency. The casing used in a well should be designed to withstand the anticipated hydraulic fracturing pressure, production pressures, corrosive conditions, and other applicable factors. If used or reconditioned casing is installed in a well that will be hydraulically fractured, it should be tested to ensure it meets API performance requirements for new built casing. Casing and coupling threads should meet API standards and specifications to ensure performance, quality, and consistency, including API Spec 5B. If proprietary casing and coupling threads from a specialized supplier are used, these threads must also pass rigorous testing done by the supplier and should adhere to applicable subsets of the API qualification tests.

(3) After the casing has been run into the drilled hole, it shall be cemented in place to provide zonal isolation between different formations (including full isolation of the groundwater) and to provide structural support of the well. Top and bottom rubber wiper plugs shall be used to minimize mixing of cement with drilling fluid while it is being pumped.}

[Much of this language is redundant to that already found in our Casing Program requirements. Paragraphs (1) and (3) of this rule are general statements rather than specific technical requirements, and thus add no regulatory value. Under paragraph (2) of this rule, TDEC would not directly reference API Specs in a rule, since those specs may be revised periodically. For TDEC's response to the universal application of API standards in the rules, see comment C-1) of the Response to Comments document.]

{0400-52-07-.02 Casing Program, Prior Approval Required}

(1) The operator's proposed casing program must be submitted for approval by the Supervisor, on Application for Permit to Drill (Form P-AD-1). If the Supervisor deems the casing program inadequate to protect fresh water zones and potential minable coal and other minerals, etc., he shall prescribe the casing program with which the operator will comply. ~~{Unless an exception is granted by the Supervisor,}~~ **[We prefer to keep this clause to provide the flexibility to address site-specific circumstances if needed. The commenter will note that there is nothing in this wording that requires the Supervisor to grant an exception.]** Suitable and sufficient surface casing shall be run and cemented to a depth not less than one hundred (100) feet below all fresh water strata encountered in the well and in a manner that will protect such fresh water from contamination resulting from drilling operations. The cement must fill the annular space behind the surface casing from the base thereof to the surface of the ground. If cement returns are not received to the surface, then the annulus must be cemented from the top.

{(2) The Application for Permit to Drill shall include a Drilling Plan for approval by the Supervisor that shall: identify all plugged and abandoned wells within 1,000 feet of any vertical well or 1,000 feet from any horizontal well component; identify all private and public water drinking water aquifer and surface water sources within 2,000 feet of any vertical or horizontal well component; and describe the proposed method for fracturing.} [We believe that these issues are adequately addressed under Rule 0400-52-07-.03 Surface Casing, Rule 0400-52-03-.01 Preparing Plats, and Rule 0400-52-02-.02 Drilling Permit. Plugged and abandoned wells are identified by the Supervisor from our records as part of our review. The commenter provides no justification for increasing the radius for identifying surface water from the current distance of 200 feet to 2000 feet.]

{(3) The Application for Permit to Drill shall include a Waste Control and Disposal Plan that includes a chemical inventory of expected additives and fuels to be used; describes methods and procedures that will be used to control spillage; and describes methods and procedures planned for waste treatment of disposal, including at a minimum drill cuttings and muds, drilling fluids, fracturing fluids, flowback liquids, and downhole equipment contaminated with Technically-Enhanced Naturally-Occurring Radioactive Materials (TENORMs).} **[Most of these items will be required to be part of the Public Notice for any fracture >200,000 gallons of water-based liquids. The requirement for applications to include an action plan containing contingency measures for spills or other releases has been added under 0400-53-03-.02 Environment as per your comment under item (4) under Environmental Protection. The handling of TENORMS has been addressed under 0400-54-01-.03 Proper Disposal of Waste.]**

{(4) The Application for Permit to Drill shall include a Casing and Cementing Plan that discusses the expected casing depths; expected or possible geologic hazards such as caves, faults, and mines; the formations that will be encountered by depth; formations expected to be confining layers of fracturing fluids;

proposed types of cements and additives and their expected amounts; borehole conditioning procedures; locations of centralizers; types of casings; methods for determining depths to aquifers and methods planned for protection; and fracture model height and length geometry.} **[We believe that casing plans are adequately addressed under Rule 0400-52-07-.03 Surface Casing.]**

{(5) The Application for Permit to Drill shall include a Water Use and Supply Plan that discusses where source water will be obtained, the local and regional effects of that withdrawal, and the permitting activities associated with such withdrawal.} **[Source water information and any permitting activities associated with water withdrawals would be required as part of the application and Public Notice for any fractures using >200,000 gallons of water-based liquids. The potential impacts of such a withdrawal would be a necessary part of TDEC's review of an ARAP permit for water withdrawal.]**

{(6) The Supervisor or his representative shall be given notice of cementing of surface casing at least {14 days ~~12 hours~~} prior to conducting such operation. The Supervisor or his representative may witness the cementing operation. Form R-WH1 must be accompanied by a copy of the drilling contractor's or service company's ticket for the work performed. **[The commenter offers no justification for increasing the notification time to the inspector.]**

{0400-52-07-.03 Cement Selection

(1) API Spec 10A and API RP 10B-2 shall be consulted in the selection and use of cementing products. Selected cements, additives, and mixing fluid shall be laboratory tested in advance to ensure they meet the requirements of the well design.

(2) Cement shall be placed completely around the casing and at the proper height above the bottom of the drilled hole (cement top) to achieve successful zone isolation and well integrity.

(3) Cement practices shall be completed to ensure that isolation is achieved. These practices should include, at a minimum:

(a) Prior to drilling, operators should investigate and review the history of nearby wells for cementing problems encountered, e.g. lost returns, irregular hole erosion, poor hole cleaning, poor cement displacement, etc.

(b) Computer simulation and other planning should be carried out in order to optimize cement placement procedures.

(c) Operators should use established, effective drilling practices to achieve a uniform, stable well bore with desired hole geometry.

(d) Operators should ensure that the drilling fluid selection is appropriate for the designed well and the geologic conditions likely to be encountered.

(e) Casing hardware, including float equipment, centralizers, cement baskets, wiper plugs (top and bottom), and stage tools should be selected as necessary as part of the well design that will meet the cement design objective and challenges and ensure isolation.

(f) Casing centralizers should be selected to help center the casing in the hole and provide for good mud removal and cement placement, especially in critical areas, such as casing shoes, production zones, and groundwater aquifers.

(g) Appropriate cement testing procedures should be properly carried out by the service company personnel.

(h) Cement slurry design shall include testing to measure the following parameters depending on site-specific geologic conditions:

(i) Critical parameters shall include: slurry density, thickening time, fluid loss control, free fluid, compressive strength development, fluid compatibility (cement, mix fluid, mud, spacer).

(ii) Secondary Parameters recommended for use as appropriate to address specific well conditions include: sedimentation control, expansion or shrinkage of set cement, static gel strength development, mechanical properties (Young's Modulus, Poisson's Ratio, etc.).

(i) Cement job design shall include proper cement spacer design and volume.

(j) The operator shall ensure proper well bore preparation, hole cleaning, and conditioning with wiper trips prior to the cement job.

(k) Rotation and reciprocation of casing should be considered where appropriate to improve mud removal and cement placement.

(I) Service providers shall ensure proper mixing, blending, and pumping of the cement in the field.

(4) After the cement is set and prior to commencing further drilling or completion operations, the cement surrounding the casing shoe shall have a compressive strength of at least 500 psi and should achieve 1200 psi in 48 hours at bottomhole conditions. Production casing cement shall be tested to ensure it is adequate to withstand the anticipated hydraulic fracturing pressure. In addition, each casing string, except the conductor casing, shall be pressure tested prior to "drill out."}

[Cement requirements are covered under Rule 0400-52-07-.01 Casing Program, and are similar to the language proposed by the commenter.]

{0400-52-07-.04Casing Centralizers

Casing centralizers shall be used in all wells. The casing shall be centralized in the hole in order to ensure it will be completely surrounded or encased by cement during cementing operations and achieve the required isolation. API RP 10D-2 and API TR 10TR4 shall be used to determine the number and placement of centralizers in vertical and deviated well bores and centralizer selection guidelines, respectively.}

[We agree, and have added a version of the above language under item (3) of 0400-52-07-.03 Surface Casing. As previously stated, TDEC will not directly reference an API standard or Spec in the rules, since the API standards will be occasionally revised.]

0400-52-07-{~~.01~~}{.05} Casing Requirements

{(1) Conductor Casing – conductor casing shall be used for the purpose of supporting unconsolidated surface deposits. A conductor casing shall be installed when groundwater is present in unconsolidated sediments overlying the most shallow bedrock formation and shall extend at least 10 feet into competent bedrock. The conductor casing shall be designed and installed to: hold back the unconsolidated surface sediments as the drilling operations proceed; isolate shallow groundwater within unconsolidated sediments; prevent surface water runoff from entering the subsurface boring; prevent shallow groundwater from migrating down the continued borehole once the conductor pipe is set; and protect the subsequent casing strings from corrosion and to structurally support some of the wellhead load.

NOTE: API and preexisting rule moved from proposed 0400-52-07-.02}

[We have added the first sentence in your paragraph (1) above to the beginning of Rule 0400-52-07-.02 Conductor Pipe as suggested. Most of the remaining language consists of defining the purpose of conductor pipe rather than stating regulatory requirements. Conductor casing must be installed whether shallow groundwater is present or not, if needed to keep unconsolidated sediments out of the well bore, but we believe a requirement to extend the conductor casing 10 feet into bedrock in all cases is excessive – the intent is to extend the conductor casing into stable consolidated material.]

(2) Surface Casing - surface casing shall be set at 100 feet below the lowest known fresh water aquifer with class A cement only. The casing used shall have an external collapse pressure rating great enough to handle the hydrostatic pressure of a class A cement from the casing shoe to surface and Internal pressure rating to handle any anticipated down hole pressures. Cement shall have a minimum 500 psi compressive strength and have a minimum 8 hour wait prior to drilling the shoe out. A blowout preventer shall be installed at all times for emergencies, but casing shall not be used as pressure control. Surface casing shall be used to protect fresh water aquifers. No casing shoe shall be drilled until a cement seal has been brought back to the surface and secured between the surface casing and the well bore, preventing any ground water contamination. {The Supervisor or Supervisor's representative shall be given notice of cementing of surface casing at least 14 days prior to conducting such operation.}

[The commenter offers no justification for extending the notification period to the inspector. The current 12 hour notification to the inspector has worked without incident or complaint to date.]

{(3)} Intermediate Casing - an intermediate string of casing shall be set prior to the drilling into any known oil and gas producing zone. Casing shall have a minimum internal pressure rating of 3000 psi. Casing shall be cemented at a minimum of 100 feet into the surface casing. {The Supervisor or Supervisor's representative shall be given notice of cementing of surface casing at least 14 days prior to conducting

such operation.} **[The commenter offers no justification for extending the notification period to the inspector. The current 12 hour notification to the inspector has worked without incident or complaint to date.]** Casing string shall be deep enough to prevent underground blowout from anticipated bottomhole pressures. Casing shall have an external collapse pressure rating to handle cement design from casing shoe to surface. Cement shall have 500 psi compressive strength and have a minimum 12 hour wait prior to drilling the shoe out. All cement and casing designs shall be presented on a specifications sheet with Permit Application for approval. A copy of Cement Tickets shall be kept on location to be viewed by inspector until drill rig is removed. In unknown or over pressured conditions a 5000 psi rating on casing shall apply. A copy of all Cement Tickets shall be attached to the well history tickets and shall include all volumes and pressures of job from start to finish. To insure adequate annular space for cementing, the annular space outside the casing shall be at least as large as follows for the applicable casing size:

Up to 7" Outside Diameter (O.D.) Casing O.D. + 1 1/2"

More than 7" and less than 10 3/4" O.D. Casing O.D. + 2"

More than 10 3/4 "O.D. Casing O.D + 3"

{(4)} In wells with special well spacing requirements (off-Plateau) as per subparagraph (1)(l) of Rule 0400-52-04-.01, all surface casing shall be set 100 feet below the fresh water and use class A cement only. {The Supervisor or the Supervisor's representative shall be given notice of cementing of surface casing at least 14 days prior to conducting such operation.} **[The commenter offers no justification for extending the notification period to the inspector. The current 12 hour notification to the inspector has worked without incident or complaint to date.]** Casing shall have an external collapse pressure rating great enough to handle the hydrostatic pressure of a class A cement from the casing shoe to surface. A Float shoe or Baffle or Guide shoe with Wiper Plug along with annular cement volume plus 35% excess shall be required on all surface casing cement jobs. Cement shall have a minimum 500 psi compressive strength and have a minimum 8 hour wait prior to drilling the shoe out. No casing shoe shall be drilled until a cement seal has been brought back to the surface and secured between the surface casing and the well bore, preventing any ground water contamination. All cement and casing designs shall be presented on a specifications sheet with Permit Application for approval.

~~{(4) Any wells on the Cumberland Plateau drilled to depths above the Chattanooga Shale may be eligible for variances on the previous casing requirements by making a specific request to the Supervisor.}~~

[We prefer to keep this clause in order to provide some flexibility for shallower, lower pressure wells if warranted. The commenter will note that the Supervisor is under no obligation to grant any such variance.]

~~1040-02-07-.01~~ 0400-52-07-.{06} Conductor Pipe

{The surface hole shall be drilled using air, freshwater, or freshwater-based drilling fluid. Oil-based drilling fluids are prohibited. The conductor pipe shall be a steel casing inserted into the hole and cemented in place using proper cementing practices and in accordance with the well design. ~~That pipe ordinarily used for the purpose of supporting unconsolidated surface deposits, is termed conductor pipe. The use and removal of conductor pipe during the drilling of any oil or gas well shall be at the option of the operator. If the conductor pipe is to be pulled it must shall be pulled prior to the cementing of the surface casing.~~} All conductor casing shall have a cement seal at the surface preventing the possibility of any groundwater contamination and shall remain in the well. {~~if not pulled prior to the surface casing cement job. If more than 40 feet of conductor pipe was installed, the conductor pipe may not be pulled.~~} **[Much of this language is redundant to that already found in our Casing Program requirements. In reference to prohibiting oil-based drilling fluids, see our response to comment O-1) in the Response to Comments document.]**

~~1040-02-07-.02~~ 0400-52-07-.{07} Surface Casing {Construction}

(1) ~~{The operator's proposed casing program must shall be submitted, for approval by the Supervisor, on Application for Permit to Drill (Form P-AD-1). If the Supervisor deems the casing program inadequate to protect fresh water zones and potential minable coal and other minerals, etc., he shall prescribe the casing program with which the operator will shall comply. Unless an exception is granted by the~~

~~Supervisor, suitable and sufficient surface casing shall be run and cemented to a depth not less than fifty (50) 100 feet below all fresh water strata encountered in the well and in a manner that will shall protect such fresh water from contamination resulting from drilling operations. The cement must shall fill the annular space behind the surface casing from the base thereof to the surface of the ground. If cement returns are not received to the surface, then the annulus must be cemented from the top.~~ The surface casing shall be designed and installed to isolate groundwater and to contain pressures that might occur in the subsequent drilling process.}

(2) ~~The Supervisor or his representative shall be given notice of cementing of surface casing at least 12 hours prior to conducting such operation. The Supervisor or his representative may witness the cementing operation. Form R-WH1 must shall be accompanied by a copy of the drilling contractor's or service company's ticket for the work performed.~~ The surface casing shall be drilled to a depth based on the deepest groundwater resources depths identified during development of the Drilling Plan and based upon observed depths of groundwater while drilling and reported aquifer elevations of nearby wells. The surface hole shall be drilled using air, freshwater, or freshwater-based drilling fluid. Oil-based drilling fluids are prohibited. Drilling shall move slowly and pause periodically to allow time for groundwater to infiltrate into the borehole to ensure recognition of each groundwater-bearing zone. At a minimum, the surface casing shall be set at least 100 feet below the deepest aquifer encountered while drilling the well.}

(3) ~~A cement basket and centralizer are to be run on the surface casing between the first and second joints of surface casing or as directed by the supervisor.~~ The surface casing shall be cemented from the bottom to the top, completely isolating groundwater aquifers. After the surface casing cement has achieved the appropriate compressive strength and prior to drilling out, the surface casing shall be pressure tested using a casing pressure test. This test shall be conducted at a pressure that will determine if the casing integrity is adequate to meet the well design and construction objectives. In addition, immediately after drilling out of the surface casing plus a short interval of new formation below the surface casing shoe, a formation pressure integrity test (also known as a "shoe test" or "leak-off test") shall be performed. If the test results of the formation pressure integrity test are inadequate, remedial measures shall be undertaken as appropriate.}

{(4) A Cement Bond Log and/or other diagnostic tool(s) shall be completed prior to continuing the boring to determine that cement integrity is adequate to meet the well design and construction objectives.}

{(5) A cement basket shall be run on the surface casing between the first and second joints of surface casing or as directed by the supervisor. Centralizers are required for the entire depth of the surface casing in accordance with the spacing requirements established by the API.}

{0400-52-07-.08 Intermediate Casing Construction}

{Intermediate casing shall be designed and installed to isolate subsurface formations that may cause borehole instability and provide protection from abnormally pressured subsurface formations. The intermediate casing shall be cemented to the surface, and a CBL and/or other diagnostic tool(s) shall be run for the entire length of the casing to determine that the cement integrity is adequate to meet the well design and construction objectives. After the intermediate casing cement has achieved the appropriate compressive strength and prior to drilling out, the intermediate casing shall be pressure tested. This test shall be conducted at a pressure that will determine if the casing integrity is adequate to meet the well design and construction objectives. In addition, immediately after drilling out of the intermediate casing plus a short interval of new formation below the intermediate casing shoe, a formation pressure integrity test (also known as a "shoe test" or "leak-off test") should be performed. If the test results of the formation pressure integrity test are inadequate or indicate a failure, remedial measures shall be undertaken as appropriate. In the case of a failure, remedial cementing operations shall be undertaken as appropriate.}

~~1040-02-07-.03~~ 0400-52-07-.{09} Production Casing, {Vertical Component}

The production, oil, or flow string, is that casing used for the purpose of segregating the zone from which production is obtained and affording a means of communication between such zone and the surface. ~~A description of the work done under this section must rule shall be reported to the Supervisor on Well History, Work Summary, and Completion or Recompletion Report (Form R-WH-I) within sixty (60) days after completion.~~ {After the production hole is drilled and logged, production casing shall be run to the total vertical depth of the well and cemented in place using proper cementing practices to provide zonal isolation between the producing zone

and all other subsurface formations and for pumping the hydraulic fracturing fluids and other stimulation techniques from the surface into the producing formation without affecting any other geologic horizon in the well.}

{At a minimum, tail cement shall be brought at least 500 ft above the highest formation where hydraulic fracturing will be performed. In all cases, the casing shall be cemented to achieve the required subsurface isolation between zones. Prior to perforating and hydraulic fracturing operations, the production casing shall be pressure tested at a pressure that will determine whether casing integrity is adequate to meet the well design and construction objectives. A Cement Bond Log and/or other diagnostic tool(s) shall also be run to determine that the cement integrity is adequate to meet the well design and construction objectives. Remedial cementing operations shall be considered if there is evidence of inadequate cement integrity.}

[We have revised our Casing Program language under 0400-52-07. We believe it is superior in terms of specificity and enforceability to address casing and cementing quality, and operators have used it for a number of years without issues. In reference to prohibiting the use of oil-based drilling fluids, see our response to comment O-1 of the Response to Comments document. In reference to the use of CBLs and other integrity tests, see our response to comment K-2).]

{0400-52-07-.10 Completion Reports}

A description of the work done under this ~~section~~ Chapter shall be reported to the Supervisor on Well History, Work Summary, and Completion or Recompletion Report (Form R-WH-I) within sixty (60) days after completion.

~~1040-02-07-.04~~ 0400-52-07-{.11} Isolation of Oil, Gas and Fresh-Water-Bearing Strata, and Potential Minable Coal and Other Mineral Deposits.

Notwithstanding compliance with the foregoing requirements, all potential minable coal and other minerals ~~must~~ shall be isolated from any possible communication through the annulus with oil-, gas- or water-bearing strata or deposits of other potential minable coal or other minable minerals. Cement bond logs or other integrity tests shall be required on all wells proposed to be fractured and on any wells to be placed into Temporary Abandonment as per Rule 0400-52-09-.06 In order to ascertain whether or not such work has been reasonably performed, the operator may elect to either run a cement bond log, or block squeeze each stratum or zone which is required to be isolated. ~~{If the cement bond log indicates a minimum of twenty-five (25) feet of cement bond above the top and twenty-five (25) feet of bond below the base of each stratum or zone to be isolated, then the provision of this rule shall have been complied with.}~~ **[We believe this minimum standard has utility in making regulatory decisions.]** If such bonding is not shown by the bond log, the Supervisor may require the operator to perform the necessary work to assure the isolation of such above described strata zones.

To 0400-52-08-.04:

~~1040-02-08-.04~~ 0400-52-08-.04 Horizontal Drilling.

{(1) Operators shall minimize the number of vertical wells and pads in favor of centralizing wells on a single pad with multiple horizontal wells from a single surface location, where feasible, to reduce the cumulative surface impact of the development operation. The considerations for setting conductor, surface, intermediate, and production casing strings are the same as those for vertical wells.}

[While this statement explains one of the main advantages to be gained from horizontal vs. vertical wells, TDEC cannot require an operator to drill a horizontal well instead of a vertical one, making this language unenforceable.]

{(2)} Wells drilled by horizontal methods shall comply with the following spacing requirements:

(a) For all oil wells, and for gas wells drilled to the top of the Conasauga Group, the surface trace of that portion of the well bore or any portion of the horizontal drainhole that penetrates the producing formation, including the horizontal drainhole end point, shall not be located closer than ~~three hundred thirty~~ (330) feet from any property or unit line.

(b) For gas wells drilled below the top of the Conasauga Group, the surface trace of that portion of the well bore or any portion of the horizontal drainhole that penetrates the producing formation, including the horizontal drainhole end point, shall not be located closer than ~~six hundred sixty~~

~~(660)~~ feet from any property or unit line.

(c) Any number of producing formations may be penetrated by lateral drainholes from a single vertical well bore.

(d) All of the producing portion of the well ~~must~~ shall be in compliance with the spacing requirements of this paragraph. The horizontal portion of the well is the formation of record for production.

Proposed new Chapter 0400-52-__:

{Chapter 0400-52-_____
Fracturing

0400-52-_-.01 General
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0400-52-_____-.01 General

The well operator or the operator's designated representative shall be on site throughout the hydraulic fracturing process. Prior to beginning the hydraulic fracture treatment, all equipment shall be tested to make sure it is in good operating condition. All high-pressure lines leading from the pump trucks to the wellhead shall be pressure tested to the maximum treating pressure. Any leaks must be eliminated prior to initiation of the hydraulic fracture treatment. Fracturing with oil-based additives of any type is prohibited.

0400-52-_____-.02 Water Use and Supply Plan

Operators of wells that will be fractured shall submit a Water Use and Supply Plan upon submittal of the well Permit Application. The Plan shall address how the operator plans to proactively communicate with local water planning agencies to ensure oil and gas operations do not constrain the resource requirements of local communities and to ensure compliance with all regulatory requirements. The planning effort shall include a review of potential water resources and wastewater management options that could be used to support hydraulic fracturing operations. This review shall address: anticipated volumes of water required for basin-wide fracturing; competing water requirements and constraints such as the location and timing of water withdrawal; water source; water transport; fluid handling and storage requirements; flow back water treatment/disposal options; permitting requirements (including, if applicable, the requirement to obtain an Aquatic Resource Alteration Permit from the Division of Water Pollution Control for withdrawals from surface waters); and potential for water recycling.
If water supplies are to be obtained from surface water sources, operators shall address potential issues associated with the timing and location of withdrawals, including, but not limited to: sensitive watersheds; historical droughts; low flow periods during the year; periods of the year when activities such as irrigation and other community and industrial needs place additional demands on local water availability; potential to maintain a stream's designated uses; potential impacts to downstream wetlands and end-users; potential impacts to fish and wildlife; potential aquifer depletion; and any mitigation measures necessary to prevent transfer of invasive species from one surface water body to another.

If water supplies are to be obtained from groundwater sources, operators shall consider the use of non-potable water where feasible and possible.}

[Source water information and any permitting activities associated with water withdrawals would be required as part of the application and Public Notice for any fractures using >200,000 gallons of water-based liquids. The potential impacts of such a withdrawal would be a necessary part of TDEC's review of an ARAP permit for water withdrawal.]

{0400-52-____-.03 Waste Control and Disposal Plan

The waste management plan to be submitted by the operator shall address management of solid waste and disposal practices for fluids within the hydraulic fracturing program, including planned flowback water characterization and disposition and description of the preferred transport method from the well pad (*i.e.*, truck or piping). Operators shall review and evaluate practices regarding waste management and disposal from the process of hydraulic fracturing, including: the preferred disposition of waste/wastewater (*e.g.*, treatment facility, disposal well, potential reuse, centralized surface impoundment or centralized tank facility); permit requirements; and the location, construction, and operation of proposed centralized flow back impoundments. The waste management plan shall also include the following information: design and capacity of storage impoundments and/or tanks; liners of any impoundment or secondary containment and why the proposed liner is sufficiently capable of containing a release; depths to the uppermost groundwater beneath the site; the number and individual and total capacity of receiving tanks on the well pad for flow back water; planned public access restrictions, including physical barriers and distance to edge of well pad; and placement of liners to prevent possible leakage from such impoundments.

The waste management plan completed by the operators should also include a transportation plan within their hydraulic fracturing program. The transportation component of that plan shall discuss the estimated truck volumes within a basin, designation of appropriate off road parking/staging areas, and approved transportation routes. Measures to reduce or mitigate the impacts of transporting large volumes of fracture fluids should be considered.

Liquid waste disposal shall follow a detailed chain-of-custody from origination to final disposal. Operators should consider options for the recycling of fracture treatment flow back fluid for use in future fracturing operations.

If the operator plans to dispose of any wastewater from the fracturing operations, including flowback, by indirect discharge to an existing wastewater treatment plant, the operator shall ensure that the treatment plant can effectively treat the waste without upsetting their system or causing a problem in the receiving water and comply with all requirements of T.C.A. Title 69 Chapter 3 and TDEC Rules Chapter 1200-4-14 Pretreatment Requirements. Pre-approval by the Division of Water Pollution Control is required prior to discharge of wastewater from fracturing to an existing wastewater treatment plant and the treatment plant sampling requirements modifications to the POTW's permits to ensure water quality standards in receiving waters are maintained at all times.}

[Information on waste disposal will be required and included as part of Public Notice for fractures using >200,000 gallons of water-based liquids, as specified in Rule 0400-52-02-.01(10)(a) Permit Required. Wastewater disposal at NPDES-permitted wastewater treatment plants or underground injection facilities is already regulated under existing rules, as the commenter has indicated.]

{0400-52-__-.04 Use of Additives

Operators shall strive to minimize the use of additives and should assess the feasibility of using more environmentally benign additives. Operators should evaluate potential opportunities for beneficial reuse of flowback and produced fluids from hydraulic fracturing in preference over surface discharge or reinjection.}

[This language states general goals to strive for rather than specific, enforceable requirements, and therefore we see no value as rule language.]

{0400-52-____.05 Baseline Assessment

A well operator who wishes to preserve its defense that the pollution of a private or public water supply existed prior to the drilling or alteration of the well shall conduct baseline monitoring prior to drilling and land alteration at a proposed well site. An operator electing to preserve its defenses that well operations did not contaminate a water supply shall complete baseline monitoring of any water supply within a one-half mile radius of the vertical well and horizontal well component. A copy of the results of the baseline assessment shall be provided to the Supervisor and the landowner or water well owner or operator within 10 business days of receipt of the results. Any test results not received by the Supervisor within 10 business days may not be used to preserve an operator's presumption of innocence should a contamination claim be made after drilling and fracturing operations are completed. Operators of wells that will be fractured should review the available information describing water

quality characteristics (surface and groundwater) in the area and, if necessary, proactively work with state and local regulators to assess the baseline characteristics of local groundwater and surface water bodies.

Once the location for a well has been selected and before it is drilled, water samples from any source of water located within a 1/2-mile radius shall be obtained and tested. Sources of water to be tested include rivers, creeks, lakes, ponds, and water wells. The area of sampling should be based on the anticipated fracture length plus a safety factor.

Operators shall analyze baseline water samples for parameters that are typical in hydraulic fracturing and its additives, which shall include, but not be limited to:

Total Dissolved Solids (TDS)	Total Suspended Solids (TSS)	Chlorides
Carbonates	Bicarbonates	Sulfate
Surfactants	Thermogenic Methane (dissolved)	Biogenic Methane (dissolved)
Barium	Strontium	Arsenic
NORMs	Total Petroleum Hydrocarbons (TPH), Diesel and Gasoline Range Organics	Flow rate (cubic feet per second)
pH (field)	Methane (as a gas)	Iron
Color, Odor, Sediment, and Bubbles Observations	Nitrates and Nitrites	PAHs (polynuclear aromatic hydrocarbons)

Operators should also analyze baseline water for additional parameters depending on site-specific geology and hydrology.}

[While the new rules will offer nearby water well owners the opportunity to have the operator provide a baseline water quality analysis of their well prior to drilling, we do not intend to require extensive groundwater and surface water monitoring around every oil and gas well. See TDEC response to comment M-7.]

{0400-52-_ -.06 "Mini frac" Treatment and Analysis

Prior to beginning a fracturing job, the owner or operator shall complete a diagnostic study, called a mini frac analysis, to determine any needed adjustments to the planned job are made and the results are used to refine computer models.}

[API defines this type of treatment and analysis in their Guidance Document HF1, and states only that sometimes this process is conducted to collect data to refine computer models and gain additional information on conditions that might bear on the fracturing treatment. API does not recommend this practice be done, nor suggest that it be a requirement for all wells. Operators are welcome to avail themselves of these surveys, but we have no justification for requiring them under rule.]

{0400-52-__.07 Treatment Parameter Monitoring

Process monitoring and quality control during the hydraulic fracture treatment is required to monitor for a successful treatment and for protection of the groundwater. Certain parameters shall be continuously monitored. These include surface injection pressure (psi), slurry rate (bpm), proppant concentration (ppa), fluid rate (bpm), and sand or proppant rate (lb/min). The data collected should be used to refine computer models used to plan future hydraulic fracture treatments.}

[During fracturing treatments most operators monitor these parameters, but it is not TDEC's intent to require operators to collect data to "refine computer models used to plan future hydraulic fracture treatments". We would consider that level of information to be better left to industry innovation and on-site best professional judgement, not as regulatory requirements.]

{0400-52-__.08 Pressure Monitoring

Pressure shall be measured at the pump and in the pipe that connects the pump to the wellhead. If the annulus

between the production casing and the intermediate casing has not been cemented to the surface, the pressure in the annular space shall be monitored and controlled. Pressure behavior throughout the hydraulic fracture treatment shall be monitored so that any unexplained deviation from the pretreatment design can be immediately detected and analyzed before operations continue. Pressure exerted on equipment shall not exceed the working pressure rating of the weakest component. The intermediate casing annulus shall be equipped with an appropriately sized and tested relief valve. The relief valve shall be set so that the pressure exerted on the casing does not exceed the working pressure rating of the casing. The flow line from the relief valve shall be secured and diverted to a lined pit or tank.}

[Pressure monitoring of this type is typically conducted during fracturing operations. We concur that this language is appropriate for inclusion for fractures using >200,000 gallons of liquids, and have added this section as suggested under 0400-52-6-.04(4) Environmental Protection.]

{0400-52-_-.09 Tiltmeter and Microseismic Monitoring

Fracture monitoring using microseismic and tiltmeter surveys shall be used on every well to evaluate new techniques, refine the effectiveness of fracturing techniques in new areas, and calibrating hydraulic fracturing computer models. A tiltmeter or a micoseismic mapping shall be used to achieve real time mapping of a hydraulic fracture treatment in progress.}

[The suggested language above is paraphrased from API's guidance on Hydraulic Well Fracturing section 10.4.3, which states that microseismic monitoring and tiltmeter surveys are NOT (emphasis added) used on every well, but are commonly used to evaluate new techniques or the effectiveness of a technique in a new area. While an operator may choose to conduct such surveys when attempting a hydraulic fracture in an area for the first time to assess and modify a fracture method, TDEC will not require such surveys to be conducted on every well, as per API's guidance.]

{0400-52-__-.10 Post-Fracturing Monitoring

Monitoring shall be conducted to determine which perforations accepted proppant and to determine the fracture growth beyond the perforation. Either a tracer test or a temperature log shall be run. Prior to a hydraulic fracturing treatment, the proppant shall be "tagged" with a tracer. After the proppant has been pumped into the formation, a cased-hole log, capable of detecting the tracer, shall be run to further confirm that placement of the proppant was as intended. A temperature log shall be run if a tracer test is not performed.}

[These tests are designed for operators to evaluate the success of their fracturing treatment at each perforation. These tests do not evaluate the areal extent of a given fracture or whether or not the fracture has created a pathway for fracture fluids to migrate to fresh water aquifers. Therefore, such testing does not provide additional environmental protection.]

{0400-52-__.11 Post-Completion Monitoring

Throughout the life of a producing well, conditions shall be monitored on an annual basis to ensure integrity of the well and well equipment. Mechanical integrity pressure monitoring shall be used to determine the mechanical integrity of tubulars and other well equipment when the well is producing and during fracturing operations.

During well fracturing, casing integrity shall be inferred by showing there is no leakage into the "A" annulus (if a frac string is used), or between the "A" annulus and "B" annulus by monitoring these pressures. After fracturing and upon final completion, the tubing/packer integrity shall be demonstrated by showing there is no leakage of injected fluids through the tubing or packer into the "A" annulus causing pressure buildup. Monitoring of these annular pressures is required during production to determine whether there are leaks. Maximum and minimum allowable annular surface pressures should be assigned to all annuli based on the gradient of the fluid in each. These upper and lower limits establish the safe working range of pressures for normal operation in the well's current service and shall constitute "do not exceed" limits.

Wellhead seal tests shall be conducted to test the mechanical integrity of the sealing elements (including valve gates and seats) and determine if they are capable of sealing against well pressure. If non-normal pressures are noted in an annulus, a re-pressure test of the wellhead seal system shall be conducted to determine if the source of communication is in the surface in the wellhead system.

When equipment is removed from a well or depressurized for maintenance, a breakdown or visual inspection shall be conducted to document the condition of the equipment after being in service.}

[We have no basis for requiring annual well integrity testing. The question of whether periodic well integrity testing is appropriate or at what intervals can be addressed in a future rule-making. However, we have added a requirement under Rule 0400-52-09-.06 for well integrity tests to be conducted on wells that have not been tested or produced in the last 15 years if they are proposed to be placed in Temporary Abandonment.]

To 0400-52-09-.05:

~~1040-02-09-.04~~ 0400-52-09-.04 Time Limit For Plugging Wells.

Except as provided in Rule ~~1040-02-09-.06~~ 0400-52-09-.06, all wells drilled for oil and gas and found to be dry holes shall be plugged within {~~one (1) year~~ 6 months} from cessation of drilling. All wells that are non-producing or abandoned shall be plugged within {~~one (1) year~~ 6 months} **[The one year time limit is consistent with other states and with the STRONGER review. The commenter provides no justification for reducing this time limit by half.]** from the date they cease producing ~~twelve (12)~~ barrels of oil per year or ~~twenty five (25)~~ mcf of gas per month or are abandoned. Upon written request to the Supervisor showing good cause, an extension of up to ~~ninety (90)~~ days additional may be granted. No operator or owner shall permit any well drilled for oil, gas, salt water disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. Nothing herein shall prevent utilizing a well for the purpose of introducing air, gas, fresh water or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. All wells which are neither producing nor plugged ~~must~~ shall comply with shut-in standards of oil and gas wells and shall be cased and capped in such a manner so as to protect all potential oil and/or gas zones, and fresh water in accordance with the requirements of Rule ~~1040-02-09-.06~~ 0400-52-09-.06.

To 0400-52-09-.05(1)(a):

(a) Except for active work areas, the operator shall drain{, remove liners,} **[We concur that synthetic liners should be included in reclamation language. Accordingly we have added the words 'synthetic liners' in this subparagraph in the second sentence of this paragraph, after 'All drilling supplies and equipment.]** sentence and fill all surface pits that are not needed for production purposes, and shall grade and stabilize the well location and location road within ~~thirty (30)~~ days of the initial disturbance, in order to minimize surface run-off and prevent excessive erosion and sedimentation. All drilling supplies and equipment, **[synthetic liners,]** trash, discarded materials and other refuse not contained and covered in the reclaimed pits shall be removed from the site. Temporary vegetative cover shall then be established on all graded areas.

To 0400-52-09-.05(2)(c):

(c) Establishment of permanent vegetative cover shall conform with the standards set forth in the most recent version of the Tennessee Erosion and Sediment Control Handbook. ~~Suggested seeding mixtures, rates, and dates are shown in the following table:~~

~~Seeding Group~~	~~Rate-Pounds Per Acre~~	~~Rate-Pounds Per 1,000 Square Feet~~	~~Seeding Dates~~
~~For Temporary Cover:~~			
~~cereal wheat or rye (100%)~~	~~20-25~~	~~0.5-0.6~~	~~10/15-11/30~~
~~sudan grass hybrid (100%)~~	~~20~~	~~0.5~~	~~04/15-08/15~~

~~Seeding Group~~	~~Rate-Pounds Per Acre~~	~~Rate-Pounds Per 1,000 Square Feet~~	~~Seeding Dates~~
~~For Permanent Cover:~~			
~~tall fescue (100%)~~	~~30~~	~~0.7~~	~~02/15-04/15 08/15-10/15~~

~~tall fescue (90%)~~	~~30~~	~~0.7~~	~~02/15-04/15~~
~~white (ladino) clover (10%)~~	~~3~~	~~0.1~~	~~08/15-10/15~~
~~tall fescue (86%)~~	~~30~~	~~0.7~~	~~02/15-04/15~~
~~crownvetch (14%)~~	~~5~~	~~0.1~~	~~08/15-10/15~~
~~sericea lespedeza (scarified) (60%)~~	~~30~~	~~0.7~~	~~03/01-04/15~~
~~tall fescue (30%)~~	~~15~~	~~0.3~~	~~03/01-04/15~~
~~annual lespedeza (10%)~~	~~5~~	~~0.1~~	~~03/01-04/15~~
~~sericea lespedeza (79%)~~	~~30~~	~~0.7~~	~~03/01-04/15~~
~~weeping lovegrass (8%)~~	~~3~~	~~0.1~~	~~03/01-04/15~~
~~annual lespedeza (13%)~~	~~5~~	~~0.1~~	~~03/01-04/15~~

~~1. Seeding rate should be increased by 20 percent on sites where a seedbed cannot be prepared.~~

~~2. Temporary cover should be disked or mowed before permanent vegetation is established.~~

~~3. Where more than 90 percent of a mixture is composed of tall fescue, annual fertilizing should be done to maintain an adequate cover.~~

~~4. Crown vetch may be used in Middle and East Tennessee and the northern half of West Tennessee, but should not be used on areas that will receive heavy traffic.~~

~~5. Sericea lespedeza and weeping lovegrass are both suitable for sites that are subject to drought.~~

~~6. Disturbed areas on which temporary cover must be established between December 1 and February 15 should be mulched, and then seeded with permanent vegetation as soon as possible.~~

~~(c)~~ The Supervisor may grant exceptions to the requirements of parts (b)1 and 2 of this paragraph when the species are necessary to establish a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved reclamation plan. {~~All items under subparagraph (c) of this paragraph are suggested guideline measures.~~}

[We concur that this sentence is no longer applicable now that subparagraph (c) has been revised. Sentence will be deleted as suggested.]

To 0400-52-09-.06:

~~1040-02-09-.06~~ 0400-52-09-.06 Temporary Abandonment.

(1) An operator has the opportunity to place any non-producing well into Temporary Abandonment for {~~five (5)~~ 2} years if all of the following requirements are fulfilled: **[The 5 year requirement for Temporary Abandonment was passed into rule in late 2011, and is just now being implemented under Notices of Non-Compliance and Orders. TDEC has no justification for reducing the time span at this time, and we would prefer to wait some time to gauge the effectiveness of these new rules before making further changes.]**

(a) The operator shall submit a Temporary Abandonment form for each well to be placed in temporary abandonment. This form can be obtained from Water Pollution Control/Oil and Gas Program.

(b) The operator shall submit a ~~one hundred dollar ($100)~~ fee for each well per year to be placed in temporary abandonment.

(c) Each well shall be capped in such a manner as to have no open casing exposed to the environment (i.e., swedge with locked ball-valve or any other viable protection).

(d) Any well shown on the Annual Well Report that indicates no production ~~must~~ shall be placed in temporary abandonment status or plugged.

(e) All fees received for temporary abandonment ~~will~~ shall be placed in an account that ~~will~~ shall be set aside to be used only for funding the plugging of abandoned oil and gas wells.

{(f) Site stabilization activities are completed within 30 days of cessation of drilling to prevent erosion and protect surface water. Those activities must meet or exceed the minimum standards established in the Tennessee Erosion & and Sediment Control Handbook and those standards established in TDEC Rule 0400-52-09-.05.

(2) The operator shall drain all surface pits, remove liners, and shall grade and stabilize the well location and location road within thirty (30) days of beginning temporary abandonment to minimize surface run-off and prevent excessive erosion and sedimentation. All drilling supplies and equipment, trash, discarded materials and other refuse shall be removed from the site. Temporary vegetative cover shall then be established on all graded areas.

(3) Within ninety (90) days of beginning temporary abandonment, the operator shall remove all production and storage structure, supplies and equipment, any oil, and salt water and debris and shall grade any remaining disturbed areas, including access roads. Permanent vegetative cover shall then be established on all disturbed areas, excluding approved permanent, non-erosive facilities, and access roads. Any access roads necessary for the operator to gain access to the well site to determine the adequacy of the vegetative cover or to perform additional re-vegetation may continue to be used by the operator until all reclamation requirements have been met.}

[Site reclamation requirements under Rule 0400-52-09-.05 Surface Reclamation will apply to Temporary Abandonment well sites also. There is no need to restate the requirements here.]

(4) At the end of the {2 ~~five~~} **[The 5 year requirement for Temporary Abandonment was passed into rule in late 2011, and is just now being implemented under NONCs and Orders. TDEC has no justification for reducing the time span at this time, and we would prefer to wait some time to gage the effectiveness of these new rules before making further changes.]** year Temporary Abandonment period, each well submitted by the operator shall be reviewed by the Department. A determination ~~will~~ shall be made on the validity of keeping the well(s) open. This determination for validity ~~will~~ shall be based on whether the operator has a deliverability test for each gas well or if the well is producing oil. If the staff finds there is no valid reason to keep the wells open, the operator ~~will~~ shall then have {six (6) months ~~two years~~} **[Some operators have a large number of wells that will be affected by the rules on plugging and abandonment just passed in late 2011. To plug all of these wells in 6 months is not possible. We prefer to wait some time to gage the effectiveness of these recent rule changes before making further changes.]** to plug the non-producing well(s).

To Chapter 0400-52-11-.01:

0400-52-11-.01 Prevention of Waste – {Repealed}

{~~1040-02-11-.01~~ 0400-52-11-.01 ~~Prevention of Waste~~

~~If any operator can show to the Supervisor or Oil and Gas Board that the work procedures herein prescribed result in waste, or such operations are unreasonable, the Supervisor may enter such an order, as a special exception to the aforesaid rules and regulations, as will shall prevent such waste or eliminate such unreasonable restraint as may result from the application of the aforesaid rules and regulations to the well or wells of such operators; provided, however, that before any operator shall be allowed the benefit of any order granting an exception as authorized by this chapter, such operator must shall establish that such exception, if granted, will shall not result in waste in the field as a whole or give him an inequitable and unfair advantage over another operator or operators in the field. No special exception will shall be granted except upon written application, fully stating the alleged facts, which shall be the subject of a hearing to be held no earlier than ten (10) days after filing the application. Prior to the hearing upon such application, at least ten (10) days notice thereof shall be given by publication to all operators in the Field. In addition to said notice by publication, the applicant must shall give adjacent operators, where appropriate, at least ten (10) days notice of said hearing by personal service or by~~

~~Registered Mail.~~}

[Although we cannot agree with deletion, we do agree that changes are needed to clarify the procedures to be followed, and have done so. Although it has never been utilized, TDEC recognizes that new technologies can be attempted, and a wide variety of scenarios can be encountered by operators. The Supervisor should retain the discretion to consider unusual circumstances or new, potentially beneficial methods that may not fit cleanly under the current wording of the rules.]

To 0400-53-01-.03:

~~1040-03-01-.03~~ 0400-53-01-.03 {Completion and Disclosure} Report Filing.

The operator shall file a Well History, Work Summary and Completion or Recompletion Report (Form R-WH-1) with the Supervisor {and post the form on the chemical disclosure registry (www.FracFocus.org)} within ~~sixty (60)~~ days after completing, recompleting or working over a well pursuant to producing oil and/or gas. Wells shall be considered completed when they are capable of being turned into the tanks and/or gas transmission or gathering lines. ~~{Well History information shall include the actual materials and volumes used to fracture, the amounts and concentrations of any additives used, the amount of wastewater generated, and the method of disposal of wastewater, for the purpose of making this information easily available to the public.~~ The} Well History, Work Summary and Completion or Recompletion Report {shall include:

(i) the operator name;
(ii) the date of the hydraulic fracturing treatment;
(iii) the county in which the well is located;
(iv) the API number for the well;
(v) the well name and number;
(vi) the longitude and latitude of the wellhead;
(vii) the true vertical depth of the well;
(viii) the total volume of water used in the hydraulic fracturing treatment of the well or the type and total volume of the base fluid used in the hydraulic fracturing treatment, if something other than water;
(ix) each hydraulic fracturing additive used in the hydraulic fracturing fluid and the trade name, vendor, and a brief descriptor of the intended use or function of each hydraulic fracturing additive in the hydraulic fracturing fluid;
(x) each chemical intentionally added to the base fluid;
(xi) the maximum concentration, in percent by mass, of each chemical intentionally added to the base fluid; and
(xii) the chemical abstract service number for each chemical intentionally added to the base fluid, if applicable.

A vendor, service provider, or operator is not required to:
(1) disclose chemicals that are not disclosed to it by the manufacturer, vendor, or service provider;
(2) disclose chemicals that were not intentionally added to the hydraulic fracturing fluid; or
(3) disclose chemicals that occur incidentally or are otherwise unintentionally present in trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid.}

[We concur in part with the commenter. Both industry and environmental interests expressed a desire for a chemical disclosure registry on a public website such as Fracfocus, and both cited Colorado's regulations as a preferred example. Accordingly we have adapted the Colorado rules to our formatting and imported them into this section as suggested. We are aware that the Colorado rules were the subject of thorough negotiations, and the final product included a process for protecting trade secrets while disclosing the family name of some chemicals. We have also included a version of that provision of the Colorado rules as well. However, as per our original intent, this language will apply only to fractures using >200,000 gallons of water-based liquids.]

To 0400-53-03-.01:

~~1040-03-03-.01~~ 0400-53-03-.01 Safety

(1) Each operator shall so conduct his operations and maintain his equipment as to reduce to a minimum the

danger of explosion, fire, or waste.

(2) All tests for production should be started and completed during daylight hours unless approval is obtained by the Supervisor.

(3) No boiler, open fire, or electric generator shall be operated within ~~one hundred (~~100~~)~~ feet of any producing oil or gas well or oil tank.

(4) Any rubbish, debris, or vegetation that might constitute a fire hazard shall be removed to a distance of at least ~~one hundred (~~100~~)~~ feet from the vicinity of wells to be tested.

(5) All waste shall be disposed of in such a manner as to avoid creating a fire hazard or polluting streams and {~~fresh water strata~~ groundwater}. **[We prefer to keep the existing language to clearly distinguish drinking water quality aquifers from deeper non-potable sources.]**

(6) No test oil, condensate, salt water, or any other fluid substance shall be discharged to or disposed of in any way into any stream, lake, or other body of water, or into any ditch or surface drainage depression leading to any stream, lake, or other body of water, except in compliance with the Water Quality Control Act T.C.A. § 69-3-101 and the regulations of the Water Quality Control Board 1200-04-03.

{(7) No well that will be hydraulically fractured may be drilled within 1,000 feet of any previously abandoned or orphaned well that was not constructed consistent with these rules and not properly abandoned to prevent the upward migration of oil, gas, or fracturing additives through either the inside of the casing or the area outside of the casing to adjoining the geologic formations.} **[The commenter provides no justification for requiring a 1000 foot setback. Under the existing rules in Rule 0400-52-04-.01 Vertical well Spacing, an operator cannot drill closer than 660 feet from an existing oil or gas well.]**

{(8) No well may be drilled within 1,000 feet of any sinkhole in any area designated as "karst" or an "area of high density of karst features" as illustrated on the Geologic Hazards Map of Tennessee, 1977, Environmental Geology Series No. 5, by Robert Miller.} **[See response to Comment F-1.]**

{(9)} All wells shall have the equipment and containers or lined pits necessary to prevent the spillage of oil, condensate, water, or any other fluids or substances produced or used during any production test. The equipment shall be in place prior to the start of the production test, and shall be large enough to contain any plausible spill.

{(10)} All wells shall be cleaned into a pit or tank, located at a distance of at least {~~one hundred (100)~~ 500} feet from any fire hazard or dwellings. **[Commenter provides no rationale for increasing the setback distance by 400 feet. We are aware of no problems with the current setback.]**

(a) If pits are to be used, the sides and bottoms of the pits ~~must~~ shall be lined with {a composite liner system that meets or exceeds the standards given in 0400-53-03-.02 Environment, 2.(h) ~~with heavy gauge seamless plastic sheets~~,} or other artificial liner approved by the Supervisor. **[The language in subparagraph (2)(g) under Environment requires a synthetic liner of at least 10 ml, or a compacted clay liner upon approval by the Supervisor.]**

(b) If it seems likely that a pit will overflow, additional pits must be constructed, or else tanks must be brought in to contain the surplus fluids.

{(11)} No oil or gas well shall be drilled closer than {~~two hundred (200)~~ one thousand (1,000)} feet from a dwelling or closer than ~~one hundred (~~100~~)~~ feet from a public road. **[The commenter offers no justification for such a large increase in the setback distance. To apply such a setback would result in many landowners being unable to develop their mineral rights.]**

(a) That portion of this regulation concerning distance from a dwelling may be waived by the supervisor upon submission of a notarized statement by the dwelling owner agreeing to the well location.

{(12)} No oil or gas well shall be drilled within {~~two hundred (200)~~ one thousand (1,000)} feet of any water well

or surface water body that is used for drinking, {commercial,} irrigation, or livestock {~~that is in active use. This requirement may be waived by the Supervisor upon submission of a notarized statement from the well owner agreeing to the location of the oil or gas well and a plan identifying the additional measures to be taken to prevent pollution of the water well.~~} [The commenter offers no justification for such an increase in the setback distance. Again, this would seriously limit the ability of many landowners to develop their mineral rights. We do not intend to take away landowners rights to allow drilling closer than 200 feet to their own well if they so choose.]

{(13)} No oil or gas well shall be drilled {within a flood plain or ~~one hundred (100) feet~~ one thousand (1,000) feet} of any stream, lake, or other body of water, so that an undisturbed riparian zone can be maintained, ~~{except that this requirement may be waived upon submission of a plan identifying additional measures acceptable to the Supervisor to be taken to prevent pollution of the waters of the State.}~~ **[The commenter offers no justification for such an increase in the setback distance. Given the density of jurisdictional streams in east TN geology/topography, this would limit the ability of many landowners to develop the mineral rights on their own property.]**

{(14)} No oil or gas well shall be drilled within {2,000 ~~330~~} feet of any water body designated {as a State Scenic River, Exceptional Tennessee Water or} an Outstanding National Resource Water (ONRW). **[The commenter provides no justification for such an increase in the setback distance.]**

~~{(15) The siting of wells, pits, or storage facilities in wetlands or in flood-prone areas (as indicated by the observed high water mark) of a stream is prohibited.}~~ **[We prefer to keep this clause as proposed. While the siting of wells, etc in wetlands and flood prone areas has not been a problem in TN to date, it allows the Supervisor more latitude to make changes to a site plan to avoid such features if needed.]**

To 0400-53-03-.02(2):

(2) Implement necessary procedures and safeguards during drilling and completion operations to prevent the uncontrolled flow of oil from wells, including, but not limited to:

(a) Follow reasonable procedures such as cleaning and lubricating pipe threads so that pipe can be made up to proper tightness.

(b) Lay flow and test lines on ground or install adequate supports for crossing streams and drainways with the lines.

(c) At truck loading terminals, provide containers to catch unrecoverable oil at the hose connections, and provide proper maintenance of valves and other equipment. Train personnel to take necessary procedures to prevent spillage.

(d) During completion operations, produce and clean wells into tanks instead of pits if at all possible.

(e) At the same time that any pits or other diversion, transport, or storage facilities are constructed at ground level, dikes, diversion ditches, or other structures shall also be constructed to prevent any surface water from entering the pits or other facilities.

(f) Remove oil, salt water, or other fluids from pits as soon as practical after it has accumulated in them, and dispose of it in such a way that none can enter surface water or ground water, or otherwise adversely affect the environment or threaten public health and safety.

(d) All pits or other diversion, transport, or storage facilities shall be constructed so that waste fluids do not discharge from them. There shall be no discharge pipe, overflow weir, trickle tube, or any other device allowing any discharge. The operator is responsible for maintaining adequate storage capacity at all times.

(h) No pit shall be located so that any part of it, including a dike or diversion structure, is within a horizontal distance of ~~one hundred ({100)~~ 1,000} feet of the normal high-water line of any stream or lake. {All pits shall have a properly constructed foundation and interior slopes consisting of a firm, unyielding base, smooth and free of rocks, debris, sharp edges or irregularities to prevent

the liner's rupture or tear. The operator shall construct a temporary pit so that the slopes are no steeper than two horizontal feet to one vertical foot (2H:1V).} All pits shall {~~be lined using a synthetic liner of at least 10 ml thickness~~ have a composite liner system consisting of a welded seam geomembrane liner of at least ~~10 ml~~ 60 mil ~~pi~~ thickness High Density Polyethylene (HDPE) liner and a two (2)-foot compacted layer having a permeability no greater than $1x10^{-7}$ centimeters per second. The geomembrane liner shall be composed of an impervious, synthetic material that is resistant to petroleum hydrocarbons, salts and acidic and alkaline solutions. The liner material shall be resistant to ultraviolet light. Liner compatibility shall comply with EPA SW-846 method 9090A.} As an alternative, compacted clay liners or other equivalent measures may be used at the discretion of the Supervisor~~.~~{as long as the permeability requirement of the composite liner system is met or exceeded.}

{(i) The operator shall minimize liner seams and orient them up and down, not across a slope. The operator shall use factory welded seams where possible. Prior to field seaming, the operator shall overlap liners four to six inches and orient seams parallel to the line of maximum slope, *i.e.*, oriented along, not across, the slope. The operator shall minimize the number of field seams in corners and irregularly shaped areas. Qualified personnel shall perform field seaming. The operator shall weld field liner seams.

(j) The operator shall anchor the edges of all liners in the bottom of a compacted earth-filled trench. The anchor trench shall be at least 18 inches deep.

(k) Pits shall be constructed such that the bottom of the liner will be no closer than ten (10) vertical feet separation between the uppermost groundwater.}

[We concur with several of the above suggestions. Accordingly we have added language to subparagraph (g) of this paragraph that specifies smoothing of the pit to prevent liner damage and a requirement to construct pits above ground if groundwater is near the surface. Liner specifications that are comparable to those used in a Class I landfill are not appropriate for a temporary pit.]

{(l)} Containment at tanks ~~must~~ shall equal at a minimum the storage capacity of ~~one and one half (1.5)~~ 1½ times the capacity of the largest tank in the tank battery.

{(m)} All tanks ~~must~~ shall be maintained to prevent corrosion which can lead to both fluid loss from the vessel and accelerated reduction in its useful life span.

{(n)} To prevent fire hazard, all tank batteries and tanks shall be kept free of brush or overgrowth within the berm surrounding the tank or tanks.

{(o)} Dikes and ditches designated in subparagraphs (e) and (g) of this paragraph should be constructed in a manner to accommodate permanent facilities such as pumping units and flow lines.

{(p)} Provide dikes and/or containment pits at storage tanks upon initial installation where such tanks are so located as to be deemed hazardous. If containment pits are to be used, they should be constructed according to the guidelines set forth in Rule ~~1040-04-01-.07~~ 0400-54-01-.07.

(3) All surface pits ~~must~~ shall be drained of water {, the liner removed,} and back filled with dirt as soon as they are no longer needed for drilling or testing. {Water must be sampled in accordance with the Waste Control and Disposal Plan for constituents of concern, results submitted to the Department for approval, and the disposal method approved by the Department prior to disposal.} **[The removal of synthetic liners has been addressed under Rule 0400-52-09-.05 Surface Reclamation, and this paragraph (3) has been moved to that rule. Disposal of wastewater is already regulated under existing water pollution rules.]**

{(4) Soil sampling must be completed upon closure of any pit or containment area to confirm that no soil contamination has occurred due to unintended leakage. The parameter list for sampling must include

constituents of concern that are representative of the fluids stored. The results of the sampling activities must be provided to the Department and approved prior to closure and stabilization of the closure containment structures.} **[We have clarified that contaminated soils at a wells site must be disposed of in accordance with Solid Waste Management rules – see Rule 0400-54-01-.03 Proper Disposal of Waste.]**

{(5)} Implement prudent production operations to prevent potential oil spills, including, but not limited to:

(a) Connect fill lines to storage tanks so that oil and gas ~~will~~ shall not spray into the atmosphere.

(b) Install "equalizer" lines between adjacent tanks as a safeguard against overflow.

(c) Install oil and gas separators where gas is produced in sufficient quantities to be hazardous.

(d) Pump contaminated unsalable residual oil from storage tanks into an accumulator tank instead of open pits.

(e) Place locks, remove handles, or otherwise secure all valves, so vandals cannot open them to cause spills.

{(6)} The Supervisor should notify all oil industry related companies, including operators, service companies, drilling contractors, and crude oil gatherers and purchasers of their responsibility and liability in regard to oil spills.

To 0400-54-01-.06:

~~1040-04-01-.07~~ 0400-54-01-.06 Containment Pit at Tank Batteries.

A containment pit is required at each permanent oil tank or battery of {tanks ~~located within corporate limits or where such tanks are less than six hundred (600) feet from any highway or inhabited dwelling, or less than one thousand (1,000) feet from any school or church or within one hundred (100) feet of a stream or where such tanks are so located as to be deemed hazardous by the Supervisor.~~} Tanks {~~not falling in the aforementioned categories~~} ~~must~~ shall be surrounded by a retaining wall or suitably ditched to a collecting sump, each of sufficient capacity and construction to contain potential spillage. Tank batteries shall not be located closer than 100 feet from any state highway or county road. **[We concur with this comment. The language above has been deleted as suggested. Containment pits should be required around all tank batteries regardless of location.]**

To 0400-54-01-.12:

~~1040-04-01-.12~~ 0400-54-01-.12 Disposal of Salt Water.

(1) Underground injection is the preferred form of disposal of salt water, provided, however, that such injection is permitted by appropriate State and Federal agencies.

(2) Produced salt water may either be injected into a subsurface formation(s) productive of hydrocarbons, if part of an approved secondary recovery project, into a subsurface formation(s) not productive of hydrocarbons, if through an approved salt water disposal well, or else may be transported off-lease to an authorized salt water disposal facility if prior approval has been granted by the Department.

(3) Produced salt water shall not be put in any unlined pit, pond, lake or depression, or in any other place in a manner that ~~will~~ shall constitute a pollution hazard to the waters of the State including ground water.

{(4) Produced water or fracturing fluids containing chlorides shall not be land applied unless the operator first determines the depth to the uppermost groundwater, the complete list of constituents in the water, and the soil type and its ability to absorb contaminants. Further, the operator shall establish a groundwater monitoring well system capable of determining if the groundwater has been contaminated by land application activities and the rate and direction of groundwater flow. The groundwater monitoring system shall depend on site-specific factors and shall include no less than three (3) groundwater monitoring wells in the uppermost groundwater-bearing zone.} **[Existing rules already prohibit the land application of**

salt water, therefore no monitoring requirement is needed. The words 'or fracturing fluids' have been added to paragraph (4) of this rule.]

{(5)} No salt water **[or fracturing fluids]** shall be discharged to or disposed of at the land surface where it can enter surface water or ground water. Salt water discharged to and temporarily stored in lined pits shall be removed before it can leak into {~~under~~}ground water. **[We prefer to leave the wording as currently written in order avoid excluding interflow water from protection.]**

{(6)} All pits or ditches used for temporary storage or transport of salt water shall be lined with an impermeable {~~man-made~~} liner {in accordance with the liner system and permeability requirements in 0400-53-03-.02 Environment, subparagraph (2)(g).} **[We concur, and will make this change.]**

Addendum to Public Hearing Comments

At the Oil and Gas Board meeting on September 28, 2012, the Board decided to hear oral comments from any members of the public present who wished to speak after the staff presentation on the rule proposal before the board began its deliberations. Twenty-six commenters addressed the Board. Any new comments made at this meeting that were not previously addressed in the Response to Comments document are addressed in this Addendum.

Comments and Responses

Comment: Many commenters asked that the Board take no action on these rule changes to give the public more time to study and comment on this. Some noted that no hearing was held in middle Tennessee.

Response: The Board considered these comments by questioning TDEC staff about the public participation process for this rule-making effort. TDEC summarized this information for the Board and explained that several stakeholders meetings with both industry and environmental groups were held over a year-long process, in addition to following the normal procedures for public notice and comment. Staff noted that the two public hearings on these rules were held in Knoxville as that is closer to the area where most oil and gas drilling is occurring. When the board began its deliberations, it considered first whether to act on the rules. The board voted unanimously to proceed to consider the rules. The board then went through the rules section by section, considering the changes that had been made in response to comments made during the comment period as well as those made at the board meeting. The board made a number of changes in response to the comments as well as a few other changes as noted below.

Comment: Commenters also asked that the Board take no action on these rule changes to let the new Board of Water Quality, Oil and Gas consider the rules.

Response: The Board recognized that the law (Public Chapter 986 of 2012) merging it into the Water Quality Control Board to create the new Board of Water Quality, Oil and Gas was going to take effect on October 1. However, the Board has been aware of the issues involved in this rulemaking for several years. Many comments were made about fracturing during a previous rulemaking by the Board in 2011 and those commenters were informed then that the subject would be addressed in a separate rulemaking. The board has been familiar with the particulars of the proposed rule since it approved starting the formal rulemaking process last spring. Because of the Board's in-depth knowledge of the issues and because there is a need to move ahead with the improvements for environmental protection provided by these rules, the Board voted to proceed.

Comment: There are certain to be spills and releases to the environment from fracturing, and the regulations are inadequate to protect the environment and public health.

Response: There are currently no surface water or groundwater impairments documented in Tennessee from fracturing activities, nor any fracturing-related health issues that we are aware of. Part of the intent of these rule changes is to strengthen the rules in order to prevent such problems from occurring in the future.
New requirements for pits, notification to the Supervisor in the case of a spill, casing, cementing, and blowout prevention requirements are all being added as part of this rulemaking to address these very issues. Although the risk of spills or other releases in any industry or transport system can never be completely eliminated, these provisions are needed and reasonable improvements in the current rules to minimize those risks.

Comment: The rule language is dense and hard for citizens to follow. Commenter doesn't like the sound of the wording "Supervisor's discretion" in the rules.

Response: We recognize that it can be very difficult for the public to read and understand rule language. Unfortunately rule language for an industry like this must often use language that is not only highly technical but also be legally enforceable and as unambiguous as possible. In an effort to make rule-making more understandable, we included an Executive Summary document that explains the nature of the changes and their intent in simpler terms.

The wording "at the Supervisor's discretion" is indeed used in the rules in several sections. Conditions of depth and pressure encountered in a given well can vary considerably, and we think it is necessary to retain some flexibility for regulators and operators to adapt to field conditions. It is not intended as a way around safe drilling practices, and the Supervisor has no obligation to agree to any alternatives methods requested by an applicant.

Comment: Commenter does not like the way the procedures for the Board meeting are organized. Commenter would prefer that TDEC present proposals to the public, while the Board listens from the gallery.

Response: It is the Board that was given the authority and responsibility to adopt rules under Tennessee Code Annotated, Title 60, Chapter 1. It is appropriate for the Board, not the public to be in charge of its meetings. It is also appropriate for the public to be able to attend the meeting. The commenter should note that there is no legal requirement for the Board to allow the public to address them, but the Board consented to hear testimony.

Comment: Commenter suggested that the later portion of a paragraph on page 36 of the rules under 'Intermediate Casing' should be moved to become a separate item (3) under that section. This would have the effect of making the requirements for cement job documentation apply to all kinds of casings, not just intermediate casing.

Response: During deliberations, the Board asked TDEC technical staff about this comment and they confirmed that the suggested change reflected the original intent of the rule. The Board made this change.

Comment: Commenter requested that a clause be added to item (4) on page 57 of the rules under 'Disposal of Salt Water' as follows:

(4) No salt water or fracturing liquids shall be discharged to or disposed of at the land surface where they can enter surface water or groundwater (insert) *unless such discharge is permitted by the appropriate State and Federal agencies.*
Response: The Board considered this comment during deliberation. TDEC technical staff had no objection to this change. This addition merely acknowledges that there are other rules and regulations both State and Federal under which a discharge might be legally permitted. The Board made this change.

Comment: Commenter expressed that a public notice period of 30 days as proposed in these rule changes was atypical, noting that no other states had any public notice or time delay in permitting a well site that was comparable to this time period.

Response: The Board debated this comment during deliberations, and asked several questions of TDEC staff related to the mechanics of the public notice period. After some debate, the Board moved to support the 30 day notice period for fractures more than 200,000 gallons of water-based liquids as proposed, and did not make this change.

Comment: Commenter stated that a consortium of environmental groups had submitted extensive comments, and that TDEC had "ignored virtually all of their comments".

Response: The staff stated in the presentation at the meeting that many of the changes made as a result of public input during the comment period were based on comments from environmental interests. The above Responses to Comments show the same thing. Several of these changes were significant, including specifications for public notice content, increasing the public notice period from 15 to 30 days, chemical disclosure on the Fracfocus website, and pressure monitoring and recording during fracturing.

Comment: Commenter stated that EPA should have a "needs assessment program" to ask why something, like fracturing, is needed at all.

Response: The Board has no authority to make requirements of EPA.

Comment: Commenter requested that the rules be amended so that Tennessee Wildlife Resources Agency (TWRA) would also receive public notice for a well permit in cases where high-quality waters, waters with noted fisheries, or waters containing threatened and endangered species were within a certain distance of the proposed well.

Response: We agree that TWRA should always be included in any public notice from TDEC, regardless of the nature or classification of the waterbodies involved. TWRA is automatically placed on all of TDEC's public notice lists of interested parties. These rules do provide that any interested agencies be given notice of the large volume fractures. Accordingly there is no need to mention TWRA specifically in the rules.

Comment: Commenter requested that adjoining land owners within a 2 mile radius should receive TDEC's public notice.

Response: The Board discussed this comment during deliberations, and moved to add language to the rule to address this comment. The sentence under 0400-52-02-.01 (10)(c)) was amended to read: "The applicant shall provide the Department's public notice of the proposed well to the owners *of any property* or any residence that has any drinking water wells within a ½ mile radius of the proposed wellhead..." Consistent with a change made earlier, in this same subsection, the board changed "domestic well" to "drinking water well."

Comment: Commenter requested that the time period for the applicant to provide the Department's public notice to a drinking water well owner within a ½ mile radius be changed from 14 days to 7 days of the date of the public notice, and that the time period for a drinking well owner to request that the applicant sample his water well be changed from 14 days to 21 days.

Response: The Board debated this comment during deliberations, and asked staff for clarification on the meaning and intent of the rule change as written. One concern was that these time frames were chosen to be sure that they can run concurrently with the 30 days public notice period and the samples be taken prior to drilling to represent a baseline condition. The commenter provided no rationale for changing the proposed time deadlines. After some discussion, the Board did not make a change in response to this comment.

Comment: Commenter expressed concern that the rule changes not be applied retroactively to previously permitting sites, and asked that language be added to the rules to state this.

Response: The Board examined this issue during deliberations. TDEC counsel stated that the general legal interpretation of any rule is that it is not retroactive unless it specifically states that it is, and that it was not TDEC's intent to make these changes retroactive or to interpret the rule changes to be so. Therefore it was not necessary to include a clause in the rules as requested.

Comment: Commenter asked if TDEC has a water well database and if so, was it available for public use on-line.

Response: TDEC staff clarified to the commenter and the Board that TDEC does indeed have a database of drinking water wells, but that this database is not yet available for use on-line. TDEC committed to making this information available on-line in the near future, and also promised to make interim arrangements to allow for identifying water wells in applications if the database has not been made available on-line when these rule changes take effect.

Comment: Commenter requested additional language under 0400-52-09-.06 that would specify some alternative methods of confirming well integrity for wells to be placed in Temporary Abandonment that have not been produced or tested in the last 15 years.

Response: The Board discussed this at some length during deliberations. After some consultation with TDEC technical staff, the Board moved to make a change in response to this comment. The language on page 41 of the rules under 0400-52-09-.06(1)(c), last sentence, was amended to read: "Alternative well integrity confirmation methods, *including annual pressure monitoring at the wellhead*, may be accepted at the discretion of the Supervisor."

Comment: Commenter pointed out that the rule language under Casing Requirements on page 34 sets forth casing and cementing requirements for intermediate casings, even though some shallow Highland Rim wells do not need or commonly utilize intermediate casings.

Response: The Board discussed this comment during deliberations, and moved to make a change in response to this request. TDEC technical staff agreed with the change. The language under 0400-52-07-,01 Casing Requirements, section (2) was amended to read: *"If intermediate casing is used,* the operator shall set an intermediate string of casing prior to the drilling..."

Comment: A board member pointed out that in some vertical wells, packers are appropriately utilized with production casing instead of cementing through the production zone. Requested that language allowing this methodology as an option be added to the rule similar to that allowed under Horizontal Wells.

Response: The Board considered this issue during deliberations TDEC staff had no objection to the change. The rule language under 0400-52-07-.04 Production Casing was amended to read: "If production casing is used in a vertical well, the operator shall cement the production casing at a minimum of 100 feet into the intermediate casing and extend the cementing across the producing formation, *unless the casing is set on a packer or set and cemented above the production zone."*

Comment: Commenter stated that applicants should be required to disclose all information on chemical additives to be used and their concentrations prior to conducting fracturing activities rather than upon well completion, and that this information should be included in the public notice.

Response: The Board debated this comment during deliberations, and asked TDEC staff for more information. Operators do not know with accuracy exactly what additives and in what volumes/concentrations they will use to fracture a given well prior to drilling, and so prior disclosure at the time of public notice could include only rough estimates that are subject to change. This raised the questions of, "If the operator makes a change in their fracturing plan that differs from what was placed on public notice, would the permit have to be re-noticed to the public? If the operator varies in any way in their fracturing process from the projected plans that were noticed, would this constitute a permit violation?" After some discussion, there was no motion made to make a change requiring prior disclosure.

Comment: Commenter expressed concerns that operators would use the trade secret protections in the rules as a way to keep the most toxic of the chemical additives they use hidden from the public.

Response: These rules do not create trade secret protections, they specify a process for how claims of trade secret protection made by an operator will be handled by TDEC in the context of fracturing chemicals. Trade secret protections are established under statutes and case law in this state. Rule 0400-53-01-.03(4) refers to existing statutory provisions allowing for a court action for an injunction or damages as the method to be followed if someone wishes to challenge a claim of trade secret as improper.

Comment: Commenter inquired about the intent of changing "will" or "must" to "shall."
Response: Counsel responded that "shall" is generally understood to mean a mandatory requirement and other terms introduce ambiguity. The Board in its deliberations noted a few places where this had not been done and made the change.

Comment: Commenters and board members noted some typographical errors and suggested some clarifications in wording.

Response: The Board made these corrections.

Comment: Commenters expressed concern about whether the rules would be adequately enforced.

Response: Enforcement is a separate matter than rulemaking and such a comment does not call for a change in the rules.

Comment: One commenter expressed appreciation that TDEC has shared its final proposal on the rules with the public when it was sent to Board members in advance of the meeting and noted that this had not been done in other states when rules on fracturing were adopted.

Response: No response necessary.

Comment: Commenters stated that the majority of comments made during the comment period were against the practice of fracturing.

Response: The Board noted that fracturing in one form or another has been occurring in Tennessee for many decades. The board is aware of the strength of feeling about these rules, but determined that the rules were appropriate to better regulate the practices currently occurring in Tennessee as well as establish requirements applicable to the large volume fracturing that is not yet occurring here.

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.

There are approximately twenty to twenty five active small businesses of this type in the oil and gas exploration and drilling sector in Tennessee that would be affected by these rule changes.

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

The changes in reporting and record keeping requirements in these rule changes is minimal, and would affect only fracturing jobs using >200,000 gallons of liquids. So far no such fracturing jobs have occurred in the state, and none are expected in the near future.

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

There should be little additional economic costs to small businesses. Requirements for slightly thicker synthetic liners for pits and for containment pits around all tank batteries should add relatively small costs, and these costs are generally passed on to the investors rather than consumers. The new provisions that are being added to the rules for blowout prevention and casing requirements represent codification of existing policies into rule, and therefore do not represent new requirements.

(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.

None. We have endeavored to keep rule changes applicable to current drilling and fracturing methods minimal. Most of the rule changes are targeted at potential future fracturing practices not currently in use in Tennessee.

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

The rules proposed are consistent with federal guidance to the states from Department of Energy, federal Bureau of Land Management regulations, and are adapted from State of Colorado and State of Arkansas oil and gas rules pertaining to fracturing and chemical disclosure. The rules proposed are less burdensome than state rules in OH, WV, NY, TX, OK, and PA, where large water-volume fracturing of deep strata wells is the common practice. This methodology is currently not practiced in Tennessee. The requirement for extending surface casing 100 feet below the lowest fresh water aquifer (changed from 50 feet) is consistent with most other states. In reference to synthetic liners for pits, no other states had a rule requirement for liners less than 10 ml in thickness.

(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.

Most of the proposed rule changes were targeted towards large-volume water-based fracturing methods that to date have not been practiced in Tennessee. The intent was to have little or no effect on existing businesses and current drilling and fracturing practices. While the proposed rules do not exempt a category of business, most of them apply only to certain fracturing methods not currently in use in the state.

Impact on Local Governments

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

The Department does not anticipate an impact on local governments from this rulemaking.

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Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
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Revision Type (check all that apply):

___ Amendment
X New
X Repeal

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

Chapter Number	**Chapter Title**
0400-51-01	Definitions
Rule Number	**Rule Title**
0400-51-01-.01	Definitions of Terms

Chapter Number	**Chapter Title**
0400-52-01	Bond
Rule Number	**Rule Title**
0400-52-01-.01	Amount of Plugging Bond
0400-52-01-.02	Blanket Plugging Bond
0400-52-01-.03	Reclamation Bond
0400-52-01-.04	Relief of Responsibility
0400-52-01-.05	Execution
0400-52-01-.06	Forfeiture
0400-52-01-.07	Notice of Compliance

Chapter Number	**Chapter Title**
0400-52-02	Permits
Rule Number	**Rule Title**
0400-52-02-.01	Permit Required
0400-52-02-.02	Drilling Permit
0400-52-02-.03	Reserved
0400-52-02-.04	Notification to Plug and Abandon
0400-52-02-.05	Reserved

Chapter Number	Chapter Title
0400-52-03	Well Location Plats
Rule Number	**Rule Title**
0400-52-03-.01	Preparing Plats

Chapter Number	Chapter Title
0400-52-04	Vertical Well Spacing
Rule Number	**Rule Title**
0400-52-04-.01	Vertical Well Spacing

Chapter Number	Chapter Title
0400-52-05	Well Identification
Rule Number	**Rule Title**
0400-52-05-.01	Posting a Sign

Chapter Number	Chapter Title
0400-52-06	Drilling Wells
Rule Number	**Rule Title**
0400-52-06-.01	Drilling Equipment
0400-52-06-.02	Blowout Prevention
0400-52-06-.03	Casingheads
0400-52-06-.04	Environmental Protection

Chapter Number	Chapter Title
0400-52-07	Casing Program
Rule Number	**Rule Title**
0400-52-07-.01	Casing Requirements
0400-52-07-.02	Conductor Pipe
0400-52-07-.03	Surface Casing
0400-52-07-.04	Production Casing
0400-52-07-.05	Isolation of Oil, Gas and Fresh-Water-Bearing Strata, and Potential Minable Coal and Other Mineral Deposits

Chapter Number	Chapter Title
0400-52-08	Directional Drilling
Rule Number	**Rule Title**
0400-52-08-.01	Lateral Deviation
0400-52-08-.02	Inclination Surveys
1040-20-08-.03	Directional Survey
0400-52-08-.04	Horizontal Drilling

Chapter Number	Chapter Title
0400-52-09	Well Plugging and Abandonment
Rule Number	**Rule Title**
0400-52-09-.01	Plugging Wells
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0400-52-09-.03	Deliverability Test
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1040-04-02-.09	Repealed
1040-04-02-.10	Repealed
1040-04-02-.11	Repealed
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1040-04-03-.04	Repealed
1040-04-03-.05	Reporting-Producers
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1040-04-03-.07	Repealed
1040-04-03-.08	Report Filing
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(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)

Repeals

Chapter 1040-01-01 through 1040-08-01
Rules of the Tennessee Oil and Gas Board

Chapters 1040-01-01 Definitions, 1040-02-01 Bond, 1040-02-02 Permits, 1040-02-03 Well Location Plats, 1040-02-04 Vertical Well Spacing, 1040-02-05 Well Identification, 1040-02-06 Drilling Wells, 1040-02-07 Casting Program, 1040-02-08 Directional Drilling, 1040-02-09 Well Plugging and Abandonment, 1040-02-10 Filing of Well Date, Reports and Maps, 1040-02-11 Exceptions and Hearings, 1040-02-12 Violations – Penalties – Notice – Hearing, 1040-03-01 Completion, Recompletion, and Related Downhole Work, 1040-03-02 Tubing and Well Equipment, 1040-03-03 Prevention of Hazards and Pollution, 1040-04-01 Pollution and Safety Controls, 1040-04-02 Procedures and Equipment for Metering, Measuring and Producing Oil Condensate and Gas, 1040-04-03 Requirements for Reporting the Volume and Disposition of Oil and Gas Produced, 1040-04-04 Ratable Take, 1040-04-05 Commingling and Automatic Custody Transfer of Hydrocarbons, 1040-04-06 Limiting Production, 1040-04-07 Regulating High Gas\Oil Ratio Wells and Preventing Waste of Gas, 1040-04-08 Subterranean Gas Storage, 1040-04-09 Pressure Maintenance Projects and Secondary Recovery, 1040-05-01 Unit Operations, 1040-06-01 Hearings and Administrative Approval, 1040-06-02 Rules of Procedure for Hearing Contested Cases, 1040-07-01 List of Forms, and 1040-08-01 Determining Under Federal Natural Gas Policy Act of 1978 are repealed.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-51-01
Definitions

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~~1040-01-01-.01~~ 0400-51-01-.01 Definitions of Terms

~~1040-01-01-.01~~ 0400-51-01-.01 Definitions of Terms

For the purpose of rules contained in ~~Chapter 1040-01-01~~ Divisions 0400-51 through 0400-58 the terms set out herein shall have the meaning indicated.

(1) "Abandoned well" shall mean either of the following:

(a) A well that was not adequately plugged or closed at conclusion of operations such that it constitutes or may constitute a threat to public health or the environment; or

(b) A well that has no owner, operator or other responsible person (hereinafter called "responsible party") who can be located, or such responsible party has failed or refused to undertake actions, where required by law, to abate the threat.

(2) "Access Road" shall mean any road built and used exclusively by the operator (except public roads) which provides access to and/or ends at a wellhead, tank, pit or other facility related to oil and gas exploration and/or production.

(3) "Active Work Area" as it pertains to a well site, shall mean that portion of the initially disturbed area necessary for production-related equipment, materials, and facilities, as determined by the supervisor.

(4) "Aquifer shall mean a geologic formation or portion thereof which contains and is capable of yielding a sufficient quantity of groundwater to serve as a domestic or public water supply or other use.

~~(4)~~(5) "Automatic Custody Transfer" shall mean that the liquid hydrocarbons is automatically measured as it is transferred from the producer to the carrier.

~~(5)~~(6) "Barrel (or, Barrel of Oil or Condensate)" shall mean the amount of ~~forty-two (~~42~~)~~ standard United States liquid measure gallons of 231 cubic inches per gallon, computed at a temperature of ~~sixty~~ 60 degrees ~~(60)~~ Fahrenheit.

(7) "Base Fluid" shall mean the continuous phase fluid type, such as water or nitrogen gas, used in a hydraulic fracturing treatment.

(8) "Blooey Line" shall mean the discharge pipe from a well drilled by air drilling. The blooey line is used to conduct the air or gas used for circulation away from the rig to reduce the fire hazard as well as to transport the cuttings a suitable distance from the well.

~~(6)~~(9) "Blow-Out" shall mean an uncontrolled escape of oil, gas and/or water from the well.

~~(7)~~(10) "Blow-Out Preventer" shall mean a properly selected casinghead control fitted with special gates or discs which may be closed around the drill pipe, or which completely closes the top of the casing if the pipe or tools are withdrawn.

~~(8)~~(11) "Board" shall mean the State Board of Water Quality, Oil and Gas ~~Board~~ as authorized and created by Title ~~60~~ 69, Chapter 3, Tennessee Code Annotated. ~~It is composed of the following:~~

~~(a) The Commissioner of Environment and Conservation, or his or her designee who shall act as chairperson,~~

~~(b) The head of the Division of Energy of the Department of Economic and Community Development,~~

~~(c) The chairperson of the Conservation Commission,~~

~~(d) A member from the oil or gas industry appointed by the Governor,~~

~~(e) An owner of oil and gas property appointed by the Governor, and~~

~~(f) A member from the mineral industry appointed by the Governor.~~

~~The Commissioner of Environment and Conservation shall be ex officio the State Oil and Gas Supervisor, and shall also serve as Supervisor of the Mineral Test Hole Regulatory Act, Part 5 of Title 60, Chapter 1.~~

~~(9)~~(12) "Bonding Agent" shall mean any entity that issues a bond for an operator to submit to the state to assure the plugging of a well or reclamation of a well site.

~~(10)~~(13) "Bottomhole Pressure" shall mean the pressure in pounds per square inch of an oil and/or gas well determined at the face of the producing horizon by means of a pressure-recording instrument, adopted and recognized by the oil and gas industry.

~~(11)~~(14) "Brush and Rock Plug" shall mean an obstruction, made of wood and stone, and placed in the well bore to form an effective base for plugging material.

~~(12)~~(15) "Casing Pressure" shall mean the pressure built up between the casing and the tubing when the casing and tubing are packed off at the top of the well.

~~(13)~~(16) "Casinghead Gas" shall mean any gas or vapor, or both, indigenous to an oil stratum and produced from such stratum with oil. It shall be treated as gas, if sold, for the purpose of paying privilege tax.

(17) "Chemical(s)" shall mean any element, chemical compound, or mixture of elements and compounds that has its own specific name or identity such as a chemical abstract service number.

(18) "Chemical Abstracts Service" shall mean the division of the American Chemical Society that is the globally recognized authority for information on chemical substances.

(19) "Chemical Abstracts Service Number or CAS Number" shall mean the unique identification number assigned to a chemical by the Chemical Abstracts Service.

(20) "Chemical Disclosure Registry" shall mean the chemical registry website known as fracfocus.org developed by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. If such website becomes permanently inoperable, then chemical disclosure registry shall mean another publicly accessible information website that is designated by the Supervisor.

(21) "Chemical Family" shall mean a group of chemicals that share similar chemical properties and have a common general name.

~~(14)~~(22) "Christmas Tree" shall mean an assembly of valves and fittings at the head of the casing of a well to control the flow. Also spoken of as "wellhead connections".

~~(15)~~(23) "Circulation" shall mean the passing of approved fluid down through the drill stem and up to the surface, in the process ~~or~~ of rotary drilling~~s~~ or in setting casing.

~~(16)~~(24) "Common Source of Supply" shall comprise and include the area, which is underlain or that, from geological or other scientific data or from drilling operations or other evidence, appears to be underlain by a common accumulation of oil or gas or both; provided, that if any such area is underlain or appears from geologic or other scientific data or from drilling operations or other evidence to be underlain by more than one common accumulation of oil or gas, or both, separated from each other by strata of earth and not connected with each other, then such area, as to each said common accumulation of oil or gas, or both, shall be deemed a separate common source of supply.

~~(17)~~(25) "Condensate" shall mean liquid hydrocarbons that were in the gaseous phase in the reservoir at initial reservoir condition. It shall be treated as oil for the purpose of paying privilege tax.

(26) "Conductor Pipe" or "Conductor Casing" shall mean the short string of casing that is not cemented in place and serves primarily to keep the top of the well bore open in unconsolidated material.

~~(18)~~(27) "Conservation" shall mean conserving, preserving, guarding, or protecting the oil and gas resources of the State by obtaining the maximum efficiency with minimum waste in the production, transportation, processing, refining, treating, and marketing of the un-renewable oil and gas resources of the State.

~~(19)~~(28) "Correlative Rights ~~or Equally~~" shall mean that action or regulation by the Board, which affords a reasonable opportunity to each person entitled thereto to recover or receive the oil and/or gas under his tract or tracts without being required to drill unnecessary wells or incur other unnecessary expense to recover or receive such oil or gas or its equivalent.

~~(20)~~(29) "Cubic Foot of Gas" shall mean the volume of gas contained in one cubic foot of space at a standard pressure base of 14.73 psi and a temperature base of 60 degrees Fahrenheit.

(30) "Department" shall mean the Tennessee Department of Environment and Conservation.

~~(21)~~(31) "Developed Area" shall mean acreage assigned by the Board to a drilling or production unit on which a well has been completed that is capable of producing oil or gas.

~~(22)~~(32) "Directional Drilling" shall mean the drilling of a well that deviated from the vertical by more than ~~five (~~5~~)~~ degrees.

~~(23)~~(33) "Disposal Well" shall mean a well drilled or converted for subsurface disposal of waste products or brine, and its related surface facilities.

~~(24)~~(34) "Drilling Mud" shall mean any approved mixture of water and clay or other material as the term is commonly used in the industry.

~~(25)~~(35) "Dry Hole or Dry Well" shall mean a well found incapable of producing either oil or gas in sufficient quantities to justify completion or continued production.

~~(26)~~(36) "Equitable Share of the Production" shall mean, as to each person, that part of the authorized production from the pool that is substantial in the proportion that the amount of recoverable oil and gas, or both, in the developed area of his tracts in the pool bears to the recoverable oil or gas, or both, in the total of the developed area in the pool.

~~(27)~~(37) "Exploitation Well" shall mean a well drilled or to be drilled to one or more pools of oil and/or gas with reasonable assurance of obtaining commercial production.

~~(28)~~(38) "Exploration Well" shall mean a well drilled in unproven or semi proven territory for the purpose of ascertaining the presence of commercial oil and/or gas accumulations.

~~(29)~~(39) "Field" shall mean the general area which is underlain or appears to be underlain by at least one ~~(1)~~ pool and including the pool or pools beneath the area.

(40) "Flow Lines" shall mean the pipes that carry the fluids or gas from a wellhead to storage or processing equipment located at or near the well site.

~~(30)~~(41) "Forced-change of operator" shall mean any oil or gas well being taken over by a new operator without the signatures from the original permittee or previous operator of record.

(42) "Fracturing" or "to fracture" shall mean the process of pumping fluids, gas or other substances with or without a proppant down a well under pressure expressly designed to initiate and propagate fractures or fracture networks in the target producing formation to facilitate oil or gas extraction.

~~(31)~~(43) "Gas" shall mean all natural gas and all other fluid hydrocarbons not defined as oil, including condensate because it originally was in a gaseous phase in the reservoir, but excluding helium and other rare gases.

~~(32)~~(44) "Gas/Oil Ratio~~n~~ (GOR)" shall mean the portion of a ~~wellbore~~ well bore drilled laterally into a common source of supply for production or injection purposes.

~~(33)~~(45) "Gathering Line" means a pipeline that transports gas or oil from a well or current production facility to a transmission line, main meter, compressor station, or tank battery.

(46) "Health Professional" shall mean a physician, physician assistant, nurse practitioner, registered nurse, or emergency medical technician licensed by the State of Tennessee.

~~(34)~~(47) "Horizontal Drainhole" shall mean the portion of a ~~wellbore~~ well bore drilled laterally into a common source of supply for production or injection purposes.

~~(35)~~(48) "Horizontal Drainhole End Point" shall mean the terminus of a horizontal drainhole.

~~(36)~~(49) "Horizontal (Lateral) Drilling" shall mean controlled directional drilling of wells with lateral penetration through productive reservoirs.

(50) "Hydraulic Fracturing Additive" shall mean any chemical substance or combination of substances, including any chemicals and proppants, which is intentionally added to a base fluid for puposes of preparing a hydraulic fracturing fluid for treatment of a well.

(51) "Hydraulic Fracturing Fluid" shall mean the fluid, including the applicable base fluid and all hydraulic fracturing additives, used to perform a hydraulic fracturing treatment.

~~(37)~~(52) "Illegal Gas" shall mean gas that has been produced, transported, or sold in violation~~s~~ of any rule, regulation, or order of the Board.

~~(38)~~(53) "Illegal Oil" shall mean oil that has been produced, transported, or sold in violation of any rule, regulation, or order of the Board.

~~(39)~~(54) "Illegal Product" shall mean any product derived in whole or in part from illegal oil or illegal gas.

~~(40)~~(55) "Interested Party" shall mean any person who owns an interest within the area of, or proximate to, the tracts directly affected by the permit application.

(56) "Intermediate Casing" shall mean the string of casing set with cement after the surface casing and before the production casing that is used in the well bore to isolate, stabilize, or provide well control.

~~(41)~~(57) "Lease Tank" shall mean the tank or other receptacle into which the oil is produced either directly from a well or from a well through gas separator, gun barrel, or similar equipment.

~~(42)~~(58) "Market Demand" shall mean the amount of oil reasonably needed for current consumption, use, storage, or working stocks, within and without the State, or the amount of gas of any type reasonably needed for current consumption, use, or storage, within and without the State.

~~(43)~~(59) "Mechanical Plug" shall mean a manufactured device to seal the well bore or inside diameter of casing.

~~(44)~~(60) "Multiple Completion" shall mean the completion of any well so as to permit simultaneous production from two or more common sources of supply with such common sources of supply completely segregated.

~~(45)~~(61) "Neet Cement" shall mean a complex, finely ground, kiln-fired calcium carbonate silicate which, when mixed with water, forms a slurry that will harden in the well bore and casing and effectively seal formations penetrated by the well bore.

~~(46)~~(62) "Nomination" shall mean the amount of oil or gas for which a purchaser has a definite and bona fide need during a given period.

~~(47)~~(63) "Non-producing well" shall mean any well shown on the ~~a~~Annual ~~w~~Well ~~r~~Report (Form CN-1272) that indicates production of 12 barrels or less of oil per year or 25 mcf or less of gas per month.

~~(48)~~(64) "Oil" shall mean crude petroleum that was originally in an oil phase in the reservoir.

~~(49)~~(65) "Operator" shall mean the person to whom the drilling permit has been issued, whether owner or not, supervising or responsible for drilling, operating, repairing, abandoning or plugging of wells subject to this act.

~~(50)~~(66) "Organization Report" shall mean the form (CN-0219) required by Rule ~~1040-02-02-.01~~ 0400-52-02-.01 to be submitted with a permit application that names the responsible parties for the well.

~~(51)~~(67) "Owner" shall mean the person who has the right to drill into and to produce from any pool, and to appropriate the production for himself or others.

~~(52)~~(68) "Person" shall mean any natural person, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, and includes any government or political subdivision or any agency thereof.

~~(53)~~(69) "Pool" shall mean an underground reservoir containing a common accumulation of crude petroleum oil or natural gas or both. Each zone of the general structure which is completely separated from any other zone in the structure is covered by the term "pool" as used therein.

~~(54)~~(70) "Pooled Unit" shall mean two or more tracts of land, of which their ownership may be different, that are consolidated and operated as a single tract for production of oil and/or gas, either by voluntary agreement between the owners thereof, or by exercising of the authority of the Board under the statute. When such tracts are consolidated by Board authority, the size of the consolidation tract ~~will~~ shall not exceed the size, with permitted tolerance, of a "Drilling Unit" as herein defined. In no such case is there any actual change in the title or ownership of the original tracts.

~~(55)~~(71) "Pollution" shall mean damage or injury from the loss, escape or unapproved disposal of any substance at any well or structure installation subject to these rules.

~~(56)~~(72) "Pollution Control Structures" shall mean structures designed to prevent pollution, including but not limited to, berms, dikes, diversion drainage ditches, hay bales, pits, or tanks.

~~(57)~~(73) "Producer" shall mean the owner or operator of a well or wells capable of producing oil or gas, or both, in paying quantities.

~~(58)~~(74) "Producing Formation" shall mean a formation from which oil or gas is being or has been produced. In the context of plugging operations, producing formation shall mean a formation from which oil or gas has been produced in the general vicinity of a well to be plugged.

~~(59)~~(75) "Producing Well" shall mean any well that produces quantities greater than 12 barrels of oil per year or 25 mcf of gas per month.

~~(60)~~(76) "Product" shall mean any commodity made from oil or gas.

(77) "Production Casing" shall mean the string of casing that is run for the purpose of confining or producing hydrocarbons and associated fluids from one or more producing formations.

~~(61)~~(78) "Production Unit or Proration Unit" shall mean a drilling unit on which a well producing oil and/or gas has been completed, and which is recognized as such for the purpose of production by the Board.

~~(62)~~(79) "Property Line" as used herein shall mean the boundary dividing tracts on which mineral rights, royalty, or leases are separately owned except that where conventional units shall have been created for the drilling of the well, the boundaries of the unit shall be considered the "property line".

(80) "Proppant" shall mean sand or any natural or man-made material that is used in a fracturing treatment to prop open the artificially created or enhanced fractures.

~~(63)~~(81) "Purchaser" shall mean any person who directly or indirectly purchases, transports, takes, or otherwise removes production to his account from a well, lease, or common source of supply.

~~(64)~~(82) "Reclamation" shall mean the regrading of all surface disturbed areas associated with oil and gas operations except water areas, replacement of the topsoil or substitution with suitable topsoil material, application of suitable mulch and soil nutrients where necessary, and the establishment of a vegetative cover that is in accordance with acceptable standards as set forth in the rules and regulations of the Board.

~~(65)~~(83) "Represented Party" shall mean any person who is known to the applicant, after diligent search, to own an interest within the area of, or proximate to, the tracts directly affected by the application and who is also known to have either a consultant or attorney representing him in conservation matters.

~~(66)~~(84) "Salt Water" shall mean water, commonly referred to as oil field brine, which is produced in association with oil and/or gas and which is generally considered unsuitable for human consumption or for irrigation because of its high content of dissolved solids.

~~(67)~~(85) "Separator" shall mean an apparatus for separating oil, gas, water, etc., with relative efficiency, as it is produced.

~~(68)~~(86) "Shut-In Pressure" shall mean the pressure noted at the wellhead when the well is completely shut-in. Not to be confused with bottomhole pressure.

~~(69)~~(87) "Stripper Well" shall have the ordinary meaning as that term is generally understood in the oil and gas industry (well capable of producing ~~ten (~~10~~)~~ barrels or less per day).

~~(70)~~(88) "Substitute Unit Well" shall mean any well already drilled to, or to be drilled to, completed or recompleted in the unitized reservoir which in the interest of good conservation practices should be designed to take the place of and become the unit well as determined by special order.

~~(71)~~(89) "Supervisor" shall mean the State Oil and Gas Supervisor ~~or his subordinates. The~~ as designated by the Commissioner of Environment ~~&~~ and Conservation ~~or his designee~~.

(90) "Surface Casing" shall mean the string of casing set with cement to prevent contamination of groundwater

from drilling fluids and water or hydrocarbons from producing formations.

(91) "Total Water Volume" shall mean the total quantity of water from all sources used in a hydraulic fracturing treatment, including surface water, ground water, produced water or recycled water.

(92) "Trade Secret" shall have the meaning set forth in T.C.A. § 47-25-1702(4) of the Tennessee Uniform Trade Secrets Act.

~~(72)~~(93) "Transmission Line" means a pipeline, other than a gathering line, that transports gas from a gathering line or storage facility to a gas distribution center or storage facility.

~~(73)~~(94) "Transporter" shall mean every person engaged in the transportation of oil or gas from tanks or other receptacles located at the place of production in this State.

~~(74)~~(95) "Tubingless Completion" shall mean the completion of any well so as to permit the passage of production from one separate underground source through one production casing set in the well.

~~(75)~~(96) "Waste" in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood in the oil and gas industry. It shall include: (1) underground waste and inefficient, excessive, or improper use or dissipation of reservoir energy, including gas energy and water drive, of any pool; and the locating, spacing, drilling, equipping, operating, or producing of any oil well or gas well in a manner which results, or tends to result, in reducing the quantity of oil or gas ultimately recoverable from any pool; and (2) surface waste and the inefficient storing of oil and the locating, spacing, drilling, equipping, operating, or producing of oil wells or gas wells in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas.

~~(76)~~(97) "Well Cuttings" shall mean rock samples obtained from rotary or cable tool drilling operations. The Supervisor at his discretion, may determine the required frequency for collecting well cuttings.

(98) "Well Integrity" shall mean the containment of subsurface zones or formations containing hydrocarbons produced into a well, and the containment of that production within the well all the way to the surface.

~~(77)~~(99) "Well Site Equipment" means the equipment, including but not limited to an associated tank battery, production and hydrocarbon equipment at an oil and gas lease or location.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-01
Bond

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~~1040-02-01-.01~~ 0400-52-01-.01 Amount of Plugging Bond

(1) A Plugging Bond is required to be in force for a well from the time a drilling or re-entry well permit is granted until the well is plugged and abandoned. The bond shall be for the sum of ~~two thousand dollars (~~$2000~~)~~ for wells from 0 to 2500 feet in depth; ~~three thousand dollars (~~$3000~~)~~ for wells ~~from more~~ that are deeper than 2500 feet, but less than or equal to 5000 feet in depth; for all wells deeper than 5000 feet the bond shall increase over ~~three thousand dollars~~ $3000 at the rate of $1.00 for every foot deeper than 5000 feet. The bonds ~~will~~ shall be written in such a manner that the Principal and Bonding Agent hereto are firmly bound to the ~~Tennessee~~ Department ~~of Environment and Conservation (hereinafter called~~

~~Department)~~, jointly and severally, for the payment of the full penal sum of the bond so that the well shall be plugged and abandoned in accordance with the rules and regulations of the Board. An individual well bond shall be released upon the proper plugging of the well and the filing with the Supervisor of a Plug and Abandon Report (Form ~~R-P&A-1~~ CN-0217), driller's log, downhole surveys, well cuttings and cores, and other data as required, or if the permit has been canceled because of lack of proper activity.

(2) The ~~b~~Bonding ~~a~~Agent may notify the Supervisor in writing of its desire to terminate its liability under the bond by giving written notice to the Supervisor. The Supervisor shall thereupon require the ~~p~~Principal in the bond to file a new bond, or to effect a change of operators on the well within ~~sixty (~~60~~)~~ days. If the ~~p~~Principal can no longer be contacted, then any interested party may seek a change of operators on the well in accordance with subparagraph (2)(a) of Rule ~~1040-02-02-.02(2)(a)~~ 0400-52-02-.02. If a new bond is filed by the ~~p~~Principal, or a change of operators is approved by the Supervisor, liability under the original bond shall cease and terminate as to acts and operations occurring after the effective date of the new bond or approval of the change of operators, and the original bond shall be released upon written request by the ~~b~~Bonding ~~a~~Agent. If a new bond is not filed within the ~~sixty (~~60~~)~~ days, or a change of operators has not been approved, the Supervisor shall revoke the permit secured by the bond and require the ~~p~~Principal to plug the well in accordance with the rules and regulations of the Board. In the event of the failure of the ~~p~~Principal to plug the well, the supervisor may issue a notice of non-compliance to the ~~p~~Principal and the ~~b~~Bonding ~~a~~Agent requiring the ~~b~~Bonding ~~a~~Agent either to cause the well to be plugged, or forfeit the amount of the bond to the Department. The ~~b~~Bonding ~~a~~Agent ~~will~~ shall then have ~~sixty (~~60~~)~~ days in which to plug the well. If the well has not been plugged within that time limit, then a notice of forfeiture ~~will~~ shall be issued, as provided for under Rule ~~1040-02-01-.06~~ 0400-52-01-.06. The ~~b~~Bonding ~~a~~Agent ~~will~~ shall then have ~~twenty-one (~~21~~)~~ days in which to petition the ~~State Oil and Gas~~ Board for a hearing relative to the bond forfeiture, pursuant to the Administrative Procedures Act, T.C.A. § 4-5-101 et seq. If a hearing is requested, no further action ~~will~~ shall be taken against the bond until such hearing has taken place and a final order given by the Board. If the well is plugged in the interim, then the notice of forfeiture ~~will~~ shall be canceled and the bond released.

~~1040-02-01-.02~~ 0400-52-01-.02 Blanket Plugging Bond

(1) In lieu of an individual bond per well, any well operator may file with the Supervisor a blanket bond in the sum of ~~twenty thousand dollars (~~$20,000~~)~~ covering a maximum of ~~ten (~~10~~)~~ wells from 0 to 5000 feet in depth; ~~thirty thousand dollars (~~$30,000~~)~~ covering a maximum of ~~ten (~~10~~)~~ wells ~~from~~ that are deeper than 5000 feet, but less than or equal to 10,000 feet in depth; and no blanket bonds for wells deeper than 10,000 feet either drilled or to be drilled by the ~~p~~Principal in the bond at any one time. Additional wells may be covered by the bond only if wells originally covered by the bond are plugged or transferred to another operator, on a one-for-one basis with the wells to be added to the bond. Otherwise, an additional bond ~~must~~ shall be filed for each additional group of ~~ten (~~10~~)~~ wells. The terms of such blanket bonds shall be in full compliance with the requirements for an individual well bond. A blanket bond shall be released upon the proper plugging of all wells of the operator (~~p~~Principal) covered by the bond, and the filing with the Supervisor of the Plug and Abandon Reports, driller's logs, downhole surveys, well cuttings and cores, and other data as required for such wells. A blanket bond may be canceled by the ~~b~~Bonding ~~a~~Agent, notifying the Supervisor in writing, delivered personally or by registered mail, that the operator is no longer authorized by the ~~b~~Bonding ~~a~~Agent to obtain permits under said bond. If or when all wells permitted under said bond have been plugged and abandoned according to the rules and regulations of the Board, or existing permits have been canceled because of lack of proper activity, the Supervisor shall release the bond.

(2) The ~~b~~Bonding ~~a~~Agent may notify the Supervisor in writing of its desire to terminate its liability under the bond by giving written notice to the Supervisor. The Supervisor shall thereupon require the ~~p~~Principal in the bond to file a new bond, or to effect a change of operators on the well(s) within ~~sixty (~~60~~)~~ days. If the ~~p~~Principal can no longer be contacted, then any interested party may seek a change of operators on the well(s) in accordance with subparagraph (2)(a) of Rule ~~1040-02-02-.02(2)(a)~~ 0400-52-02-.02. If a new bond is filed by the ~~p~~Principal, or a change of operators is approved by the Supervisor on all wells covered by the bond, liability under the original bond shall cease and terminate as to acts and operations occurring after the effective date of the new bond, or approval of the changes of operators, and the original bond shall be released upon written request by the ~~b~~Bonding ~~a~~Agent. If a new bond is not filed within the ~~sixty (~~60~~)~~ days, or a change of operators has not been approved on all wells covered by the bond, the Supervisor shall revoke the permit(s) secured by the bond and require the ~~p~~Principal to plug the well(s) in accordance with the rules and regulations of the Board. In the event of the failure of the

~~p~~Principal to plug the well(s), the ~~b~~Bonding ~~a~~Agent may either cause the well(s) to be plugged, or forfeit the amount of the bond to the Department. This action ~~will~~ shall be initiated by the issuance of a notice of noncompliance, as provided for under Rule ~~1040-02-01-.07~~ 0400-52-01-.07. The ~~b~~Bonding ~~a~~Agent ~~will~~ shall then have ~~sixty (~~60~~)~~ days in which to plug the well(s). If the well(s) have not been plugged within that time limit, then a notice of forfeiture ~~will~~ shall be issued, as provided for under Rule ~~1040-02-01-.06~~ 0400-52-01-.06. The ~~b~~Bonding ~~a~~Agent ~~will~~ shall then have ~~twenty-one (~~21~~)~~ days in which to petition the ~~State Oil and Gas~~ Board for a hearing relative to the bond forfeiture, pursuant to the Administrative Procedures Act, T.C.A. § 4-5-101 et seq. If a hearing is requested, no further action ~~will~~ shall be taken against the bond until such hearing has taken place and a final order given by the Board. If the well(s) are plugged in the interim, then the notice of forfeiture ~~will~~ shall be canceled and the bond released.

~~1040-02-01-.03~~ 0400-52-01-.03 Reclamation Bond

(1) A reclamation bond is required to be filed with the Supervisor at the time an operator's permit application is submitted, and shall be effective from the time the initial surface disturbances begin until the well is plugged and the site and access roads are reclaimed. The bond shall be for the sum of ~~one thousand five hundred dollars (~~$1,500~~)~~ per well site. The bond shall be in favor of the Department, and shall be a performance bond, conditioned that the well site and access roads shall be reclaimed in accordance with the rules and regulations of the Board. Upon satisfactory completion of regrading and revegetation of all disturbed areas except active work areas and access roads needed for oil or gas production, the Supervisor shall release one-third ~~(1/3)~~ of the reclamation bond, or reduce the amount of the reclamation bond by one-third ~~(1/3)~~. Access roads that will continue to be used by the landowner for other legitimate purposes and maintained in usable condition, which condition reduces erosion to a practical minimum, ~~will~~ shall not have to be revegetated by the operator. Such usage shall be established by the landowner by sworn affidavit. After plugging of the well and final reclamation of the well site, and after plantings have survived two growing seasons with an established ground cover of at least ~~ninety percent (~~90%~~)~~ herbaceous and/or woody species of which at least ~~eighty percent (~~80%~~)~~ are perennial species, the supervisor shall release the remainder of the reclamation bond.

(2) This paragraph shall be applicable only when the same ~~b~~Bonding ~~a~~Agent is responsible for both the plugging and reclamation bonds on a well. The ~~b~~Bonding ~~a~~Agent may notify the Supervisor in writing of its desire to terminate its liability under the reclamation bond by giving written notice to the Supervisor. The Supervisor shall thereupon require the ~~p~~Principal in the reclamation bond to file a new bond, or to effect a change of operators on the well within ~~sixty (~~60~~)~~ days. If the ~~p~~Principal can no longer be contacted, then any interested party may seek a change of operations on the well in accordance with subparagraph (2)(a) of Rule ~~1040-02-02-.02(2)(a)~~ 0400-52-02-.02. If a new reclamation bond is filed by the ~~p~~Principal, or a change of operators is approved by the Supervisor, liability under the original bond shall cease and terminate as to acts and operations occurring after the effective date of the new bond, or approval of the change of operators, and the original bond shall be released upon written request by the ~~b~~Bonding ~~a~~Agent. If a new reclamation bond is not filed, or a change of operators has not been approved within ~~sixty (~~60~~)~~ days, the Supervisor shall revoke the permit secured by the plugging and reclamation bonds and require the ~~p~~Principal to plug the well and reclaim the well site and access roads in accordance with the rules and regulations of the Board. In the event of the failure of the ~~p~~Principal to plug the well and reclaim the well site and access roads, the ~~b~~Bonding ~~a~~Agent may either cause the well to be plugged and the well site and access roads to be reclaimed, or forfeit the amount of the bonds to the Department. This action ~~will~~ shall be initiated by the issuance of notices on noncompliance as provided for under Rule ~~1040-02-01-.07~~ 0400-52-01-.07. The ~~b~~Bonding ~~a~~Agent ~~will~~ shall then have ~~thirty (~~30~~)~~ days in which to plug the well and reclaim the well site and access roads. If the well has not been plugged and the well site and access roads have not been reclaimed within that time limit then notices of forfeiture ~~will~~ shall be issued as provided for under Rule ~~1040-02-01-.06~~ 0400-52-01-.06. The ~~b~~Bonding ~~a~~Agent ~~will~~ shall then have ~~twenty-one (~~21~~)~~ days in which to petition the ~~State Oil and Gas~~ Board for a hearing relative to the bond forfeitures, pursuant to the Administrative Procedures Act T.C.A. § 4-5-101 et seq. If a hearing is requested, no further action ~~will~~ shall be taken against the plugging and reclamation bonds until such hearing has taken place and a final order has been given by the Board. In the event the ~~b~~Bonding ~~a~~Agent causes the well to be plugged and the well site and access roads to be reclaimed the plugging bond shall be released, and the amount of the reclamation bond shall be reduced by one-third ~~(1/3)~~, to ~~one thousand dollars (~~$1,000~~)~~, unless such reduction has previously taken place. The remainder of the reclamation bond ~~will~~ shall be released only after plantings have survived two growing seasons with an established ground cover of at least ~~ninety percent (~~90%~~)~~ herbaceous and/or woody species provided that at least ~~eighty percent (~~80%~~)~~ are perennial species.

~~1040-02-01-.04~~ 0400-52-01-.04 Relief of Responsibility

A permittee's bonds and other responsibilities to a well or wells shall be relieved upon approval by the Supervisor of a successor's ~~a~~Application ~~for a~~ to Change ~~of~~ Operators ~~or Owner's Permit~~ (Form ~~P-AD-3~~ CN-0237), furnishing bonds, and the tendering of authority on Form ~~P-AD-3~~ CN-0237 by the permittee requesting the Supervisor to approve the successor's application.

~~1040-02-01-.05~~ 0400-52-01-.05 Execution

Any of the following shall serve as bonds:

(1) A surety bond executed by the well operator as principal and by a corporate surety authorized to do business in Tennessee; or

(2) Cash; or

(3) A certified check; or

(4) A Certificate of Deposit, if it is made out exactly as follows: "Operator Name and Tennessee Department of Environment and Conservation or Tennessee Department of Environment and Conservation"; and does not contain any terms or conditions that provide that the issuing bank may charge against the deposit any debt of the depositor(s) owing to it (set-off terms); or any terms or conditions that provide that anyone whose signature appears on the signature card may withdraw funds from the account. The operator shall be entitled to any interest earned on a certificate of deposit as the same becomes due and payable. The treasurer of the State of Tennessee shall receive and hold the originals of such certificates in the name of the State of Tennessee, in trust, for the purpose for which such deposit is made, and shall at all times be responsible for the custody and safekeeping of such deposits; provided, however, that the certificate may be returned to the issuing financial institution as may be necessary for renewal from time to time; or

(5) An irrevocable letter of credit issued by any federally insured bank or savings and loan association. The letter of credit ~~must~~ shall comply with the format shown on Form ~~ILC (Irrevocable Standby Letter of Credit format~~ CN-0120 (Comprehensive Bond Identification).

~~1040-02-01-.06~~ 0400-52-01-.06 Forfeiture

(1) The Supervisor shall cause a notice of noncompliance to be served upon the operator by certified mail, addressed to the permanent address shown on the application for a permit:

(a) If the requirements with respect to proper plugging upon abandonment of a well or wells and submission of all required records and data have not been complied with within the time limits set by the Board or Department, and/or,

(b) If the requirements with respect to proper reclamation of the well site(s) and access roads have not been complied with within the time limits set by the Board or Department.

(2) The notice shall specify in what respects the operator has failed to comply with this chapter or the regulations or orders of the Board or Department.

(3) If the operator has not reached an agreement with the Supervisor, or has not complied with the requirements set forth within ~~thirty (~~30~~)~~ days after mailing the notice, the plugging bond shall then be forfeited to the Department, and the money used by the Department to properly plug the well(s), and/or the reclamation bond used to reclaim the well site(s) and access roads.

(4) In the case of the plugging bonds, such bonds are penal in nature, and the full amount of the bond ~~will~~ shall be forfeited.

(5) In the case of reclamation bonds, such bonds are considered to be performance bonds, and any portion of a reclamation bond not expended to perform the reclamation work shall be refunded to the operator or

his ~~b~~Bonding ~~a~~Agent if the conditions of the bond are fully satisfied.

~~1040-02-01-.07~~ 0400-52-01-.07 Notice of Noncompliance

At any time the Supervisor causes a notice of noncompliance to be served upon an operator (principal), copies of such notice shall be mailed to the resident agent writing such bond (where the address is known) and to the ~~b~~Bonding ~~a~~Agent at the address provided to the Tennessee Department of Commerce and Insurance for receipt of notices. The ~~b~~Bonding ~~a~~Agent shall be afforded the opportunity to act in behalf of the operator (principal) within the time set forth in regard to the proper plugging of the well or wells and submission of required well records, down hole data, and plugging reports and/or reclamation of the well site and access roads. Should the operator (principal) and ~~b~~Bonding ~~a~~Agent fail to comply within the time provided, then and only in that event, the plugging bond shall be forfeited, and/or the reclamation bond used to reclaim the well site and access roads.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-02
Permits

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~~1040-02-02-.01~~ 0400-52-02-.01 Permit Required

(1) A permit is required from the Supervisor before any person shall conduct operations described in Chapter ~~1040-02-01~~ 0400-52-01 through Chapter ~~1040-02-12~~ 0400-52-12. Each permit, when granted, shall expire ~~three hundred and sixty five (~~365~~)~~ days after issuance unless the applicant has commenced operations and reasonably continues said operations pursuant to the permitted objective. Any permit now in force shall expire ~~three hundred sixty days (~~365~~)~~ days from the date of this rule unless permittee complies with this requirement. If a permitted location is to be abandoned without the commencement of any drilling activity, then the operator ~~must~~ shall notify the Supervisor in writing within ~~thirty (~~30~~)~~ days after expiration of the permit.

(2) No work shall begin on a well pursuant to this chapter before a permit for such work on the well has been issued by the Supervisor. Furthermore, any work the operator may do, or may have done, ~~will~~ shall be at his own risk and with the full understanding that the Supervisor may find it necessary to require changing the well location or operation plans, or otherwise deny the permit because of noncompliance with applicable rules and regulations and require that the well be plugged. No requests for exceptions ~~will~~ shall be considered for a well that was started before a permit was issued.

(a) A legible copy of this permit ~~must~~ shall be displayed on location upon commencement of drilling operations and remain on display at said location until completion of the well.

(3) Fifteen ~~(15)~~ day progress on ~~drill reports~~ drilling, upon request of the Supervisor, shall be mailed to the Supervisor describing well activities for the previous week. ~~Said reports shall be made on the Fifteen Day Progress Drill Report (Form R-PD-I).~~

(4) Organization Report (Form ~~R-O-1~~ CN-0219) shall be made to the Supervisor prior to the issuance of a permit. The applicant shall name all parties responsible for the well and give contact information for them on the Organization Report consistent~~ly~~ with the record submitted to the ~~Secretary~~ Secretaries of States for any corporation or limited liability company. If such persons have previously filed an ~~R-O-1 report~~ Organization Report with the Supervisor, it ~~will~~ shall not be necessary to submit another report, unless there has been a change in the information originally submitted.

(5) The operator ~~will~~ shall indicate on the permit application, on a space provided, if the operator has the legal right to drill and produce the well.

(6) A notice to surface owners of oil and gas estates is required as follows:

(a) No later than the filing of the application with the Department for a permit to drill and prior to initiating any site preparation, the applicant shall give notice by certified mail, return receipt requested, of his intent to drill to the property owner or owners of the surface of the land to be drilled or to be affected by the surface disturbances listed in subparagraph (c) of this paragraph.

(b) The property owners to be notified under this ~~section~~ paragraph shall be the property owners of record in the property tax assessor's office in the county where the property is located.

(c) The notice shall include a well location plat which shows the proposed location of the oil and gas well site, the proposed location of all new ingress and egress, the location of all diversions, drilling pits, dikes, and related structures and facilities, the location of proposed storage tanks and all other surface disturbances. Said plat shall comply with Chapter ~~1040-02-03~~ 0400-52-03.

(d) The notice shall state that the property owner and applicant have ~~fifteen (~~15~~)~~ working days from the date of mailing to discuss the location of surface disturbances in connection with the drilling operation. It shall also state that if the property owner and applicant are unable to resolve differences regarding the location of surface disturbances, either or both may request in writing a hearing before the Supervisor or his ~~designee~~ representative. The notice shall provide the name and address of the Supervisor.

(e) The applicant shall file with the Supervisor, as a part of the application, written certification that the notice required by subparagraph (a) of this paragraph has been given, including the name and address of each property owner given notice and the date on which each notice was mailed.

(f) The applicant and the property owners given notice under subparagraph (a) of this paragraph shall attempt to resolve any differences between them regarding surface disturbances related to the proposed drilling operation. If those differences cannot be resolved, then a hearing and order may be obtained as follows:

1. Any property owners entitled to notice (or the applicant) may request, within ~~fifteen (~~15~~)~~ working days of the mailing of the notice required in subparagraph (a) of this paragraph, that the Supervisor or his ~~designee~~ representative conduct a hearing. A request for hearing under this paragraph shall be in writing to the Supervisor, and shall be mailed by certified mail, return receipt requested within ~~fifteen (~~15~~)~~ working days of the mailing of the notice required in subparagraph (a) of this paragraph. The purpose of the hearing ~~will~~ shall be to minimize the impact of the proposed drilling operation on the surface of the land.

2. The hearing shall be conducted as a contested case pursuant to the Administrative Procedures Act under Title 4, Chapter 5, Part 3 and shall be held before a hearing officer sitting alone. For purposes of the hearing, the Supervisor or his ~~designee~~ representative shall be the hearing officer. The hearing shall be held within ~~ten (~~10~~)~~ working days of receipt of a request for hearing by the Supervisor or his ~~designee~~ representative, and shall be held in the county of the proposed oil and gas well. Notice of the hearing shall be given to all persons entitled to notice under subparagraph (a) of this paragraph and the applicant.

3. The hearing officer shall render a decision within ~~ten (~~10~~)~~ calendar days of the hearing. The decision shall be considered a final order not subject to further agency review pursuant to T.C.A. § 4-5-315(a)(1).

4. For purposes of this subparagraph, "working day" means all calendar days excluding Saturdays, Sundays, and legal holidays as designated in T.C.A. § 15-1-101.

(g) Notwithstanding any other requirement for a permit to drill, such a permit may only be issued:

1. If the applicant submits to the Supervisor statements of no objection signed by all property owners entitled to notice under subparagraph (a) of this paragraph; or

2. If a hearing is not requested as provided in part (f)1 of this paragraph; or

3. Upon the issuing of a final order pursuant to part (f)3 of this paragraph.

(h) For purposes of satisfying the requirements of subparagraph (g) of this paragraph for issuing a permit:

1. The Supervisor may treat the persons named in the applicant's certification of property owners, under subparagraph (e) of this paragraph, as being all of the property owners entitled to notice under subparagraph (a) of this paragraph, unless the Supervisor has actual notice to the contrary.

2. If a request for hearing as provided in part (f)1 of this paragraph is not delivered to the office of the Supervisor within ~~fifteen (~~15~~)~~ working days plus ~~three (~~3~~)~~ additional days after the date notice-of-intent to drill was mailed to each property owner, as stated in the applicant's certification of notice, under subparagraph (e) of this paragraph, the Supervisor may assume that no hearing was requested, unless he has actual notice to the contrary.

(7) Inspection and approval of all access roads, surface disturbances, and pollution control structures at a proposed well site by the designated gas and oil field inspector is required prior to the issuance of any permit under this ~~Chapter~~ chapter.

(8) Permits shall not in any way be construed as a certification by the State of Tennessee that any property interest in the premises covered by a permit is vested in the permit; they are issued solely under the regulatory powers vested in the ~~State Oil and Gas~~ Board and the Department under the provisions set forth in ~~of~~ Title 60 of the ~~T C A~~ Tennessee Code ~~for the purposes recited in said Code Section~~ and the rules and regulations promulgated by the Board pursuant to ~~said Code Section~~ Title 60.

(9) In the event of litigation over a particular tract of land, or in the event a tract of land is contested as to the ownership of oil and gas rights, the policy of the Board ~~will~~ shall be to issue permits in order to preserve the physical integrity of that particular tract without prejudicing any claimants to the title of that land.

(10) In the case of any well that is proposed to be fractured using a cumulative total of more than 200,000 gallons of water-based liquids:

(a) The Supervisor shall give notice to the public by e-mail, including a list of interested persons and agencies who have requested such notification, and by posting on the Department website. The Public Notice shall include the following information:

1. Name, address, and telephone number of the Division contact where further information can be obtained.

2. Name and location of the applicant.

3. The location of the well proposed to be fractured.

4. A brief description of the well plan including information regarding the sources of water to be used as base fluid, fracturing methods, whether or not an Aquatic Resource Alteration Permit for water withdrawal will be required, and estimated amounts and methods of wastewater disposal.

5. A brief description of the procedures for the Supervisor to make a final determination of whether to issue the permit.

(b) Interested persons may submit written comments for 30 days from the date of Public Notice. Any

comments received shall be considered by the Supervisor, and the Supervisor shall provide written responses to those comments. Prior to Public Notice, the Supervisor may require additional information from the applicant in these cases, including but not limited to information on water sources, fracturing methodologies, and methods of wastewater disposal. The Supervisor will notify the public of permit issuance or denial through the Division's website.

(c) The applicant shall provide the Department's Public Notice of the proposed well to owners of any property within ½ mile of the proposed well head or any residence that has any drinking water wells within a ½ mile radius of the proposed wellhead within 14 days of the date of the Public Notice. In the case of a horizontal well, the ½ mile radius shall be measured from the terminus of the horizontal well bore. The determination of the presence of any such drinking water wells shall include at a minimum the information available on the Division of Water Resources Well Log Tracking System. The applicant shall collect a sample of any such well at the request of the owner and have the sample analyzed for Total Petroleum Hydrocarbons (TPH), BTEX (benzene/toluene/ethyl benzene/xylene), pH, chlorides, Total Organic Carbon (TOC) and Total Dissolved Solids, to demonstrate the condition of the water well prior to the drilling of the well to be fractured. Landowners opting for their well to be sampled by the applicant must submit a written request to the applicant within 14 days of receiving the Public Notice from the operator or the applicant is under no obligation to sample the well. Sampling results shall be provided to the Supervisor and drinking water well owner as soon as results are obtained. Sample collection protocols shall be comparable to those specified in the Department's "Quality System Standard Operating Procedure for Chemical and Bacteriological Sampling of Surface Water". Sample analyses shall be conducted by a certified laboratory utilizing standard methods and minimum detection levels consistent with Tennessee Department of Health laboratories.

~~1040-02-02-.02~~ 0400-52-02-.02 Drilling Permit.

(1) Applications for a permit to drill a well for oil and gas shall be made on Application for Permit to Drill (Form ~~P-AD-1~~ CN-0211) and submitted to the Supervisor's office for approval. The application shall be accompanied by a copy of a location plat, bond, ~~o~~Organization ~~r~~Report (Form CN-0219) and a fee of five hundred dollars ($500~~.00~~). The application shall give the name and address of the drilling contractor, if known; otherwise notification shall be made by letter to the Supervisor as soon as determined. Information submitted with the application shall include the intent to fracture the well, as well as an estimate of the volume of fluids to be used to fracture. The application shall also include a plan for erosion control, prevention of pollution of surface waters, and reclamation of all areas disturbed by the operations, including access roads. The plan shall conform to the requirements of Rule ~~1040-02-09-.05~~ 0400-52-09-.05. The plan ~~must~~ shall be sufficiently detailed to allow a gas and oil field inspector to locate the site of the facilities to be constructed and estimate the expected environmental impact, but does not have to include detailed engineering design drawings. The plan shall also include identification of all drinking water wells within a ¼ mile radius of the proposed wellhead, except where a ½ mile radius is required, as specified in paragraph (10) of Rule 0400-52-02-.01. The Supervisor may require modifications in the operator's plan if such modifications are necessary to prevent pollution or to promote reclamation. Upon approval, the operator's plan shall be a condition of the permit. Failure to comply with the plan shall be grounds for revocation of the permit and forfeiture of the bond.

(2) A drilling permit ~~must~~ shall be amended by filing an Application to Amend Well Permit~~s~~ (Form ~~P-AD-2~~ CN-0228) with the Supervisor and paying a fee of ~~one hundred dollars (~~$100~~.00)~~ if the well name, number, elevation, location, or proposed total depth is changed. If the well location is changed, ~~one (~~1~~)~~ copy of a revised survey plat ~~must~~ shall be filed with the application. The amended permit is subject to the same terms and conditions as a well permit, including erosion control requirements. A person who is granted a drilling permit can only transfer the permit and attendant rights to another person after submitting an Application to Change Operators (Form ~~P-AD-3~~ CN-0237) and receiving approval of the application from the Supervisor. The person to whom the permit is being transferred ~~must~~ shall file an Organization Report (Form ~~R-0-1~~ CN-0219), post a well plugging bond and a reclamation bond, if needed, and pay a fee of ~~one hundred dollars (~~$100~~.00)~~. The transfer of a permit from the original permittee to another operator, with or without the approval of the Supervisor, does not relieve the original permittee of obligations occurring before the transfer, and the bond ~~will~~ shall not be released until all material at the time of transfer has been submitted. Unless change of operator forms have been processed or approved by the office of the Supervisor, any operation conducted on the well in question is the responsibility of the original permittee, and his bond ~~will~~ shall not be released until all State requirements have been met.

(a) If an Application to Change ~~o~~Operators (Form ~~P-AD-3~~ CN-0237) is to be submitted without the signature of the current permittee, it ~~will~~ shall be considered a forced change of operator, then the following items ~~must~~ shall also be submitted:

1. Copy of the lease and assignments, if any, under which the permit was originally issued, or subsequently transferred, if those documents are available, or an affidavit from the landowner that no prior oil and gas leases are still active. An affidavit from the original landowner that there are no other unexpired oil and gas leases, if the title to the land has changed hands since the Department issued the permit on the land in question, or, if the original landowner cannot be located, an affidavit by the new operator or his agent that he has checked the grantor index in the register's office and found no unexplained conveyance of the oil and gas rights by the original landowner.

2. Copy of the lease and assignments, if any, under which the permit ~~will~~ shall be transferred to the new operator.

3. Copy of a certified letter to the current permittee requesting that an Application to Change Operators (Form ~~P-AD-3~~ CN-0237) be signed, and also stating that if the application is not signed, and no written objection to a change of operator without that signature is submitted to the Department in writing within ~~ten (~~10~~)~~ working days of receipt of said letter, the new operator ~~will~~ shall seek approval from the Department of that Approval to Change Operators without said signature. In addition, the applicant ~~will~~ shall send the certified mail notice to the current address that is registered with the ~~Tennessee Oil and Gas~~ Board or the Department as shown on the Organization~~al~~ Report (Form CN-0219).

4. A copy of a Court Order relative to the inactive or expired status of any prior oil and gas leases may be submitted in lieu of the items mentioned in parts 2 and 3 of this subparagraph.

5. If a written objection to approving the ~~application~~ Application to Change Operators (Form CN-0237) is properly submitted to the Department, the staff ~~will~~ shall administratively deny the application. If the applicant seeks to have the application considered further, he may then apply for a hearing before the ~~Oil and Gas~~ Board. The Board ~~will~~ shall then consider approval of the application only when there is no doubt as to the ownership of the oil and gas rights of the applicant. If a cloud or a question as to the title is determined to exist by the Board, then the Board ~~will~~ shall deny the application, and refer the applicant to the court for a ruling on the question of ownership.

(b) If a well or wells revert back to a landowner, whether by court action, or by lease expiration or other provisions, and the well ~~will~~ shall remain in operation, then the landowner ~~must~~ shall submit an Application to Change Operators (Form ~~P-AD-3~~ CN-0237), file an Organization Report (Form ~~R-0-1~~ CN-0219), post a well plugging bond, post a reclamation bond if required, pay a fee of ~~one hundred dollars (~~$100~~.00)~~, and otherwise comply with well spacing regulations. If the well will be used for domestic gas only, then a plugging bond in the amount of ~~five hundred dollars (~~$500~~)~~ ~~will~~ shall be required.

(c) Before a well can be turned over to a landowner for use as a fresh water well, the operator ~~must~~ shall set a ~~one hundred (~~100~~)~~ foot plug within ~~three hundred (~~300~~)~~ feet of the surface, or a cement plug at ~~fifty (~~50~~)~~ feet above the casing shoe, whichever is the deeper, and the well ~~must~~ shall be completed as a water well, and approved by the ~~Department of Environment and Conservation, Division of Water Supply~~ Department's Division of Water Resources. No Organization Report (Form ~~R-0-1~~ CN-0219) is required, and in lieu of a plugging bond the landowner ~~must~~ shall submit a notarized letter agreeing to assume liability for any subsequent plugging which might be required.

(3) If drilling operations cease for a period of ~~thirty (~~30~~)~~ days, the operator shall notify the Supervisor in writing of the reason for the shutdown and the date on which operations shall be resumed.

(4) All wells shall be either properly plugged or completed within a period of ~~six (~~6~~)~~ months following

cessation of drilling. Upon written request to the Supervisor by the operator, showing valid cause for requiring additional time, a reasonable extension of as much as ~~ninety (~~90~~)~~ days additional may be granted.

(5) An applicant who requests a permit to drill on site which is closer than normal statewide spacing to the boundary of an offsetting oil and gas lease, or mineral or surface property, or on a tract of land which is contested as to the ownership of oil and gas rights, ~~must~~ shall comply with the following procedures:

(a) Notify by certified mail all affected offset and/or separate owners of oil and gas leases and mineral and surface property, as can reasonably be determined, that he is applying for a permit to drill a well; and submit a copy of the drill-site location plat with the notice.

(b) Publish the operator's name, lease name, well number and description of the drill-site location in a newspaper of general circulation in the county where the well is to be drilled, with a statement that if any interested owner objects to the drilling of said well, they should make their objections known to the Supervisor ~~of the State Oil and Gas Board~~.

(c) If, within ~~ten (~~10~~)~~ days after the notice, there are no objections to issuing the permit, then the Supervisor shall issue the permit, provided all other requirements have been complied with.

(d) If there is an objection or objections to issuing the permit, the objector or objectors ~~must~~ shall furnish the applicant and the Supervisor the basis of the objection and support his contentions with documents, etc., within ~~ten (~~10~~)~~ days after the date of the notice.

(e) If the applicant, after receiving an objection, still wants the permit he ~~must~~ shall then apply for a hearing before the ~~Oil and Gas~~ Board. The Board ~~will~~ shall then decide whether or not to issue the permit or refer the applicant to the court for relief.

(6) If more than one applicant applies for a permit to drill the same or a conflicting location on a tract of land at a permissible distance from an offset or offsetting well, the first application received in the ~~Supervisors~~ Supervisor's office shall be issued the permit, provided the applicant complies with all other rules and regulations governing permits to drill a well. If the first applicant fails to exercise his permit privilege, then the next applicant of record, based on time submittal, shall receive the permit, provided he complies with all other requirements.

(7) If the ownership of the drill site tract of land is contested, all claimants shall be identified by an accompanying letter.

(8) Requests for permits for a voluntary pooled drilling unit, or for two or more leases or tracts that have been pooled for exploration or development shall be accompanied by a notarized affidavit signed by the operator that has the right to pool these leases to form a drilling unit.

(9) The Supervisor has the right to withhold the issuance of a permit to any operator in violation of any rule or regulation of this order until such violation has been removed.

~~1040-02-02-.03~~ 0400-52-02-.03 ~~Repealed~~ Reserved

~~1040-02-02-.04~~ 0400-52-02-.04 Notification To Plug and Abandon.

Prior to plugging, notice shall be given the Supervisor in order that the Supervisor or his representative may witness the work. Work performed ~~must~~ shall be reported to the Supervisor on the Plug and Abandon Report (Form ~~R-P&A-1~~ CN-0217) within ~~thirty (~~30~~)~~ days after completing the work. Form ~~R-P&A-1 must~~ CN-0217 shall be accompanied by a copy of the drilling contractor's or the service company's ticket for work done unless the work was observed by the Supervisor or his representative.

~~1040-02-02-.05~~ 0400-52-02-.05 ~~Repealed~~ Reserved.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-03
Well Location Plats

Table of Contents

0040-52-03-.01 Preparing Plats

~~1040-02-03-.01~~ 0400-52-03-.01 Preparing Plats

(1) Well location plats shall be constructed and certified as accurate by a surveyor registered by the State of Tennessee. The following procedures and instructions shall be strictly complied with in preparing plats:

(a) Two legible copies of a well location plat shall be submitted for each proposed well and drawn on a sheet 8½" x 14" or larger, using bond paper.

(b) The plat shall be prepared to a scale of one inch equals one hundred, two hundred, three hundred, four hundred, five hundred or six hundred feet (1" = 100, 200, 300, 400, 500 or 600'). The scale set forth on the plat should be of a graphic type rather than so many inches equaling so many feet.

(c) The top or upper edge of the plat shall be oriented to the north, and a vector depicting magnetic north shall be placed on the edge or margin of the plat.

(d) The surface elevation of the proposed drill site, referenced to mean sea level, shall be determined and a reference benchmark established within ~~two hundred (~~200~~)~~ feet of each location and its elevation and description noted on the plat. If the surface elevation or drill site location is altered during location preparation, it ~~must~~ shall be re-determined by the operator, and this information submitted to the Supervisor within ~~ten (~~10~~)~~ days.

(e) A description or diagram of the proposed drill site location shall be made with reference to a specific 7½-minute topographic quadrangle map (1 inch equals 2,000 feet) by the use of the Carter Coordinate System, and Latitude and Longitude and by bearing and distance in feet to two permanent landmarks or monuments that are readily identifiable on a 7½-minute topographic map.

(f) The location plat, in addition to other requirements, shall identify surface ownership on the tract of land where the permitted well is to be located and surface ownership on offsetting tracts of land, if within ~~three thousand (~~3,000~~)~~ feet.

(g) The plat shall show the amount of acreage in the drill site tract.

(h) The distance in feet between the proposed drill site and the two nearest property and lease lines, and the nearest dry, abandoned, drilling or producing well, if such exists within ~~three thousand (~~3,000~~)~~ feet, shall be shown on the plat.

(i) In cases where the tract to be drilled is composed of separately owned interests which have been pooled or unitized the property lines and the amount of acreage in each separately owned interest ~~must~~ shall be shown. In addition, the unit lines~~,~~ and the distance to the two nearest unit lines ~~must~~ shall also be shown ~~interest must be shown~~.

(j) The plat shall also show the location of all existing or proposed access roads, the location of all dwellings, diversions, drilling pits, dikes, tanks, and all other surface disturbances, and the location of all streams, lakes, or other bodies of water within 200 feet of the well site and visible from the access roads, or apparent on a USGS topographic map. This information may be shown on more than one sheet if necessary, provided that on each sheet the name of the operator, well name and number, scale (of graphic type), a vector depicting magnetic north, and the location of the proposed drill site are shown along with the surveyor's certification and seal, and date on which the well location plat was constructed.

(k) All plats ~~will~~ shall be submitted with a latitude and longitude for each well site location.

(l) Any well site submitted for a horizontal well ~~must~~ shall show the locations for the well collar; entry point of the horizontal leg and the termination point. Each of these locations ~~must~~ shall be shown on the plat with latitude, longitude and Carter Coordinate System.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-04
Vertical Well Spacing

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0400-52-04-.01 Vertical Well Spacing

~~1040-02-04-.01~~ 0400-52-04-.01 Vertical Well Spacing

(1) No permits shall be issued for the drilling of wells in search of oil and gas and no well shall be drilled in search of oil or gas nor shall a well be abandoned in one pool and recompleted in another pool in which no spacing rules are prescribed by special fieldwide orders, unless the location of such well shall comply with the following requirements:

(a) Wells drilled in search of oil or gas to a depth of less than ~~one thousand (~~1,000~~)~~ feet shall be drilled on 10-acre spacing, and shall not be located closer than ~~six hundred sixty (~~660~~)~~ feet from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool; and not closer than ~~three hundred thirty (~~330~~)~~ feet from any property or unit line.

(b) Wells drilled in search of oil or gas to a depth of ~~one thousand (~~1,000~~)~~ to ~~two thousand (~~2,000~~)~~ feet or to the base of the Chattanooga Shale, whichever is deeper, shall be drilled on 20-acre spacing, and shall not be located closer than ~~six hundred sixty (~~660~~)~~ feet from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool; and not closer than ~~three hundred thirty (~~330~~)~~ feet from any property or unit line.

(c) Wells drilled in search of oil to a depth of more than ~~two thousand (~~2,000~~)~~ feet shall be drilled on 40-acre spacing, and shall not be located closer than ~~six hundred sixty (~~660~~)~~ feet from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool; and not closer than ~~three hundred thirty (~~330~~)~~ feet from any property or unit line.

(d) Wells drilled in search of gas from a depth of ~~two thousand (~~2,000~~)~~ feet to ~~five thousand (~~5,000~~)~~ feet or to the top of the Conasauga Formation shall be drilled on 40-acre spacing, and shall not be located closer than ~~six hundred sixty (~~660~~)~~ feet from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool; and not closer than ~~three hundred thirty (~~330~~)~~ feet from any property or unit line.

(e) Wells drilled in search of gas to a depth of more than ~~five thousand (~~5,000~~)~~ feet or below the top of the Conasauga Formation shall be drilled on 160-acre spacing, and shall not be located closer than ~~one thousand three hundred twenty (~~1,320~~)~~ feet from any other well completed in, drilling to, or for which a permit shall have been granted to drill to the same pool; and not closer than ~~six hundred sixty (~~660~~)~~ feet from any property or unit line.

(f) Any existing well may be deepened and produced for oil or gas from whatever zone(s) production may be obtained on the presently permitted unit size, provided, however, that any exceptions to offsetting property lines or wells under current spacing rules ~~must~~ shall comply with the provision of ~~rule 1040-02-04-.01~~ subparagraph (1)(k) of Rule 0400-52-04-.01.

(g) Where a permit is requested for a wildcat well to be drilled in an area in which the surface or mineral ownership is so divided that the well cannot be located in compliance with the requirement of a distance from property lines and well spacing and a drilling unit cannot be formed in advance of drilling because it is not known whether the well ~~will~~ shall be completed as an oil well or a gas well, a permit may nevertheless be granted for the drilling of the well when the

applicant presents evidence satisfactory to the Supervisor that the applicant has available for assignment to said well leases or acreage of area and size to constitute, in the judgment of the Supervisor, a reasonable producing unit for such well and such applicant agrees to create or to apply to the Board for creation of a reasonable producing unit within ~~forty-five (~~45~~)~~ days after completion of the well.

(h) Upon the completion of a confirmation well to a discovery well, the operator of the discovery well ~~must~~ shall apply for a public hearing before the ~~State Oil and Gas~~ Board for the purpose of establishing temporary drilling and production units. When a pool has had ~~five (~~5~~)~~ wells drilled to and completed therein or after ~~one (~~1~~)~~ year has elapsed from the completion of the confirmation well in the field, whichever occurs first, the operator or operators of well in the field shall petition the Board for a public hearing for the purposes of establishing field rules and regulations and the creation of drilling and production units for the pools in the field. The right is reserved, however, to any interested party to apply for a public hearing at an earlier date and if the Board finds from an examination of the information furnished that temporary or permanent drilling and production units should be formed, it shall be so ordered.

(i) Where prior to the issuance of this order, a pool has already been partially developed with a greater density of wells than that prescribed herein, the Supervisor may, without additional public hearing, exempt such pools from the provisions of this order. The exemptions for these pools shall be granted only after application has been made to the Supervisor in writing accompanied by a map delineating the locations of all existing wells completed and producing from the pool for which exception is being asked.

(j) A poolwide unit is exempt, within its internal boundary, from well spacing rules as to the particular unitized pool, but all wells ~~must~~ shall be located interior of the unit outline in compliance with the rules for distance from property lines.

(k) The Supervisor may grant administrative approval of exceptions to ~~Chapter 1040-02-04 Well Spacing~~ this chapter, or any order of the Supervisor establishing well spacing for a pool upon submission of an application showing all pertinent information and data and after due notice is given to all operators of interest.

1. The application shall be made to the Supervisor with a copy to each known offset operator of interest and such application shall include:

   (i) Statement of reason and justification for requested relief.

   (ii) Map or plat as described in Chapter ~~1040-02-03~~ 0400-52-03, which additionally shows:

      (I) The location at which an oil or gas well could be drilled in compliance with ~~Chapter 1040-02-04~~ this chapter, or applicable order;

      (II) The location at which the applicant requests permission to drill;

      (III) The outline of the drilling unit to be assigned to the proposed well site with a notation as to the amount of acreage contained therein;

      (IV) The outline of all other drilling or production units currently assigned to the tract or lease upon which the proposed drilling unit is located, with a notation of the amount of acreage assigned to each unit.

   (iii) Sufficient geological evidence that the proposed drilling unit ~~will~~ shall be reasonably productive of oil and/or gas.

   (iv) List of names and addresses of all interested persons notified of the application.

2. Each drilling unit should comply with the well density as described in ~~Chapter 1040-02-04~~ this chapter, or the applicable order.

3. The acreage assigned to the proposed drilling unit should be reasonably expected to be productive of oil and/or gas from the common source of supply.

4. If the application meets with the approval of the Supervisor and no written protest is received by the Supervisor within ~~ten (~~10~~)~~ days following prescribed notice of application, the Board may grant the requested relief without the necessity of a public hearing.

5. If the application is accompanied by a written waiver from all known offset lease owners, the ~~ten (~~10~~)~~ day delay ~~will~~ shall be unnecessary.

6. If the Supervisor does not elect to approve the application administratively, or if written protest is received within the ~~ten (~~10~~)~~ day period, the application may be set for public hearing.

(l) Any drilling being conducted in Overton, Clay, Pickett or Fentress Counties (this is portions of Fentress County that are west of Hwy 127 and North and West of State Hwy 154) is based on 400 feet to another well and 200 feet to the unit or property line down to a depth of 2500 feet. This is an exception to the current state wide drilling requirements.

(m) Exception not to exceed ~~ten percent (~~10%~~)~~ in spacing distances on locations interior to property boundaries ~~will~~ shall be allowed administratively by the Supervisor. Any exception adjacent to offset operators ~~must~~ shall comply with subparagraph (k) of this paragraph.

(2) If it is necessary to drill a well below the depth bracket for the anticipated productive zone for stratigraphic information only, the Application for Permit to Drill (Form ~~P-AD-1~~ CN-0211), shall indicate the proposed total depth and anticipated depth bracket for productive zone and unit. Following drilling, logging and testing, the well shall be plugged back, or casing set to the legal total depth appropriate for the anticipated productive zone. The plug back depth shall be indicated on the Plug and Abandon Report (Form ~~R-PA-I~~ CN-0217)), which ~~must~~ shall be accompanied by a work ticket which indicates in detail how the work was done. If production is established below the depth bracket for the anticipated productive zone, appropriate spacing shall be established by the Supervisor or Board.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-05
Well Identification

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0400-52-05-.01 Posting a Sign

~~1040-02-05-.01~~ 0400-52-05-.01 Posting a Sign.

No well shall be placed in production, shut-in, or left unplugged until a sign has been posted on the well location. All wells ~~must~~ shall display a sign showing the operator name and telephone number, well name and number, and permit number. The mailing address and telephone number of the Department ~~must~~ shall also appear on the sign. The sign ~~must~~ shall be at a minimum ~~eight and a half (~~8½~~)~~ inches in height by ~~eleven (~~11~~)~~ inches in width, made of durable material and be legible. If the tank battery serving a particular well is not within sight of that particular well, then a sign ~~must~~ shall also be posted at a good conspicuous location at the tank battery for each well for which production is gauged individually. Where a number of wells on the same lease produce into a common tank battery, only one sign is required, and should show the name of the lease and well numbers, rather than individual permit numbers. The obligation to maintain legible signs remains until the well is plugged and ~~abandonment~~ abandoned.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-06

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0400-52-06-.01 Drilling Equipment
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~~1040-02-06-.01~~ 0400-52-06-.01 Drilling Equipment

All drilling equipment shall be designed, constructed, and operated in such a manner so as to prevent accidents and insure safe operating practices. It is recommended that each operator require the drilling contractor to comply with the general rules and safety procedures of the industry.

~~1040-02-06-.02~~ 0400-52-06-.02 Blowout Prevention

(1) ~~All wells~~ The operator shall ~~be equipped and operated~~ equip and operate all wells in such a manner as to prevent the uncontrolled emission of oil, gas, and water from the well.

(2) The operator shall equip all wells, other than those specified in paragraph (3) of this rule, with a minimum of the equipment specified in this paragraph:

(a) The operator shall install a blowout prevention system with 2 separate units capable of closing with the drill pipe in the hole or other equivalent control system as approved by the Supervisor or his representative. A minimum of 1500 psi working pressure or 110% of maximum surface pressure that would be reasonably expected based on the depth and location of the well is required, whichever is greater. In unknown or expected higher pressures a minimum of 5000 psi working pressure shall be required.

1. The blowout preventers shall be installed above ground level if possible but if a cellar is dug, the equipment shall be accessible during drilling operations. The entire control equipment shall be in good working condition at all times. All outlets, fittings, and connections on the casing, blowout preventers, choke manifold, and auxiliary wellhead equipment that may be subjected to wellhead pressure shall be of a material and construction that shall withstand the anticipated pressure and shall be resistant to fire. The lines from outlets on or below the blowout preventers shall be securely installed, anchored, and protected from damage.

2. Blowout preventers, accumulators, and pumps shall be used in accordance with the product manufacturer's rating and operational specifications. The operator is responsible for seeing that the blowout prevention equipment is in proper working order. This includes the proper operation of the closing unit valving, proper operation of the pressure gauges, and the presence of the manufacturer's recommended accumulator fluids. A combination of any 2 of the following secondary closing systems is acceptable:

(i) Intrinsically safe electric-operated pump;

(ii) Air-operated pump;

(iii) Hand-operated pump; and

(iv) Nitrogen-operated pump.

Blowout preventer rams shall be of a proper size for the drill pipe being used or production casing being run in the well or shall be variable-type rams that are of the proper size range. Blowout prevention shall be installed before passing through any known production or high pressure zone in the well boring path.

3. Blowout prevention equipment and intermediate casing shall be tested to a pressure of

1,500 psi at surface for not less than 30 minutes. This shall be done prior to drilling the plug on the intermediate casing or at other intervals as approved or requested by the Supervisor. If, at the end of 30 minutes, the pressure shows a drop of 10% or more from the original test pressure, the casing shall be condemned until the leak is corrected. A pressure test demonstrating less than a 10% pressure drop after 30 minutes is proof that the condition has been corrected. A record of each test, including test pressures, times, failures, and each mechanical test of the casings, blowout preventers, surface connections, surface fittings, and auxiliary wellhead equipment shall be entered in the logbook, signed by the driller, and kept available for inspection by the Supervisor or his representative.

4. With the understanding that all permitting procedures have been followed, a well may be deepened to 200' below the bottom of the Chattanooga Shale without initiating other than the usual well control procedures. The casing shall withstand at least 1,500 psi with no more than 10% loss of pressure in 30 minutes.

(b) Accessible controls located both in the rig and at a safe remote location of at least 50 feet from wellhead.

(c) An annular choke valve.

(d) A drill pipe or power head valve capable of pump truck connection.

(e) A flow line or blooey line of the proper size and working pressure shall be installed in the most direct route practicable to pit and shall be anchored securely. The use of closed loop systems or mud tanks is acceptable.

(3) For non-Cumberland Plateau wells in areas of known lower pressures, the operator shall equip all wells with a minimum of the following equipment:

(a) An annular-type blowout preventer or other equivalent control system as approved by the Supervisor or his representative;

(b) Accessible controls located both on the rig floor and at a safe remote location at least 50 feet from wellhead;

(c) An Annular choke valve;

(d) A drill pipe or power head valve capable of pump truck connection;

(e) A flow line of the proper size and working pressure; and

(f) Blowout prevention equipment that has a rated minimum working pressure of 1500 psi.

1. The blowout preventers shall be installed above ground level if possible but if a cellar is dug, the equipment shall be accessible during drilling operations. The entire control equipment shall be in good working condition at all times. All outlets, fittings, and connections on the casing, blowout preventers, choke manifold, and auxiliary wellhead equipment that may be subjected to wellhead pressure shall be of a material and construction that shall withstand the anticipated pressure and shall be resistant to fire. The lines from outlets on or below the blowout preventers shall be securely installed, anchored, and protected from damage.

2. Blowout preventers, accumulators, and pumps shall be used in accordance with the product manufacturer's rating and operational specifications. The operator is responsible for seeing that the blowout prevention equipment is in proper working order. This includes the proper operation of the closing unit valving, proper operation of the pressure gauges, and the presence of the manufacturer's recommended accumulator fluids. Any of the following closing systems is acceptable:

(i) Intrinsically safe electric-operated pump;

(ii) Air-operated pump;

(iii) Hand-operated pump; and

(iv) Nitrogen-operated pump.

Blowout preventers shall be of a proper size for the drill pipe being used or production casing being run.

3. Blowout prevention equipment and surface casing shall be tested to a pressure of 400 psi at surface for not less than 30 minutes before drilling the plug on the surface casing and at other intervals as approved or requested by the Supervisor. If at the end of 30 minutes the pressure shows a drop of 10% or more from the original test pressure, the casing shall be condemned until the leak is corrected. A pressure test demonstrating less than a 10% pressure drop after 30 minutes is proof that the condition has been corrected. A record of each test, including test pressures, times, failures, and each mechanical test of the casings, blowout preventers, surface connections, surface fittings, and auxiliary wellhead equipment shall be entered in the logbook, signed by the driller, and kept available for inspection by the Supervisor or his representative. If the casing is to be tested at the time of surface casing, cementing 150 psi for a period of ten minutes may be used. The annulus shall be filled with fluid and the plug shall have been landed prior to the test beginning. If a drop of over 10% or more from the original test pressure is found the casing shall be condemned until the leak is corrected. The previous criteria concerning recording of the test shall be followed.

4. The casing shall withstand at least 400 psi with no more than 10% loss of pressure in 30 minutes.

~~1040-02-06-.03~~ 0400-52-06-.03 Casingheads.

All wells shall be equipped with casingheads with a test pressure in conformance with conditions to be anticipated in wells in which they are used. Casinghead ~~body~~ bodies shall be equipped with proper connections and valves accessible to the surface as soon as installed. Reconditioning shall be required on any well leaking gas or oil.

~~1040-02-06-.04~~ 0400-52-06-.04 Environmental Protection.

(1) Oil and gas wells shall be drilled and operated in a manner that protects aquifers and surface waters. Wells shall be designed to ensure the environmentally sound, safe production of hydrocarbons by containing them inside the well, isolating the productive formations from fresh water formations, and properly executing fracturing and other stimulation operations. Well design and construction must ensure that no leaks occur through or between casing strings. The fluids produced from the well (oil, water, gas) must travel directly from the producing zone to the surface inside the well conduit.

~~(1)~~(2) All oil and gas operations shall be conducted in a manner that ~~will~~ shall prevent or mitigate adverse environmental impacts such as soil erosion and water pollution. All areas disturbed by the operations, including access roads, shall be reclaimed as prescribed in ~~rule 1040-02-09-.05~~ Rule 0400-52-09-.05. Access roads shall be constructed in such a manner as to reduce erosion to a practical minimum. Sediment ponds, berms, diversion ditches, hay bales, and other measures designed to prevent erosion and discharge from well sites shall be taken to prevent or minimize soil erosion and pollution of surface waters. Erosion prevention and sediment controls at all oil and gas operations shall meet or exceed the following:

~~(2) Erosion prevention and sediment controls.~~

(a) The erosion prevention controls shall be designed and implemented to minimize the dislodging and suspension of soil in water. Sediment controls shall be designed and implemented to retain mobilized sediment on site.

(b) All control measures ~~must~~ shall be properly selected, installed, and maintained in accordance with the manufacturer's specifications (where applicable) and standard engineering practices. All control measures selected ~~must~~ shall be able to slow runoff so that rill and gully formation is prevented. When steep slopes and/or fine particle soils are present at the site, additional physical or chemical treatment of storm water runoff may be required. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the operator ~~must~~ shall replace or modify the control for relevant site situations.

(c) If sediment escapes the drilling, production, and/or roadway areas, off-site accumulations of sediment that have not reached a stream ~~must~~ shall be removed at a frequency sufficient to minimize offsite impacts. Fugitive sediment that has escaped the drill area and has collected in a drainage ditches or roadways ~~must~~ shall be removed so that it is not subsequently washed into culverts and streams by the next rain and/or so that it does not pose a safety hazard. Permittees shall not initiate remediation/restoration of a stream without consulting the Department first.

(d) Sediment shall be removed from sediment traps, silt fences, sedimentation ponds, and other sediment controls as necessary.

(e) Upon attainment of stability, materials used for erosion prevention and sediment control should be removed or otherwise prevented from becoming a pollutant source for storm water discharges.

(f) Pre-construction vegetative ground cover shall not be destroyed, removed or disturbed more than ~~thirty (~~30~~)~~ days prior to grading or earth moving unless the area is seeded and/or mulched or other temporary cover is installed.

(g) Clearing and grubbing ~~must~~ shall be held to the minimum necessary for drilling and/or production activities.

(h) Construction ~~must~~ shall be sequenced to minimize the exposure time of graded or denuded areas.

(i) Erosion prevention and sediment control measures ~~must~~ shall be in place and functional before drilling activities begin, and ~~must~~ shall be properly maintained throughout the drilling and production phase.

(j) Permanent stabilization with perennial vegetation (using native herbaceous and woody plants where practicable) or other permanently stable, non-eroding surface shall replace any temporary measures as soon as practicable.

(3) The operator shall notify the oil and gas inspector at least 24 hours prior to beginning fracturing or acid treatment activities. The operator shall maintain personnel on-site during fracturing activities, and during the initial flow back period, until such time as the well pressure returns to near pre-fracturing reservoir pressure. Unmanned flowback operations shall be checked routinely.

(4) For fracturing treatments using more than 200,000 gallons of water-based liquids, the operator shall conduct pressure monitoring during the fracturing treatment to monitor for a successful treatment and for protection of the groundwater. Annulus pressure shall be continuously monitored and recorded for all such fracturing treatments. If intermediate casing has been set, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. Records of pressure monitoring shall be included as part of the well history reporting requirements.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-07
Casing Program

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0400-52-07-.01 Casing Requirements

(1) Surface Casing

(a) The operator shall set surface casing at 100 feet below the lowest known fresh water aquifer. The Supervisor shall have the authority to require distances of less than 100 feet upon specific request from the operator if adequate technical justification can be made. The operator shall use casing that has an external collapse pressure rating great enough to handle the hydrostatic pressure of a class A cement from the casing shoe to surface and internal pressure rating to handle any anticipated down hole pressures. The operator shall use cement with a minimum 500 psi compressive strength and will allow a minimum of 8 hour wait, or until the cement has adequately set, prior to drilling the shoe out. Surface casing shall be used to protect fresh water aquifers. No casing shoe shall be drilled until a cement seal has been brought back to the surface and secured between the surface casing and the well bore, preventing any ground water contamination.

(b) In non-Cumberland Plateau wells in areas of known lower pressures, the operator shall set all surface casing 100 feet below the fresh water and use class A cement only. The Supervisor shall have the authority to require distances less than 100 feet upon specific request from the operator if adequate technical justification can be made. The operator shall use casing with an external collapse pressure rating great enough to handle the hydrostatic pressure of a class A cement from the casing shoe to surface. A Float shoe or Baffle or Guide shoe with Wiper Plug along with annular cement volume plus 35% excess shall be required on all surface casing cement jobs. Cement shall have a minimum 500 psi compressive strength and have a minimum 8 hour wait, or longer if needed to ensure that cement has adequately set, prior to drilling the shoe out. No casing shoe shall be drilled until a cement seal has been brought back to the surface and secured between the surface casing and the well bore, preventing any ground water contamination. The operator shall present all cement and casing designs on a specifications sheet with permit application for approval.

(2) If intermediate casing is used, the operator shall set an intermediate string of casing prior to drilling into any known oil and gas producing zone. Casing shall have a minimum internal pressure rating of 110% of maximum formation pressure reasonably expected based on the depth and location of the well. The operator shall cement the intermediate casing at a minimum of 100 feet into the surface casing. Casing string shall be deep enough to prevent underground blowout from anticipated bottomhole pressures. Casing shall have an external collapse pressure rating to handle cement design from casing shoe to surface. The operator shall use cement with 500 psi compressive strength and have a minimum 8 hour wait, or until cement has adequately set, prior to drilling the shoe out.

(3) The operator shall present all cement and casing designs on a specifications sheet with permit application for approval. A copy of cement tickets shall be kept on location to be viewed by the inspector until the drill rig is removed. In unknown or over pressured conditions a 5000 psi rating on casing shall apply. The operator shall attach a copy of all cement tickets to the well history tickets and shall include all volumes and pressures of job from start to finish. To ensure adequate annular space for cementing, the annular space outside the casing shall be at least as large as follows for the applicable casing size:

Up to 7" Outside Diameter (O.D.) Casing O.D. + 1 1/2"

More than 7" and less than 10 3/4" O.D. Casing O.D. + 2"

More than 10 3/4 "O.D. Casing O.D + 3"

(4) Any wells on the Cumberland Plateau drilled to depths above the Chattanooga Shale may be eligible for

variances on the casing requirements in this rule by making a specific request to the Supervisor.

~~1040-02-07-.01~~ 0400-52-07-.02 Conductor Pipe

~~That~~ Conductor pipe ~~ordinarily~~ or conductor casing shall be used for the purpose of supporting unconsolidated surface deposits~~, is termed conductor pipe~~. The use and removal of less than 40 feet of conductor pipe during the drilling of any oil or gas well shall be at the option of the operator. If ~~the~~ such conductor pipe is to be pulled it ~~must~~ shall be pulled prior to the cementing of the surface casing. All conductor casing shall have a cement seal at the surface preventing the possibility of any groundwater contamination and shall remain in the well if not pulled prior to the surface casing cement job. If more than 40 feet of conductor pipe was installed, the conductor pipe may not be pulled.

~~1040-02-07-.02~~ 0400-52-07-.03 Surface Casing.

(1) The ~~operator's~~ operator shall submit a proposed casing program ~~must be submitted,~~ for approval by the Supervisor, on Application for Permit to Drill (Form ~~P-AD-1~~ CN-0211). If the Supervisor deems the casing program inadequate to protect fresh water zones and potential minable coal and other minerals, etc., he shall prescribe the casing program with which the operator ~~will~~ shall comply. Unless an exception is granted by the Supervisor, suitable and sufficient surface casing shall be run and cemented to a depth not less than ~~fifty (50)~~ 100 feet below all fresh water strata encountered in the well and in a manner that ~~will~~ shall protect such fresh water from contamination resulting from drilling operations. The Supervisor shall have the authority to require distances of less than 100 feet upon specific request from the operator if adequate technical justification can be made. The cement ~~must~~ shall fill the annular space behind the surface casing from the base thereof to the surface of the ground. If cement returns are not received to the surface, then the annulus ~~must~~ shall be cemented from the top.

(2) The Supervisor or his representative shall be given notice of cementing of surface casing at least 12 hours prior to conducting such operation. The Supervisor or his representative may witness the cementing operation. Form ~~R-WH1 must~~ CN-0221 shall be accompanied by a copy of the drilling contractor's or service company's ticket for the work performed.

(3) ~~A~~ The operator shall run a cement basket ~~and centralizer are to be run~~ on the surface casing one joint below the conductor pipe, or between the first and second joints ~~of surface casing~~ if no conductor pipe is utilized, or as directed by the ~~supervisor~~ Supervisor. The operator shall utilize a centralizer in order to center the casing in the well bore and ensure it will be completely surrounded or encased by cement and achieve the required isolation.

~~1040-02-07-.03~~ 0400-52-07-.04 Production Casing.

The production, oil, or flow string, is that casing used for the purpose of segregating the zone from which production is obtained and affording a means of communication between such zone and the surface. If production casing is used in a vertical well, the operator shall cement the production casing at a minimum of 100 feet into the intermediate casing and extend the cementing across the producing formation, unless the casing is set on a packer or set and cemented above the production zone. Alternative casing and cementing designs may be approved by the Supervisor upon request if adequate technical justification can be made. Casing shall have an external collapse pressure rating to handle cement design from total depth to surface. The operator shall use cement with 500 psi compressive strength and have a minimum 8 hour wait, or until cement has adequately set. The operator shall present all cement and casing designs on a specifications sheet with Permit Application for approval. A copy of cement tickets shall be kept on location to be viewed by the inspector until the drill rig is removed. In unknown or over pressured conditions a 5000 psi rating on casing shall apply. The operator shall attach a copy of all cement tickets to the well history tickets and shall include all volumes and pressures of job from start to finish. A description of the work done under this ~~section must~~ rule shall be reported to the Supervisor on Well History, Work Summary, and Completion or Recompletion Report (Form ~~R-WH-I~~ CN-0221) within ~~sixty~~ ~~(~~60~~)~~ days after completion.

~~1040-02-07-.04~~ 0400-52-07-.05 Isolation of Oil, Gas and Fresh-Water-Bearing Strata, and Potential Minable Coal and Other Mineral Deposits.

Notwithstanding compliance with the foregoing requirements, all potential minable coal and other minerals ~~must~~ shall be isolated from any possible communication through the annulus with oil-, gas- or water-bearing strata or

deposits of other potential minable coal or other minable minerals. Pressure testing of casing as specified in Rule 0400-52-06-.02 and documentation of cementing as required in Rule 0400-52-07-.01 shall constitute the minimum requirements for maintaining isolation through well integrity. In order to ascertain whether ~~or not such work~~ cementing has been ~~reasonably~~ effectively performed, the operator may elect to either run a cement bond log, or block squeeze each stratum or zone which is required to be isolated. If the cement bond log indicates a minimum of ~~twenty-five (~~25~~)~~ feet of cement bond above the top and ~~twenty-five (~~25~~)~~ feet of bond below the base of each stratum or zone to be isolated, then the provision of this rule shall have been complied with. If such bonding is not shown by the bond log, the Supervisor may require the operator to perform the necessary work to assure the isolation of such above described strata zones.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-08
Directional Drilling

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~~1040-02-08-.01~~ 0400-52-08-.01 Lateral Deviation

(1) No operator shall drill a well in which the well bore deviates laterally a resultant distance greater than that determined by a ~~five-degree (~~5 degree~~)~~ angle from a vertical line passing through the center of the surface location of the well bore, without running a directional survey. If the operator desires to directionally control and thereby intentionally deflect a hole from the vertical (whether more or less than ~~five degrees (~~5 degrees~~)~~ and unless done to straighten the hole or to side-track junk in the hole or because of other mechanical difficulties) a ~~permit, Application for Re-Entry and Work Permit (Form P-RAW-I),~~ letter of approval shall be first ~~be~~ obtained from the Supervisor. Nothing herein shall be construed to permit the drilling of any well in such a manner that it crosses property lines.

(2) Whenever a well is deviated from vertical, the point at which the well bore intersects the producing formation (pool) shall be protected to the surface and become the location of the well in determining if it complied with the spacing rules.

~~1040-02-08-.02~~ 0400-52-08-.02 Inclination Surveys.

An inclination survey shall be made at the discretion of the Supervisor on all wells drilled with the first shot-point at a depth not greater than that of the surface casing seat and succeeding shot-points not more than ~~one thousand (~~1,000~~)~~ feet apart. Inclination surveys conforming to the requirements may be made either during the normal course of drilling or after the well has reached total depth. Such survey data shall be certified by the operator's representative and/or drilling contractor and shall indicate the resultant lateral deviation as the sum of the calculated lateral displacement determined between each inclination survey point, assuming that all such displacement occurs in the direction of the nearest property line. If a directional survey determining the bottom of the hole is filed with the Supervisor upon completion of the well, it shall not be necessary to furnish the inclination survey date. Except as otherwise specified herein, all inclination and/or directional survey data shall be filed along with Well History (Form ~~R-WH-1 (Well History~~ CN-0221).

~~1040-02-08-.03~~ 0400-52-08-.03 Directional Survey

(1) A directional survey shall be run by a qualified contractor approved by the Supervisor and ~~two (~~2~~)~~ certified copies thereof filed with the Supervisor on any well, if:

(a) The well is directionally controlled and is thereby intentionally deflected from the vertical; or

(b) The resultant level deviation as calculated from inclination survey data is a distance greater than the distance from the center of the surface location of the well bore to the nearest property or unit

line and might violate the distance from property lines rule; or

(c) The well bore deviates a resultant distance greater than that determined by a ~~five degree (~~5 degree~~)~~ angle from a vertical line passing through the center of the surface location of the well bore.

(2) The Supervisor, on his own initiative or at the request of an offset operator, shall have the right to require the operator to run a directional survey on any well if there is reasonable cause therefore. Whenever a survey is so required, and the operator of the well and the offset operator are unable to agree as to the terms and conditions for running such survey, the Supervisor, upon request of either, shall determine such terms and conditions, after notice to all interested parties and a public hearing.

(3) Unless required by the Supervisor, a directional survey shall not be required for any well which is not directionally controlled and thereby intentionally deflected from the vertical and which has a surface location, maximum angle of deviation and total depth, in compliance with the provisions of ~~Chapter 1040-02-01 through Chapter 1040-02-12~~ Chapters 0400-52-01 through 0400-52-12.

(4) The provisions hereof shall not alter or affect the minimum spacing provisions of ~~Chapter 1040-02-01 through Chapter 1040-02-12~~ Chapters 0400-52-01 through 0400-52-12.

~~1040-02-08-.04~~ 0400-52-08-.04 Horizontal Drilling.

(1) Wells drilled by horizontal methods shall comply with the following spacing requirements:

(a) For all oil wells, and for gas wells drilled to the top of the Conasauga Group, the surface trace of that portion of the ~~wellbore~~ well bore or any portion of the horizontal drainhole that penetrates the producing formation, including the horizontal drainhole end point, shall not be located closer than ~~three hundred thirty (~~330~~)~~ feet from any property or unit line.

(b) For gas wells drilled below the top of the Conasauga Group, the surface trace of that portion of the ~~wellbore~~ well bore or any portion of the horizontal drainhole that penetrates the producing formation, including the horizontal drainhole end point, shall not be located closer than ~~six hundred sixty (~~660~~)~~ feet from any property or unit line.

(c) Any number of producing formations may be penetrated by lateral drainholes from a single vertical ~~wellbore~~ well bore.

(d) All of the producing portion of the well ~~must~~ shall be in compliance with the spacing requirements of this paragraph. The horizontal portion of the well is the formation of record for production.

(2) For all horizontal wells, the operator shall at a minimum cement the production casing from the first packer up to 100 feet inside the intermediate casing. Alternatively, the operator may utilize an appropriate packer at the bottom of the intermediate casing instead of cement. Casing shall have an external collapse pressure rating to handle cement design from termination point to surface. If cement is used, the operator shall use cement with 500 psi compressive strength and have a minimum 8 hour wait, or until cement has adequately set. The operator shall present all cement and casing designs on a specifications sheet with Permit Application for approval. A copy of cement tickets shall be kept on location to be viewed by the inspector until the drill rig is removed. When unknown or over pressured conditions are encountered a 5000 psi rating on casing shall apply. The operator shall attach a copy of all cement tickets to the well history tickets and shall include all volumes and pressures of job from start to finish.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-09
Well Plugging and Abandonment

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~~1040-02-09-.01~~ 0400-52-09-.01 Plugging Wells

(1) All wells which are to be plugged and abandoned may be filled with a mud fluid of sufficient weight to offset the hydrostatic pressure of any formation penetrated. Sufficient cement plugs ~~must~~ shall be efficiently placed in number and properly located as to prevent the commingling of oil, gas, salt water, and fresh water from one zone to another, and to isolate potentially minable coal beds and seams and other potentially extractable minerals. All downhole plugs may be "felt for" to insure that they have been properly placed.

(2) The specific method and procedure for plugging a well shall be as follows:

(a) A mechanical plug, or a brush and stone plug, and a neet cement plug of not less than ~~twenty-five (~~25~~)~~ feet in length shall be placed between each geologic group or formation.

(b) A mechanical plug, or a brush-and-stone plug, and a neet cement plug of not less than ~~fifty (~~50~~)~~ feet in length shall be placed below the base of the surface casing. The plug shall be placed so that at least ~~twenty-five (~~25~~)~~ feet of cement is below the base of the surface casing and extends up into the casing ~~twenty-five (~~25~~)~~ feet.

(c) A mechanical plug, or a brush-and-stone plug, and a neet cement plug of not less than ~~twenty-five (~~25~~)~~ feet shall be placed at the surface of the well. The surface casing shall be cut off below plow depth at the request of the landowner or when determined appropriate by the ~~supervisor~~ Supervisor or his representative.

(d) In a well with casing that does not seal off the ground water, a mechanical plug, or a brush-and-stone plug, and a neet cement plug ~~must~~ shall be set ~~fifty (50)~~ 100 feet below the deepest known ground water strata. The cement plug ~~must~~ shall be adequate in length to reach at least ~~ten (~~10~~)~~ feet ~~in to~~ into the casing.

(e) In an uncased well, a mechanical plug, or a brush-and-stone plug, and a neet cement plug ~~must~~ shall be set at least ~~fifty (~~50~~)~~ feet below the deepest ground water strata and extend up to the surface or just below plow depth if appropriate.

(f) The mechanical plug or the brush-and-stone plug method ~~maybe~~ may be replaced by filling the well from total depth to the surface with cement, provided, however, that such method ~~must~~ shall be either prescribed or approved by the Supervisor.

(g) If there is fluid in the well, a dump bailer or tubing may be used to place the cement in the well.

(h) If drill water or mud is present it may be used as filler between the plugs.

(i) If any casing has been installed in the well and has not been cemented to the surface the casing ~~must~~ shall be pulled prior to the plugging of the well. If the casing cannot be readily removed the casing ~~must~~ shall be shot and then pulled.

(3) Any other methods not defined above, but approved by the Supervisor, may be used.

~~1040-02-09-.02~~ 0400-52-09-.02 Inspection.

The Supervisor or his representative ~~must~~ shall be given notice of intent to plug a well at least 12 hours prior to conducting such operation. The Supervisor or his representative may inspect the work of plugging and abandonment as it progresses, check the location and quality of plugs, check the amount of casing pulled, and check the demonstration of movement, if any, of oil, gas, or water. The operator ~~must~~ shall submit a Plug and

Abandon Report (Form ~~R-P & A-1~~ CN-0217) covering the work performed to the Supervisor within ~~thirty (~~30~~)~~ days after plugging and abandoning the well. This work may be observed by the Supervisor or his representative and that observance verified by his signature on the Plug and Abandon Report (Form ~~R-P & A-1~~ CN-0217).

~~1040-02-09-.03~~ 0400-52-09-.03 Deliverability Test.

Before any well ~~will~~ shall be classified as a shut-in gas well, the operator ~~must~~ shall furnish the results of a deliverability test. Such deliverability test shall be performed after the well has achieved a stabilized flow rate. If stabilization cannot be achieved, the maximum test period required is ~~twenty-four (~~24~~)~~ hours. The results of the deliverability test shall be submitted on Gas Well Deliverability Tests (Form R-DT-1), and in the initial Production section of the Well History, Work Summary, and Completion or Recompletion Report (Form ~~R-WH-1~~ CN-0221), and ~~must~~ shall be complete as to stabilized flow rate, hours tested, choke size, and pressure in order to demonstrate that a stabilized flow rate was achieved. A copy of the chart on which the deliverability is based ~~must~~ shall also be submitted. All deliverability tests shall be conducted once every ~~three (~~3~~)~~ years. The well ~~will~~ shall remain shut-in in accordance with the requirements of Rule ~~1040-02-09-.06~~ 0400-52-09-.06. In addition, a gas well may be considered shut-in if the well has been cemented with 4½ inch casing and submitted with a report signed by a petroleum engineer or geologist.

~~1040-02-09-.04~~ 0400-52-09-.04 Time Limit For Plugging Wells.

Except as provided in Rule ~~1040-02-09-.06~~ 0400-52-09-.06, all wells drilled for oil and gas and found to be dry holes shall be plugged within ~~one (~~1~~)~~ year from cessation of drilling. All wells that are non-producing or abandoned shall be plugged within ~~one (~~1~~)~~ year from the date they cease producing ~~twelve (~~12~~)~~ barrels of oil per year or ~~twenty-five (~~25~~)~~ mcf of gas per month or are abandoned. Upon written request to the Supervisor showing good cause, an extension of up to ~~ninety (~~90~~)~~ days additional may be granted. No operator or owner shall permit any well drilled for oil, gas, salt water disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. Nothing herein shall prevent utilizing a well for the purpose of introducing air, gas, fresh water or other liquid pressure into or upon the producing strata for the purpose of recovering oil and gas. All wells which are neither producing nor plugged ~~must~~ shall comply with shut-in standards of oil and gas wells and shall be cased and capped in such a manner so as to protect all potential oil and/or gas zones, and fresh water in accordance with the requirements of Rule ~~1040-02-09-.06~~ 0400-52-09-.06.

~~1040-02-09-.05~~ 0400-52-09-.05 Surface Reclamation.

(1) Reclamation of well sites, oil or gas pipeline right-of-way, storage facility sites, and access roads.

(a) Except for active work areas, the operator shall drain and fill all surface pits that are not needed for production purposes, and shall grade and stabilize the well location and location road within ~~thirty (~~30~~)~~ days of the initial disturbance, in order to minimize surface run-off and prevent excessive erosion and sedimentation. All drilling supplies and equipment, synthetic liners, trash, discarded materials and other refuse not contained and covered in the reclaimed pits shall be removed from the site. Temporary vegetative cover shall then be established on all graded areas.

(b) Within ~~ninety (~~90~~)~~ days of the plugging and abandonment of any well, the operator shall remove all production and storage structure, supplies and equipment, any oil, salt water and debris, fill any remaining excavations, and grade any remaining disturbed areas, including access roads. Permanent vegetative cover shall then be established on all disturbed areas, excluding approved permanent, non-erosive facilities, and access roads which are to be turned over to the landowner. Any access roads necessary for the operator to gain access to the well site in order to determine the adequacy of the vegetative cover or to perform additional re-vegetation may continue to be used by the operator until all of the Board's reclamation requirements have been met.

(c) Upon written request to the Supervisor showing good cause, an extension of up to ~~ninety (~~90~~)~~ days additional may be granted to an operator to complete grading and/or vegetation of a well site or access roads.

(2) Re-vegetation - General Requirements.

(a) The operator shall establish, in accordance with paragraph (1) of this rule, on all surface disturbed areas except water areas and surface areas of access roads approved by the Supervisor as permanent roads, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is as follows:

1. Diverse, effective, and permanent;

2. Comprised of species approved by the Supervisor that ~~will~~ shall not impede natural vegetative cover; and

3. Capable of long term stabilization of the soil surface from erosion.

(b) The reclamation plant species shall have the following:

1. The same seasonal characteristics of growth as the original vegetation;

2. Be capable of self-regeneration;

3. Be compatible with existing plant and animal species existing in the areas; and

4. Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws and/or regulations.

(c) Establishment of permanent vegetative cover shall conform with the standards set forth in the most recent version of the Tennessee Erosion and Sediment Control Handbook. ~~Suggested seeding mixtures, rates, and dates are shown in the following table:~~

~~Seeding Group~~	~~Rate-Pounds Per Acre~~	~~Rate-Pounds Per 1,000 Square Feet~~	~~Seeding Dates~~
~~For Temporary Cover:~~			
~~cereal wheat or rye (100%)~~	~~20-25~~	~~0.5-0.6~~	~~10/15-11/30~~
~~sudan grass hybrid (100%)~~	~~20~~	~~0.5~~	~~04/15-08/15~~

~~Seeding Group~~	~~Rate-Pounds Per Acre~~	~~Rate-Pounds Per 1,000 Square Feet~~	~~Seeding Dates~~
~~For Permanent Cover:~~			
~~tall fescue (100%)~~	~~30~~	~~0.7~~	~~02/15-04/15 08/15-10/15~~
~~tall fescue (90%)~~	~~30~~	~~0.7~~	~~02/15-04/15~~
~~white (ladino) clover (10%)~~	~~3~~	~~0.1~~	~~08/15-10/15~~
~~tall fescue (86%)~~	~~30~~	~~0.7~~	~~02/15-04/15~~
~~crownvetch (14%)~~	~~5~~	~~0.1~~	~~08/15-10/15~~
~~sericea lespedeza (scarified) (60%)~~	~~30~~	~~0.7~~	~~03/01-04/15~~
~~tall fescue (30%)~~	~~15~~	~~0.3~~	~~03/01-04/15~~
~~annual lespedeza (10%)~~	~~5~~	~~0.1~~	~~03/01-04/15~~
~~sericea lespedeza (79%)~~	~~30~~	~~0.7~~	~~03/01-04/15~~
~~weeping lovegrass (8%)~~	~~3~~	~~0.1~~	~~03/01-04/15~~
~~annual lespedeza (13%)~~	~~5~~	~~0.1~~	~~03/01-04/15~~

~~1. Seeding rate should be increased by 20 percent on sites where a seedbed cannot be prepared.~~

~~2. Temporary cover should be disked or mowed before permanent vegetation is established.~~

~~3. Where more than 90 percent of a mixture is composed of tall fescue, annual fertilizing~~

~~should be done to maintain an adequate cover.~~

~~4. Crown vetch may be used in Middle and East Tennessee and the northern half of West Tennessee, but should not be used on areas that will receive heavy traffic.~~

~~5. Sericea lespedeza and weeping lovegrass are both suitable for sites that are subject to drought.~~

~~6. Disturbed areas on which temporary cover must be established between December 1 and February 15 should be mulched, and then seeded with permanent vegetation as soon as possible.~~

(d) The Supervisor may grant exceptions to the requirements of parts (b)1 and 2 of this paragraph when the species are necessary to establish a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved reclamation plan. ~~All items under subparagraph (c) are suggested guideline measures.~~

(3) Re-vegetation - ~~Top soiling~~ Topsoiling, Mulching and Soil Amendments.

(a) Prior to the establishment of a permanent vegetative cover on disturbed areas where excavation activities have occurred, the operator shall replace the excavated topsoil or provide an approved topsoil substitute material suitable for supporting the long range re-vegetation goals.

(b) Suitable mulch and/or other soil stabilizing practice shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes unless the Supervisor waives this requirement based on a determination that seasonal, soil, or slope factors result in a condition whereby mulch or other stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetation cover.

(c) Nutrients and soil amendments shall be applied to the redistributed growth medium prior to re-vegetation when necessary to establish and maintain the vegetative cover.

(4) Diverse ~~v~~Vegetation ~~c~~Cover - Standards for Success.

(a) All previously disturbed and reclaimed areas shall be inspected by the Supervisor or his ~~designee~~ representative prior to final reclamation bond release in order to determine the level of success of permanent re-vegetation.

(b) Re-vegetation success shall not be determined until after at least two successfully completed spring or summer growing seasons have occurred.

(c) Standards for success shall be based on a ground cover of at least ~~ninety percent (~~90%~~)~~ consisting of herbaceous and/or woody species with a minimum of ~~eighty percent (~~80%~~)~~ being of perennial varieties.

~~1040-02-09-.06~~ 0400-52-09-.06 Temporary Abandonment.

(1) An operator has the opportunity to place any non-producing well into Temporary Abandonment for ~~five (~~5~~)~~ years if all of the following requirements are fulfilled:

(a) The operator shall submit a Temporary Well Abandonment Information form (CN-1368) for each well to be placed in ~~t~~Temporary ~~a~~Abandonment. This form can be obtained from Water ~~Pollution Control~~ Resources/Oil and Gas Program.

(b) The operator shall submit a ~~one hundred dollar (~~$100~~)~~ fee for each well per year to be placed in ~~t~~Temporary ~~a~~Abandonment.

(c) Each well shall be capped in such a manner as to have no open casing exposed to the environment (i.e., swedge with locked ball-valve or any other viable protection). The operator shall conduct a well integrity test prior to placing a well into Temporary Abandonment, if no such

test has been conducted within the prior 15 years and there has been no oil or gas production from the well in that same time period. Integrity testing shall at a minimum consist of either a Mechanical Integrity Test (MIT) on the casing, or a pressure test on the casing using tubing and and a packer to a minimum of 500 psi. Alternative well integrity confirmation methods, including annual pressure monitoring at the well head, may be accepted at the discretion of the Supervisor.

(d) Any well shown on the Annual Well Report (Form CN-1272) that indicates no production ~~must~~ shall be placed in ~~t~~Temporary ~~a~~Abandonment status or plugged.

(e) All fees received for ~~t~~Temporary ~~a~~Abandonment ~~will~~ shall be placed in an account that ~~will~~ shall be set aside to be used only for funding the plugging of abandoned oil and gas wells.

(2) At the end of the five year Temporary Abandonment period, each well submitted by the operator shall be reviewed by the Department. A determination ~~will~~ shall be made on the validity of keeping the well(s) open. This determination for validity ~~will~~ shall be based on whether the operator has a deliverability test for each gas well or if the well is producing oil. If the staff finds there is no valid reason to keep the wells open, the operator ~~will~~ shall then have two years to plug the non-producing well(s).

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-10
Filing of Well Data, Reports and Maps

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0400-52-10-.01 Information Due Date
0400-52-10-.02 Information Required
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0400-52-10-.04 Field Map
0400-52-10-.05 Information Confidential
0400-52-10-.06 Annual Well Report

~~1040-02-10-.01~~ 0400-52-10-.01 Information Due Date

The required well data and reports shall be tendered to the Supervisor within ~~sixty (~~60~~)~~ days from the date of drilling to total depth of the well. This date is defined as the termination of continuous drilling operations. The due date for information submitted may not be postponed by the expressed intent to resume operations at some future date.

~~1040-02-10-.02~~ 0400-52-10-.02 Information Required.

The following information is required within ~~sixty (~~60~~)~~ days after drilling to total depth:

(1) Two final and unmarked prints of all electrical logs and other downhole surveys, if any. If no logs are run, then "NONE" should be entered in the "TYPE(S) OF GEOPHYSICAL LOGS RUN" section of the Well History Form (Form ~~R-WH-1~~ CN-0221).

(2) Driller's log - a driller's log shall be submitted in one of the following forms:

(a) On reverse side of Well History Form (~~R-WH-1~~ CN-0221); or

(b) On a separate typed sheet (one copy).

(3) Drilling-time log - One copy for all wells drilled with rotary tools.

(4) Drill-stem test - One final copy of any.

(5) Core analysis - One copy if available.

(6) Completion Report - one copy of Well History, Work Summary, and Completion or Recompletion Report (Form ~~R-WH-1~~ CN-0221) shall be completed, notarized and submitted for each well. All shows of oil and/or gas, water zones, and coal seams penetrated shall be reported on the reverse side of this form. If all the required information is not available at the end of the ~~sixty (~~60~~)~~ day period the additional information ~~will~~ shall be filed on a supplemental Form ~~R-WH-1~~ CN-0221 within 10 days after completion of the well.

(7) Samples and Cores-well cuttings are required at ~~ten (~~10~~)~~ foot intervals from the top of bedrock to total depth of each well, and ~~must~~ shall be submitted to the Tennessee ~~Division~~ Office of Geology ~~office~~ in Nashville according to the following guidelines if requested by the Supervisor:

(a) Well cuttings should arrive in sturdy containers, such as heavy cardboard boxes with sturdy bottoms. Burlap bags are acceptable, but plastic garbage bags are not.

(b) Well cuttings ~~must~~ shall be completely dry when received.

(c) Each set of cuttings ~~must~~ shall be in its own container. No two seats should be in the same box or burlap bag. If more than ~~one (~~1~~)~~ container is required for a particular set of cuttings, this should be noted on all containers.

(d) Individual bags should be clearly marked and identified as to operator name, well name and number, permit number and interval. Each container ~~must~~ shall be clearly marked with operator name, well name and number, permit number, and county.

(e) Bags should be marked with waterproof ink.

(f) Sets of well cuttings not meeting the ~~above~~ requirements ~~will~~ of subparagraphs (a) through (e) of this paragraph shall not be accepted by the Tennessee ~~Division~~ Office of Geology until those requirements are met. Cores which may be required by the Supervisor ~~must~~ shall be submitted in adequate boxes clearly marked as to the name of the well and depth intervals.

~~1040-02-10-.03~~ 0400-52-10-.03 Reserved

~~1040-02-10-.04~~ 0400-52-10-.04 Field Map.

Persons or companies operating in a producing area shall furnish the Supervisor with a field map showing lease lines and well locations on request.

~~1040-02-10-.05~~ 0400-52-10-.05 Information Confidential.

Upon request by the permittee to the Supervisor, the aforementioned well information shall be kept CONFIDENTIAL by the Supervisor for a period not to exceed ~~six (~~6~~)~~ months from the date of drilling to total depth of the well, as defined in Rule ~~1040-02-10-.01~~ 0400-52-10-.01.

~~1040-02-10-.06~~ 0400-52-10-.06 Annual Well Report.

Operators shall file an annual report on each bonded well(s). The report shall include the well(s) name and number, permit number, location, current status of the well(s), any production for the past year, and future plans for the well(s). The annual report shall be due on the 15th of April each year. If the report is not received before May 1st, the well(s) shall be determined abandoned.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-11
Exceptions and Hearings

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0400-52-11-.01 Prevention of Waste

~~1040-02-11-.01~~ 0400-52-11-.01 Prevention of Waste

If any operator can show to the Supervisor ~~or Oil and Gas Board~~ that the work procedures herein prescribed result in waste, or such operations are unreasonable, the Supervisor may enter such an order, as a special exception to the aforesaid rules and regulations, as ~~will~~ shall prevent such waste or eliminate such unreasonable restraint as may result from the application of the aforesaid rules and regulations to the well or wells of such operators; provided, however, that before any operator shall be allowed the benefit of any order granting an exception as authorized by this chapter, such operator ~~must~~ shall establish that such exception, if granted, ~~will~~ shall not result in waste in the field as a whole or give him an inequitable and unfair advantage over another operator or operators in the field. No special exception ~~will~~ shall be granted except upon written application, fully stating the alleged facts, which shall be ~~the subject of a hearing to be held no earlier than ten (10)~~ acted upon within 20 days after filing the application. ~~Prior~~ At least 10 days prior to acting ~~the hearing~~ upon such application, the Supervisor shall give ~~at least ten (10) days notice thereof shall be given by publication~~ e-mail notice to all operators in the Field. In addition to said notice by ~~publication~~ e-mail, the applicant ~~must~~ shall give adjacent operators, where appropriate, at least ~~ten (~~10~~)~~ days notice ~~of said hearing~~ by personal service or by ~~Registered~~ Certified Mail. If the Supervisor denies such a request, the operator may appeal to the Board and a contested case hearing shall be scheduled as soon as possible. The Supervisor shall send e-mail notice of such hearing to all operators in the Field at least 10 days prior to the hearing.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-52-12
~~Violations – Penalties – Notice – Hearing~~ Violations, Penalties, Notice, Hearing

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0400-52-12-.01 Violations, Penalties, Notice, Hearing
0400-52-12-.02 Red Tagging of Wells

~~1040-02-12-.01~~ 0400-52-12-.01 Violations, Penalties, Notice, Hearing

(1) The Supervisor shall have the authority to assess monetary penalties as provided in paragraphs (3), (4), and (5) of this rule for any violation of this chapter, rules and regulations, or any order adopted by the Board. In making such assessment, the Supervisor shall give due consideration to the appropriateness of the penalty with respect to the size of the business of the operator charged, the gravity of the violation, the good faith of the operator, and the operator's history of previous violations.

(2) If, upon an inspection or investigation, the Supervisor or ~~any of~~ his ~~authorized personnel~~ representative shall determine that any operator is not in compliance with any standard or regulation or rule of the Board promulgated by the Board pursuant to this chapter, he shall with reasonable promptness and in no event later than ~~six (~~6~~)~~ months following the inspection, issue to the operator by certified mail a written citation that states the nature and, if appropriate, the location of the violation, including a reference to the provision of the chapter and the regulation alleged to have been violated. In addition, the citation shall fix a reasonable time for abatement of the violation. If the issuing Supervisor has reason to believe that such violation, or the failure to abate such violation, should result in the assessment of a penalty under paragraphs (3), (4), and (5) of this rule the citation may so state.

(3) Any operator who has received a citation of this chapter, rules and regulations or order of the Board, promulgated pursuant to this chapter, and has failed to correct such violation within the period of correction of this citation, shall be assessed a penalty of up to ~~one thousand (~~$1,000~~) dollars~~ for each day the violation exists. The period of correction may be suspended or lengthened by the assessing party upon a showing by the operator of a good faith effort to comply with the correction requirements, and that failure to comply with the correction requirements is due to factors beyond his reasonable control.

(4) Any operator who has received a citation for a violation of this chapter, or rules and regulations, or order of the Board and such violation is specifically determined not to be of a serious nature, may be assessed a penalty of up to ~~one thousand (~~$1,000~~) dollars~~ for each such violation.

(5) Any operator who willfully or repeatedly violates the requirements of this chapter, or rules and regulations, or order of the Board promulgated pursuant to this chapter may be assessed a penalty of up to ~~ten thousand (~~$10,000~~) dollars~~ for each violation.

(6) Penalties provided for by paragraphs (3), (4), and (5) of this rule shall be imposed in the manner hereinafter provided. Whenever the Board, through the Supervisor, has determined that such a penalty should be assessed against an operator, a written notice and assessment of a penalty shall be issued to the operator by certified mail, return receipt requested, stating the amount of the penalty to be assessed and the reason therefore (which may be done by reference to citations issued prior to or simultaneously with such notification).

(7) Any citation or notice and assessment of a penalty issued pursuant to this rule shall inform the operator of his rights to appeal such citation or assessment of a penalty to the Board. Any such citation or notice ~~and~~ shall become final ~~twenty (~~20~~)~~ days after the receipt of such citation or notice and assessment of penalty by the operator unless the operator, within the period of ~~twenty (~~20~~)~~ days, shall file a written notice of appeal with the Supervisor.

(8) If the operator files an appeal of such citation or assessment of a penalty as provided by paragraph (7) of this rule, the proceedings on such appeal shall be conducted in accordance with the provisions of the Uniform Administrative Procedures Act, as amended, compiled in Title 4, Chapter 5, and the rules of procedure of the Oil and Gas Board governing the conduct of contested cases. The Board shall afford the operator an opportunity for a hearing, after reasonable notice, The Board shall thereafter render a final order, in accordance with the provisions of § 4-5-314, affirming, modifying or vacating the Supervisor's citation or assessment of a penalty. A final order rendered pursuant to this rule shall be effective upon its entry unless a later effective date shall be stated therein. A petition to stay the effective date of a final order may be filed under the provisions of § 4-5-316. A petition for reconsideration of a final order may be filed under the provision *of* § 4-5-317. Judicial review of a final order may be sought by filing a petition for review under the provisions of § 4-5-322.

~~(9) All penalties owed under this chapter shall be paid to the assessing Supervisor for deposit into the Treasury of the State of Tennessee and shall accrue to the State of Tennessee and may be recovered in a civil action in the name of the State of Tennessee in any Court of Record in the county where the violation is alleged to have occurred or where the operator has its principal office. (Acts 1978 (Adj. S), ch. 791, § 1; T.C.A. § 60-113; Acts 1984, ch. 700, §§ 1,2.)~~

~~1040-02-12-.02~~ 0400-52-12-.02 Red Tagging of Wells.

If, upon an inspection or investigation, the Supervisor or ~~any of~~ his ~~authorized personnel~~ representative shall determine that a well or tank battery is not in compliance with any standard or regulation or rule or order of the Board promulgated by the Board pursuant to this chapter, he shall with reasonable promptness and in no event later than ~~five (~~5~~)~~ working days following the inspection, place a "red tag" (~~Form WC-~~NOTICE THIS WELL CLOSED - Form CN-0110) on the well or tank battery, which notice shall state that drilling or plugging of the well or any further production of oil and gas from the well or tank battery is hereby ordered to be terminated until approval to proceed has been granted by the Supervisor. The notice shall further indicate the nature of the violation or threatened violation, including a reference to the provision of the chapter and the regulation which has been violated.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-53-01
Completion, Recompletion, and Related Downhole Work

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0400-53-01-.08 Reserved
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~~1040-03-01-.01~~ 0400-53-01-.01 Time Limit for Well Completion

All wells drilled in connection with the production of oil and gas, unless plugged in accordance with well abandonment procedures as stated in ~~Chapter 1040-02-09~~ Chapter 0400-52-09, shall be completed within ~~one (~~1~~)~~ year from cessation of drilling unless the operator is following the procedures outlined in Rule ~~1040-02-09-.06~~ 0400-52-09-.06 Temporary Abandonment.

~~1040-03-01-.02~~ 0400-53-01-.02 Notification for Re-entry.

Notification to the supervisor is required prior to conducting work for the purpose of deepening a well pursuant to producing oil and/or gas.

The operator ~~must~~ shall notify the Supervisor ~~twenty-four (~~24~~)~~ hours in advance of conducting this proposed operation.

This rule shall not deter an operator from taking immediate action in an emergency to prevent damage when a service company, other than the drilling contractor, performs any work germane to this ~~section~~ rule. The service company shall furnish the operator, and the operator upon request shall furnish the Supervisor with legible and exact copies of reports furnished the owner or operator of the well.

~~1040-03-01-.03~~ 0400-53-01-.03 Report Filing.

The operator shall file a Well History, Work Summary and Completion or Recompletion Report (Form ~~R-WH-1~~ CN-0221) with the Supervisor within ~~sixty (~~60~~)~~ days after completing, recompleting or working over a well pursuant to producing oil and/or gas. Wells shall be considered completed when they are capable of being turned into the tanks and/or gas transmission or gathering lines. Well history information shall include the actual materials and volumes used to fracture, the amounts and concentrations of any additives used, the amount of wastewater generated, and the method of disposal of wastewater, for the purpose of making this information easily available to the public.

(1) Required disclosures. In the case of any well fractured using a cumulative total of greater than 200,000 gallons of water-based liquids, the following shall apply:

(a) Vendor and service provider disclosures. Service providers who perform any part of a hydraulic fracture using greater than 200,000 gallons of water based liquids and vendors who provide hydraulic fracturing additives directly to the operator for such a hydraulic fracture shall, with the exception of information claimed to be a trade secret, furnish the operator with the information required by subparagraph (b) of this paragraph, as applicable. Such vendors and service providers shall provide this information as soon as possible within 30 days following the conclusion of the fracturing activity and in no case later than 90 days after the commencement of the fracturing activity.

(b) Operator disclosures. Within 60 days following the conclusion of a hydraulic fracture using greater than 200,000 gallons of water-based liquids, and in no case later than 120 days after the commencement of such hydraulic fracturing activity , the operator of the well shall complete the chemical disclosure registry form and post the form on the chemical disclosure registry, including:

1. the operator name;

2. the date of the hydraulic fracture;

3. the county in which the well is located;

4. the API number for the well;

5. the well name and number;

6. the longitude and latitude of the wellhead;

7. the true vertical depth of the well;

8. the total volume of water used in the hydraulic fracturing of the well or the type and total volume of the base fluid used in the fracturing, if something other than water;

9. each hydraulic fracturing additive used in the hydraulic fracturing fluid and the trade name, vendor, and a brief descriptor of the intended use of function of each hydraulic fracturing additive in the hydraulic fracturing fluid;

10. each chemical intentionally added to the base fluid;

11. the maximum concentration, in percent by mass, of each chemical intentionally added to the base fluid; and

12. the chemical abstract service number for each chemical intentionally added to the base fluid, if applicable.

(c) If the vendor, service provider, or operator claim that the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical is/are claimed to be a trade secret, the operator of the well shall so indicate on the chemical disclosure registry form and, as applicable, the vendor, service provider, or operator shall submit to the Supervisor a Claim of Entitlement Form notifying the Supervisor that the specific identity of a chemical, the concentration of a chemical, or both is being withheld as a trade secret. The operator shall nonetheless disclose all information required under subparagraph (b) of this rule that is not claimed to be a trade secret. If a chemical is claimed to be a trade secret, the operator shall also include in the chemical registry form the chemical family or other similar descriptor associated with such chemical.

(d) Unless the information is entitled to protection as a trade secret, information submitted to the Supervisor or posted to the chemical disclosure registry is public information.

(e) Inaccuracies in information. A vendor is not responsible for any inaccuracy in information that is provided to the vendor by a third party manufacturer of the hydraulic fracturing additives. A service provider is not responsible for any inaccuracy in information that is provided to the service provider by the vendor. An operator is not responsible for any inaccuracy in information provided to the operator by the vendor or service provider.

(f) Disclosure to health professionals. Vendors, service companies, and operators shall identify the specific identity and amount of any chemicals claimed to be a trade secret to any health professional who requests such information in writing if the health professional provides a written statement of need for the information and executes a confidentiality agreement. The written statement of need shall be a statement that the health professional has a reasonable basis to believe that (1) the information is needed for purposes of diagnosis or treatment of an individual, (2) the individual being diagnosed or treated may have been exposed to the chemical concerned, and (3) knowledge of the information will assist in such diagnosis or treatment. The confidentiality agreement shall state that the health professional shall not use the information for purposes other than the health needs asserted in the statement of need, and that the health professional shall otherwise maintain the information as confidential. Where a health professional determines that a medical emergency exists and the specific identity and amount of any chemicals claimed to be a trade secret are necessary for emergency treatment, the vendor, service provider, or operator, as applicable, shall immediately disclose the information to that health professional upon a verbal acknowledgment by the health professional that such information shall not be used for purposes other than the health needs asserted and that that health professional shall otherwise maintain the information as confidential. The vendor, service provider, or operator, as applicable may request a written statement of need, and a confidentiality

agreement from all health professionals to whom information regarding the specific identity and amount of any chemicals claimed to be a trade secret was disclosed, as soon as circumstances permit. Information so disclosed to a health professional shall in no way be construed as publicly available.

(2) Disclosures not required. A vendor, service provider, or operator is not required to:

(a) disclose chemicals that are not disclosed to it by the manufacturer, vendor, or service provider;

(b) disclose chemicals that were not intentionally added to the hydraulic fracturing fluid; or

(c) disclose chemicals that occur incidentally or are otherwise unintentionally present in the trace amounts, may be the incidental result of a chemical reaction or chemical process, or may be constituents of naturally occurring materials that become part of a hydraulic fracturing fluid.

(3) Trade secret protection. Vendors, service companies, and operators are not required to disclose trade secrets to the chemical disclosure registry or in the Well History Report. If the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical are claimed to be entitled to protection as a trade secret, the vendor, service provider or operator may withhold the specific identity, the concentration, or both the specific identity and concentration of the chemical, as the case may be, from the information provided to the chemical disclosure registry or in the Well History Report, in the manner provided by paragraph (1) of this rule.

(a) The vendors, service providers, or operators, as applicable, shall provide the specific identity of a chemical, the concentration of a chemical, or both of a chemical claimed to be a trade secret to the Board upon request from the Supervisor stating that such information is necessary to respond to a spill or release or a complaint from a person who may have been directly and adversely affected or aggrieved by such spill or release. Upon receipt of a written statement of necessity, such information shall be disclosed by the vendor, service provider, or operator, as applicable, directly to the Supervisor or his representative and shall in no way be construed as publicly available.

(b) The Supervisor or his representative may disclose information regarding the specific identity of a chemical, the concentration of a chemical, or both the specific identity and concentration of a chemical claimed to be a trade secret to additional Department staff members to the extent that such disclosure is necessary to allow the Department staff member receiving the information to assist in responding to the spill, release, or complaint, provided that such individuals shall not disseminate the information further. In addition, the Supervisor may disclose such information to any Board Member, the relevant county public health director or emergency manager, or to the Tennessee Department of Public Health or the Tennessee Department of Environment and Conservation Directors upon request by that individual. Any information so disclosed to the Supervisor, a Department staff member, a Board Member, a county public health director or emergency manager, or to the Tennessee Department of Public Health or the Tennessee Department of Environment and Conservation Directors shall at all times be considered confidential and shall not be construed as publicly available. The Tennessee Department of Public Health and the Tennessee Department of Environment and Conservation Directors, or his or her designee, may disclose such information to their respective staff members under the same terms and conditions as apply to the Supervisor.

(4) Any party who is adversely affected by a claim of trade secret that the party believes to be improper may file an action for damages pursuant to T.C.A. § 60-1-403 or for injunctive relief pursuant to T.C.A. § 47-25-1703(c).

~~1040-03-01-.04~~ 0400-53-01-.04 Gas/Oil Ratio Tests.

(1) All oil wells drilled ~~must~~ shall be equipped so that gas/oil ratios can be taken at any time. Production and gas/oil ratio tests shall be made when requested by the Supervisor, and shall be witnessed by the Supervisor or his representative.

(a) Gas production potential tests shall be made on the Gas Well Deliverability Tests (Form ~~R-DT-I~~

R-DT-1) and submitted as prescribed above to the Supervisor, and conducted every three years until the well is plugged and abandoned when requested by the ~~s~~Supervisor.

(b) Gas wells shall not be tested by the "open-flow" method. The back-pressure method of determining the open-flow, as outlined by the Bureau of Mines in their Monograph 1, "Back-Pressure Data on Natural Gas Wells", shall be used. When for any reasons, the completed back-pressure method is not feasible, an acceptable method, not entailing excessive physical waste of gas may be used upon recommendation of the Department.

(c) Gas/Oil (c: Gas/Condensate) ratios shall be reported on Form ~~R-PT-1 and Form R-WH-1~~ CN-0221.

(d) In the event any operator considers that, for the purpose of determining field allowable, his well has not had a fair determination of its gas/oil ratio, or that its gas/oil ratio has changed because of natural causes or corrective work on his well, he may make application in writing to the Supervisor for a re-test or a special test of the gas/oil ratio~~n~~ of his well, and for an adjustment of his well if applicable. If, upon re-testing a well, the Supervisor finds that the new gas/oil ratio justifies a change in the allowable, he is authorized to make such change.

~~1040-03-01-.05~~ 0400-53-01-.05 ~~Periodic GMP Tests~~ Reserved

~~Gallons of liquid per thousand cubic feet of gas shall be reported on Periodic GPM Tests Report (Form R-GPM-1) to the Supervisor on the thirtieth (30th) day after the Supervisor requests such data.~~

~~1040-03-01-.06~~ 0400-53-01-.06 Gas Composition Analysis.

Gas Composition Analysis shall be completed and submitted to the Supervisor within ~~sixty (~~60~~)~~ days after the Supervisor requests such data.

~~1040-03-01-.07~~ 0400-53-01-.07 Bottomhole Pressure Tests.

Bottomhole Pressure Tests shall be conducted and submitted to the Supervisor within ~~sixty (~~60~~)~~ days after the Supervisor requests such data.

~~1040-03-01-.08~~ 0400-53-01-.08 Reserved.

~~1040-03-01-.09~~ 0400-53-01-.09 Reserved.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-53-02
Tubing and Well Equipment

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0400-53-02-.01 Reserved
0400-53-02-.02 Connections
0400-53-02-.03 Separators
0400-53-02-.04 Safety Valves

~~1040-03-02-.01~~ 0400-53-02-.01 ~~Repealed~~ Reserved.

~~1040-03-02-.02~~ 0400-53-02-.02 Connections.

(1) When requested by the ~~s~~Supervisor or his representative, wellhead connections shall be tested prior to installation at a pressure indicated by the Supervisor in conformance with conditions existing in areas in which they are used.

(2) Whenever such tests are made in the field, they shall be witnessed by the Supervisor.

(3) Tubing and tubingheads shall be free from obstructions in wells used for bottomhole pressure test purposes.

~~1040-03-02-.03~~ 0400-53-02-.03 Separators.

All flowing and gas-lift oil wells are to be produced through efficient operating separators, except in the case of low-pressure headings or gas-lift wells with low-gas output (less than 100 lbs. surface pressure).

~~1040-03-02-.04~~ 0400-53-02-.04 Safety Valves.

(1) A safety valve is required on all flowing wells, with a surface pressure in excess of ~~one thousand (~~1,000~~)~~ pounds in the following categories.

(a) Any location inaccessible during period of storm or floods.

(b) Location within any wildlife refuges, parks or game preserves, or bodies of water used for recreation or navigation.

(c) Location within ~~six hundred (~~600~~)~~ feet of public roads or waterways, railroads, inhabited dwellings, or closer than ~~one thousand (~~1,000~~)~~ feet to any school or church.

(2) Where the use of safety valves would unduly interfere with normal operations of a well, the Supervisor may, upon submission of pertinent data in writing, waive the requirements of this rule.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-53-03
Prevention of Hazards and Pollution

Table of Contents

0400-53-03-.01 Safety
0400-53-03-.02 ~~Pollution and Safety Controls~~ Environment

~~1040-03-03-.01~~ 0400-53-03-.01 Safety

(1) Each operator shall so conduct his operations and maintain his equipment as to reduce to a minimum the danger of explosion, fire, or waste.

(2) All tests for production should be started and completed during daylight hours unless approval is obtained by the Supervisor.

(3) No boiler, open fire, or electric generator shall be operated within ~~one hundred (~~100~~)~~ feet of any producing oil or gas well or oil tank.

(4) Any rubbish, debris, or vegetation that might constitute a fire hazard shall be removed to a distance of at least ~~one hundred (~~100~~)~~ feet from the vicinity of wells to be tested.

(5) All waste shall be disposed of in such a manner as to avoid creating a fire hazard or polluting streams and fresh water strata.

(6) No test oil, condensate, salt water, or any other fluid substance shall be discharged to or disposed of in any way into any stream, lake, or other body of water, or into any ditch or surface drainage depression leading to any stream, lake, or other body of water, except in compliance with the Water Quality Control Act T.C.A. §§ 69-3-101 et seq. and the regulations of the Board of Water Quality, ~~Oil and Gas, Chapter Control Board~~ 1200-04-03.

(7) All wells shall have the equipment and containers or lined pits necessary to prevent the spillage of oil,

condensate, water, or any other fluids or substances produced or used during any production test. The equipment shall be in place prior to the start of the production test, and shall be large enough to contain any plausible spill.

(8) All wells shall be cleaned into a pit or tank, located at a distance of at least ~~one hundred (~~100~~)~~ feet from any fire hazard or dwellings. ~~(a) If pits are to be used, the sides and bottoms of the pits must be lined with heavy gauge seamless plastic sheets, or other artificial liner approved by the Supervisor. (b)~~ If it seems likely that a pit will overflow, additional pits ~~must~~ shall be constructed, or else tanks ~~must~~ shall be brought in to contain the surplus fluids.

(9) No oil or gas well shall be drilled closer than ~~two hundred (~~200~~)~~ feet from a dwelling or closer than ~~one hundred (~~100~~)~~ feet from a ~~public~~ state highway or county road.

(a) That portion of this regulation concerning distance from a dwelling may be waived by the ~~s~~Supervisor upon submission of a notarized statement by the dwelling owner agreeing to the well location.

(10) No oil or gas well shall be drilled within ~~two hundred (~~200~~)~~ feet of any water well that is in active use. This requirement may be waived by the Supervisor upon submission of a notarized statement from the well owner agreeing to the location of the oil or gas well and a plan identifying the additional measures to be taken to prevent pollution of the water well.

(11) No oil or gas well shall be drilled within ~~one hundred (~~100~~)~~ feet of any stream, lake, or other body of water, so that an undisturbed riparian zone can be maintained, except that this requirement may be waived upon submission of a plan identifying additional measures acceptable to the Supervisor to be taken to prevent pollution of the waters of the State. No oil or gas well shall be drilled within 330 feet of any water body designated as an Outstanding National Resource Water (ONRW).

(12) The siting of wells, pits, or storage facilities in wetlands or in flood-prone areas (as indicated by the observed high water mark) of a stream is prohibited.

~~1040-03-03-.02~~ 0400-53-03-.02 ~~Pollution and Safety Controls~~ Environment

(1) All personnel, including operators and service personnel shall be trained in the prevention of spills and made aware of the consequences of spillage. There shall be a Site Coordinator designated for each well site who ~~will~~ shall be the principle contact for all activities on the location and the responsible party for submitting an action and safety plan for each well site. The action plan shall include contingency measures to mitigate and minimize the risk of failure, spills, or releases due to unplanned events. Site Coordinators shall be certified by completing the Tennessee Site Coordinator Training Course. Equivalent training credentials may be temporarily accepted at the Supervisor's discretion until such time as the course certification can be obtained.

(2) ~~Implement~~ Operators shall implement necessary procedures and safeguards during drilling and completion operations to prevent the uncontrolled flow of oil from wells, including, but not limited to:

(a) Follow reasonable procedures such as cleaning and lubricating pipe threads so that pipe can be made up to proper tightness.

(b) Lay flow and test lines on ground or install adequate supports for crossing streams and drainways with the lines.

(c) At truck loading terminals, provide containers to catch unrecoverable oil at the hose connections, and provide proper maintenance of valves and other equipment. Train personnel to take necessary procedures to prevent spillage.

(d) During completion operations, produce and clean wells into tanks instead of pits if at all possible.

(e) At the same time that any pits or other diversion, transport, or storage facilities are constructed at ground level, dikes, diversion ditches, or other structures shall also be constructed to prevent any surface water from entering the pits or other facilities.

(f) Remove oil, salt water, or other fluids from pits as soon as practical after it has accumulated in them, and dispose of it in such a way that none can enter surface water or ground water, or otherwise adversely affect the environment or threaten public health and safety. Uncontaminated fresh water (free of salt, hydrocarbons or other potential pollutants) produced during drilling operations may be land applied on site.

(g) All pits or other diversion, transport, or storage facilities shall be constructed so that waste fluids do not discharge from them. There shall be no discharge pipe, overflow weir, trickle tube, or any other device allowing any discharge. The operator is responsible for maintaining adequate storage capacity at all times. No pit shall be located so that any part of it, including a dike or diversion structure, is within a horizontal distance of ~~one hundred (~~100~~)~~ feet of the normal high-water line of any stream or lake. All pits shall be lined using a synthetic liner of at least 10 mil thickness. If a rocky or uneven surface is encountered in pit construction, sand or sandy material shall be placed below the liner sufficient to protect the liner from damage. The synthetic liner shall be protected from deterioration, punctures, or other activity that may damage the integrity of the liner. As an alternative, compacted clay liners or other equivalent measures may be used at the discretion of the Supervisor. In areas where groundwater is close enough to the surface that it will be encountered in construction of a pit, pits shall be constructed above ground, or the operator shall use a closed-loop system.

(h) Containment at tanks ~~must~~ shall equal at a minimum the storage capacity of ~~one and one-half (1.5)~~ 1½ times the capacity of the largest tank in the tank battery.

(i) All tanks ~~must~~ shall be maintained to prevent corrosion which can lead to both fluid loss from the vessel and accelerated reduction in its useful life span.

(j) To prevent fire hazard, all tank batteries and tanks shall be kept free of brush or overgrowth within the berm surrounding the tank or tanks.

(k) Dikes and ditches designated in subparagraphs (e) and (g) of this paragraph should be constructed in a manner to accommodate permanent facilities such as pumping units and flow lines.

(l) Provide dikes and/or containment pits at storage tanks upon initial installation where such tanks are so located as to be deemed hazardous. If containment pits are to be used, they should be constructed according to the guidelines set forth in Rule ~~1040-04-01-.07~~ 0400-54-01-.05.

(3) ~~All surface pits must~~ The following additional requirements shall ~~be drained of water~~ apply to mud and ~~back filled with dirt as soon as they are no longer needed for drilling or testing~~ reserve pits.

(a) The operator shall indicate in the drilling application that mud and/or reserve pits are to be constructed. The application shall include at a minimum the size and configuration of the pits, the liner to be used, the type of fluid system and drilling fluids to be used, and the method of disposal of all drilling fluids used at the site.

(b) Mud circulation and reserve pits shall be constructed with a synthetic liner of at least 20 mil thickness, with a 4 inch welded seam overlap, completely covering the pit bottom and inside walls. Other materials and methods used for liner construction must be approved by the Supervisor prior to use.

(c) Mud circulation and reserve pits shall be constructed and operated with a minimum of 2 feet of freeboard, and shall be designed so that only runoff from the immediate work area may enter the pit. Pits constructed above ground with bermed side walls shall be constructed with a minimum of 2:1 side slopes on both interior and exterior walls. The top of the bermed walls must be a minimum of 2 feet wide.

(d) Closed loop systems may be used for mud and circulation, and must be maintained in a leak-free condition.

(4) ~~Implement~~ Operators shall implement prudent production operations to prevent potential oil spills, including, but not limited to:

(a) Connect fill lines to storage tanks so that oil and gas ~~will~~ shall not spray into the atmosphere.

(b) Install "equalizer" lines between adjacent tanks as a safeguard against overflow.

(c) Install oil and gas separators where gas is produced in sufficient quantities to be hazardous.

(d) Pump contaminated unsalable residual oil from storage tanks into an accumulator tank instead of open pits.

(e) Place locks, remove handles, or otherwise secure all valves, so vandals cannot open them to cause spills.

(5) The Supervisor should notify all oil industry related companies, including operators, service companies, drilling contractors, and crude oil gatherers and purchasers of their responsibility and liability in regard to oil spills. In the case of a spill of oil, saltwater, or other drilling or production associated materials, the operator shall contact the Supervisor or his representative within 12 hours upon knowledge of the spill.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-01
Pollution and Safety Controls

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~~1040-04-01-.01~~ 0400-54-01-.01 Operator's Responsibility

Each operator shall so conduct his operations and maintain his equipment as to reduce to a minimum the danger of explosion, fire, or waste.

~~1040-04-01-.02~~ 0400-54-01-.02 Proper Handling of Drilling Foam.

When it becomes necessary to use detergents during air-rotary drilling operations, the foam generated by such activity shall be directed into a containment pit and retained there until it has been degraded to a harmless form.

~~1040-04-01-.03~~ 0400-54-01-.03 Proper Disposal of Waste.

No waste oil, oil field waste, or any other fluid substance shall be discharged to or disposed of in any way into any stream, lake, or other body of water, or into any ditch or surface drainage depression leading to any stream, lake, or other body of water, except in accordance with a discharge permit obtained from the Department ~~of Environment and Conservation~~. No solid waste, including but not limited to contaminated soils at a well site, shall be disposed of except as allowed by the Solid Waste Disposal Control Act T.C.A. §§ 68-211-101 et seq.

Any Naturally Occurring Radioactive Material (NORM) or Technically Enhanced Naturally Occurring Radioactive

Material (TENORM) produced at a well site shall be disposed of in accordance with the Tennessee State Regulations for Protection Against Radiation, Chapter 0400-20-05.

~~1040-04-01-.04~~ 0400-54-01-.04 Removal of Debris.

Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least ~~one hundred (~~100~~)~~ feet from the vicinity of wells, tanks and pump stations.

~~1040-04-01-.05 Pollution Avoidance.~~

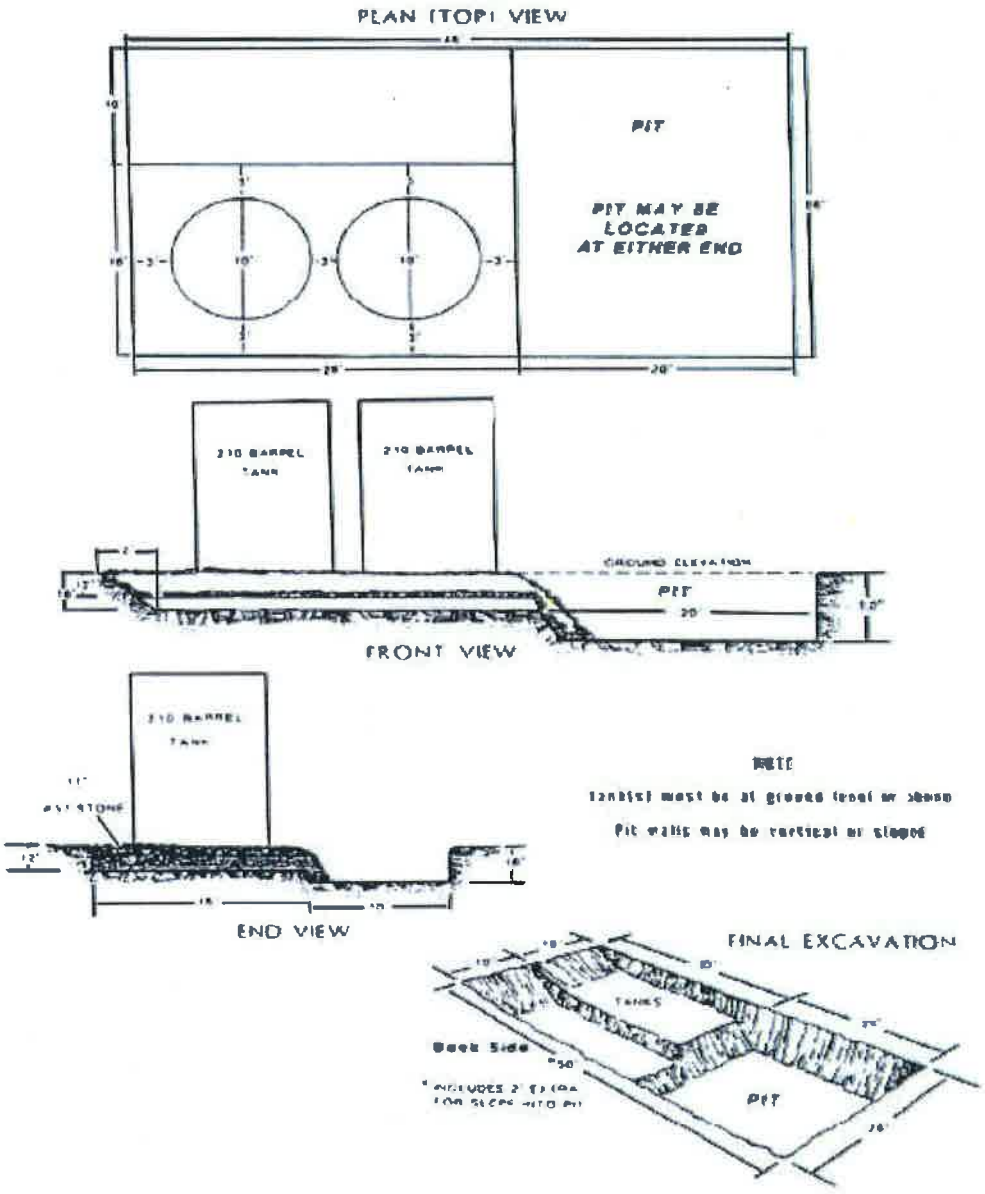
~~All waste shall be burned or disposed of in such a manner as to avoid creating a fire hazard or polluting streams and ground water.~~

~~1040-04-01-.06 Cleaning Pit or Tank.~~

~~All wells shall be cleaned into a lined pit or tank located at a distance of at least one hundred (100) feet from any fire hazards or dwellings~~.

~~1040-04-01-.07~~ 0400-54-01-.05 Containment Pit at Tank Batteries.

A containment pit is required at each permanent oil tank or battery of tanks, and such pits ~~located within corporate limits or where such tanks are less than six hundred (600) feet from any highway or inhabited dwelling, or less than one thousand (1,000) feet from any school or church or within one hundred (100) feet of a stream or where such tanks are so located as to be deemed hazardous by the Supervisor. Tanks not falling in the aforementioned categories must~~ shall be surrounded by a retaining wall or suitably ditched to a collecting sump, each of sufficient capacity and construction to contain potential spillage. Tank batteries shall not be located closer than 100 feet from any state highway or county road.



~~1040-04-01-.08~~ 0400-54-01-.06 Vents Required.

All storage facilities ~~must~~ shall be vented.

~~1040-04-01-.09~~ 0400-54-01-.07 Improper Loading.

Oil transporters and producers ~~will~~ shall not load oil from oil storage facilities into vehicles parked on public roads.

~~1040-04-01-.10~~ 0400-54-01-.08 Gathering Lines.

All gathering lines shall be buried beneath the surface wherever no blasting is required, and ~~must~~ shall be steel or weather resistant black plastic wherever outcropping, resistant rock makes it necessary to lay the pipe on top of the ground. Lines crossing streams, rivers, intermittent streams or other drainways shall be constructed in such a fashion as to bridge the drainage features and protect the gathering lines from damage due to lack of adequate support. Failure of support may result in rupture of or discharge from the line. If the line is to be installed below the stream bed or below ground level and ~~will~~ shall cross state waters an Aquatic Resources Alteration Permit

~~must~~ shall be obtained prior to the activity occurring. Burial is not required, however, in those instances where this would conflict with the Natural Gas Pipeline Safety Act ~~(published in the Federal Register, Volume 35, No 161, Part II, August 19, 1970)~~ and rules at 49 CFR Part 192.

~~1040-04-01-.11~~ 0400-54-01-.09 Improper Casing.

All producing wells that are not properly cased and/or cemented ~~must~~ shall cease production. The operator is required to perform corrective work before production can be resumed.

~~1040-04-01-.12~~ 0400-54-01-.10 Disposal of Salt Water.

(1) Underground injection is the preferred form of disposal of salt water, provided, however, that such injection is permitted by appropriate State and Federal agencies.

(2) Produced salt water may either be injected into a subsurface formation(s) productive of hydrocarbons, if part of an approved secondary recovery project, into a subsurface formation(s) not productive of hydrocarbons, if through an approved salt water disposal well, or else may be transported off-lease to an authorized salt water disposal facility if prior approval has been granted by the Department.

(3) Produced salt water shall not be put in any unlined pit, pond, lake or depression, or in any other place in a manner that ~~will~~ shall constitute a pollution hazard to the waters of the State including ground water.

(4) No salt water or fracturing liquids shall be discharged to or disposed of at the land surface where ~~it~~ they can enter surface water or ground water, unless such discharge is permitted by appropriate State and Federal agencies. Salt water or fracturing liquids discharged to and temporarily stored in lined pits shall be removed before ~~it~~ they can leak into underground water.

(5) All pits or ditches used for temporary storage or transport of salt water shall be lined with an impermeable man-made liner in accordance with the liner requirements specified in subparagraph (2)(g) of Rule 0400-53-03-.02.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-02
Procedures and Equipment for Metering, Measuring and Producing Oil Condensate and Gas

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~~1040-04-02-.01~~ 0400-54-02-.01 Gas/Oil Ratios Equipment

All leases are to be so equipped as to permit the determination of gas/oil ratios on individual flowing and gas-lift wells. Gas/oil ratio data on all wells shall be available to the Supervisor at all times.

~~1040-04-02-.02~~ 0400-54-02-.02 Gauging.

Each lease shall be provided with sufficient tankage and/or meters to permit proper gauging of the oil/condensate and gas produced. The tanks or meters ~~must~~ shall be identified by a sign showing the ownership of the tanks or meters and the name of the lease from which the oil/condensate or gas is being produced. In no case shall meters be the sole means of measuring oil runs from any field. There ~~must~~ shall be used at least one gauge tank to check the readings of oil and condensate meters.

~~1040-04-02-.03~~ 0400-54-02-.03 Testing.

All oil tendered to any transportation system shall be gauged and tested for Basic ~~S. & W.~~ Sediment and Water and temperature. For each and every transfer of oil from the lease tanks the number of the "on-seal" observed temperature and the percent of Basic ~~S. & W.~~ Sediment and Water shall be recorded on each and every run ticket, and the producer and purchaser of any transfer of oil from lease tanks shall receive a copy of the run or delivery ticket or tickets.

~~1040-04-02-.04~~ 0400-54-02-.04 Improper Transfer.

There shall not be any simultaneous movement of oil into and out of any tank that is being used for delivering oil to a gatherer or transporter. Transfer of oil or gas from the possession of one lease to the possession of another lease, except when properly accounted for, is hereby prohibited. The possession of improper mechanical means for transferring oil from one lease tank or well to the lease tank or well of another lease is hereby prohibited.

~~1040-04-02-.05~~ 0400-54-02-.05 Lease Tank Outlets.

All pipeline outlets from lease tanks shall be kept sealed at all times except when a pipeline is being made from the tank, and the number of the "on-seal" and "off-seal" shall be recorded on each and every run ticket. Additionally, all pipeline outlets from lease tanks shall be made secure to prevent the unauthorized discharge or transfer of oil.

~~1040-04-02-.06~~ 0400-54-02-.06 Bleed-Off Lines.

Basic ~~S. & W.~~ Sediment and Water bleed-off lines of lease tanks shall be sealed or locked at the time any pipeline run is being made.

~~1040-04-02-.07~~ 0400-54-02-.07 Commingling Prohibited.

Oil produced from separately owned leases, not pooled, unitized, or consolidated shall not be commingled in lease tanks except as hereinafter provided for in ~~this order~~ Chapter 0400-54-05.

~~1040-04-02-.08~~ 0400-54-02-.08 Required Test Lines.

Reserved.

~~1040-04-02-.09~~ 0400-54-02-.09 Reserved

~~1040-04-02-.10~~ 0400-54-02-.10 Reserved.

~~1040-04-02-.11~~ 0400-54-02-.11 Reserved.

~~1040-04-02-.12~~ 0400-54-02-.12 Reserved.

~~1040-04-02-.13~~ 0400-54-02-.13 Basic Orifice Coefficients.

Basic orifice coefficients used in the calculation of gas flow shall be those contained in the American Gas Association's Gas Measurement Committee Report No. 3 or some other basic orifice coefficients generally accepted in the industry and approved by the Supervisor, such as those published by the Foxboro Company, American Meter Company, and Pittsburg Equitable Meter Company. Corrections for base pressure and base temperature shall be made. Corrections for supercompressibility are recommended when available. Corrections

for Reynolds number and expansion factor are recommended only in cases where their combined correction is equal to or exceeds ~~one percent (~~1%~~)~~.

~~1040-04-02-.14~~ 0400-54-02-.14 Pilot Tubes.

Gas measurements with Pilot Tubes shall be based on Reid's formula and shall follow recommendations similar to those set forth in Appendix 4 of the Bureau of Mines Monograph 7. Corrections for base pressure and base temperature shall be made as in orifice measurements.

~~1040-04-02-.15~~ 0400-54-02-.15 Gas Measurements.

Gas measurements with orifice well tests shall follow recommendations similar to those set forth in Bulletin No. E-7 of the American Meter Company. Corrections for base pressure and base temperature and gravity shall be made as in orifice measurements.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-03
Requirements for Reporting the Volume and Disposition of Oil and Gas Produced

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~~1040-04-03-.01~~ 0400-54-03-.01 Time Reports

The length of time reports and other pertinent data, covered by this ~~section~~ chapter, shall be kept on file by the operators and available for inspection by the Supervisor or members of his staff, for not less than a period of ~~three (3)~~ years.

~~1040-04-03-.02~~ 0400-54-03-.02 Month Defined.

A "month" and "calendar month" shall mean the interval of time from 7:00 a.m. on the first day of any month of the calendar to 7:00 a.m. of the first day of the next succeeding month of the calendar.

~~1040-04-03-.03~~ 0400-54-03-.03 Reserved.

~~1040-04-03-.04~~ 0400-54-03-.04 Reserved.

~~1040-04-03-.05~~ 0400-54-03-.05 Reporting-Producers.

Each producer of oil and such producer of condensate from a gas well, where produced in liquid form at the wellhead by ordinary production methods or as Calculated Theoretical Condensate, defined as the amount of condensate (allocated back to lease) that normally would be separated by conventional methods from natural gas well volumes flowing full stream directly to a plant without any condensate separation having been made at lease or a plant, shall furnish for each year an Annual Well Report (Form CN-1272) pursuant to Rule ~~1040-02-10-.06~~

0400-52-10-.06 setting forth complete information and data indicated by such reports respecting oil produced from every lease operated by said producer and respecting condensate produced from gas wells at the wellhead in liquid form by ordinary production methods from each lease operated by said producer.

~~1040-04-03-.06~~ 0400-54-03-.06 Monthly Reporting-Transporters.

Each transporter of oil and condensate shall furnish for such calendar month a Transporter's and Storer's Monthly Report for Crude Oil and/or Condensate (Form ~~R-MP-2~~ CN-0229) containing complete information and data indicated by such form including the quantity of oil removed from each lease and permit numbers of producing wells on each lease.

~~1040-04-03-.07~~ 0400-54-03-.07 Reserved.

~~1040-04-03-.08~~ 0400-54-03-.08 Report Filing.

The transporter's and storer's reports for each month shall be prepared and filed according to instructions on the form, on or before the ~~twenty-fifth (~~25th~~)~~ day of the next succeeding month.

~~1040-04-03-.09~~ 0400-54-03-.09 Computing Method.

All quantities included in the reports provided for in this chapter shall be reported in barrels computed from ~~one hundred percent (~~100%~~)~~ tank tables and based upon actual physical gauges.

~~1040-04-03-.10~~ 0400-54-03-.10 Report Verification.

All reports provided for in this chapter shall be verified by affidavit in the form or forms indicated; any reports not so verified shall not be taken as filed in compliance with this chapter.

~~1040-04-03-.11~~ 0400-54-03-.11 Monthly Report-Gas.

All gas produced within the State of Tennessee, excepting gas vented from stripper wells, shall be reported on the Annual Well Report (Form CN-1272) and Monthly Gatherer's and/or Transporters Natural Gas Report (Form ~~R-MP-5~~ CN-0244). Every producer shall complete the Annual Well Report (Form CN-1272) pursuant to ~~1040-02-10-.06~~ Rule 0400-52-10-.06. Every transporter shall complete Form ~~R-MP-5~~ CN-0244. The transporter thus required to report, shall execute under oath and file in the manner hereafter directed on or before the last day of each month, Form ~~R-MP-5~~ CN-0244, setting forth fully the data and information indicated by such form, which shall be completed as to data covering the calendar month next preceding the date of filing.

~~1040-04-03-.12~~ 0400-54-03-.12 Monthly Report-Plant.

Each operator of a gasoline plant, cycling plant, or any other plant at which gasoline, butane, propane, condensate, kerosene, oil or other liquid products are extracted from natural gas, shall be furnished for each calendar month ~~a Monthly Gasoline and/or Cycling Plant Report (Form R-MP-6) containing the information indicated by such form respecting natural gas and products involved in the operation of each plant during each month~~. Such report for each month shall be prepared and filed ~~according to instructions on the form~~ on or before the last day of each month.

~~1040-04-03-.13~~ 0400-54-03-.13 Report-Gas Gatherers.

Gas gatherers shall report the amounts of gas handled and disposed of on Monthly Producers Natural Gas Report (Form ~~R-MP-4~~ CN-0239). The gas which he has produced in the field shall be reported on Form ~~R-MP-4~~ CN-0239, under the section of the report entitled "Production." The gas gathered in the same field along with gas which he has gathered in nearby fields and transported to that field shall be reported on the same form, under the section entitled "Acquisitions." He shall indicate in this section the company from whom the gas was received, the field from which this gas was produced, and the amount of gas received. In the event the gatherer has produced no gas in the field from which he is gathering, then he shall indicate in the Production Section of Form ~~R-MP-4~~ CN-0239 that he has no gas production. His acquisition in that field shall be listed in the Acquisitions section.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-04
Ratable Take

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0400-54-04-.01 Taking Oil and Gas Ratably

~~1040-04-04-.01~~ 0400-54-04-.01 Taking Oil and Gas Ratably

(1) It is required that oil and gas be taken ratably from wells producing from a common pool. The application of vacuum at the wellhead of a well, or upon any gas or oil-bearing reservoir is prohibited, except on application, notice and hearing. A copy of the application and notice of hearing shall be mailed by certified mail to each offset operator within ~~five (5)~~ days after the application is filed. Wherever authority is granted to impose a vacuum, a continuous record thereof shall be kept by the operator as required by the order authorizing same. The record shall be made available to the Board on request. Should any operator, or a person with financial interest feel that oil and gas is not being taken ratably from well or wells in which he participates, then he may make that fact known through application for a public hearing and present and exhibit appropriate technical data to demonstrate such positions to the ~~Oil and Gas~~ Board. A decision ~~will~~ shall be made by the Board provided the applicant complies with the rule governing said hearings.

(2) At a minimum, consideration of approval for use of a vacuum pump ~~must~~ shall include the following:

(a) A comprehensive presentation of the information pertinent to the request;

(b) Well histories of the well in question and surrounding wells;

(c) Electronic logs, if available, for each well;

(d) 7½ minute topographic quadrangle maps indicating the location of each well within one mile of the well site;

(e) A property map of the same area showing the surface owners, and mineral lease holders on surrounding properties; and

(f) A copy of a signed document, from each interested party, i.e., surrounding landowners and lease holders, stating that they have no objection to the well in question being pulled on a vacuum.

(3) Subparagraph (2)(f) of ~~paragraph (2)~~ this rule may be waived if the gas that is pulled from the well is re-injected back into the same reservoir(s) as it is pulled from as a secondary recovery operation.

(4) All requests made to the ~~Oil and Gas~~ Board shall include the requirements of paragraph (2) of this rule.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-05
Commingling and Automatic Custody Transfer of Hydrocarbons

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0400-54-05-.01 Permission to Commingle
0400-54-05-.02 Notice Publication
0400-54-05-.03 Granting Permission
0400-54-05-.04 Meter Calibrations
0400-54-05-.05 Operational Limitations
0400-54-05-.06 By-Pass Lines
0400-54-05-.07 ~~Test for GPM~~ Reserved
0400-54-05-.08 Retention of Reports

~~1040-04-05-.01~~ 0400-54-05-.01 Permission to Commingle.

Permission to commingle gas and/or liquid hydrocarbons and to measure and transfer custody of liquid hydrocarbons by use of methods other than customary gauge tanks may be obtained without the necessity of a public hearing, in the absence of protest, as hereinafter provided, and upon strict compliance with the procedure set forth herein.

(1) Detailed schematic diagram of the mechanical installation to be used with adequate explanation of the flow of gas and/or liquid hydrocarbons and indicating locations of locking devices and seals to provide assurance against, or evidence of, tampering.

(2) Statement by the producer that in his opinion the use of the proposed method ~~will~~ shall provide reasonably accurate measurement and ~~will~~ shall not create inequities.

(3) A list of all known interested parties, including operators and royalty owners, affected by the application.

~~1040-04-05-.02~~ 0400-54-05-.02 Notice Publication.

Notice of the filing of an application for projects applicable to this ~~section~~ chapter shall be published in a newspaper of general circulation in the county wherein the field is located.

~~1040-04-05-.03~~ 0400-54-05-.03 Granting Permission.

Upon the basis of application as herein provided, no permission for projects applicable to this ~~section will~~ chapter shall be granted if, in the judgment of the Supervisor, the data and information submitted does not warrant the approval of the application or if any party protests the application by filing written protest with the Supervisor within ~~fifteen (~~15~~)~~ days following the first publications of the notice of the application; however, in either of the foregoing events, the application may be set for public hearing at the election of the applicant or the Supervisor.

~~1040-04-05-.04~~ 0400-54-05-.04 Meter Calibrations.

The applicant shall provide a suitable means of calibrating each meter used for measurement of hydrocarbons in order that its accuracy in operation can be proven, such calibration to be done before or at the time the meter is initially installed and at such intervals or other times as the Supervisor or his ~~agent~~ representative shall, after consideration of the inherent characteristics of the particular equipment, deem proper. The results of all meter calibrations required by this order shall be certified as being true and correct by the party performing the calibration. These results shall be available upon request to the Supervisor or his ~~duly authorized~~ representative.

~~1040-04-05-.05~~ 0400-54-05-.05 Operational Limitations.

The approved custody transfer or commingling installation shall be permitted to operate so as to transfer or commingle, as produced, the hydrocarbons produced from the well or wells served by such installation. The limitations on the operation of such installation are as follows:

(1) The daily production rate from any well or wells ~~must~~ shall not cause waste.

(2) Unless otherwise permitted, no production from a well in a prorated pool in excess of the total monthly allowable may be transferred during a calendar month.

(3) The production from any given well in any one day shall not be increased more than ~~twenty-five percent (~~25%~~)~~ of the legally permissible hydrocarbon production from such well or wells.

~~1040-04-05-.06~~ 0400-54-05-.06 By-Pass Lines.

Permission, in writing, from the Supervisor ~~must~~ shall be obtained for all by-pass lines or other lines that ~~will~~ shall permit flow around the regular meter, and each such line ~~must~~ shall have a meter that ~~will~~ shall permit individual well measurement.

~~1040-04-05-.07~~ 0400-54-05-.07 ~~Test for GPM.~~ Reserved

~~Should the application be for the approval of the use of well tests, split stream tests, full stream tests, or other~~

~~methods of determining GPM of the full well stream test or other method of determining GPM of the full well stream in lieu of gauge tanks and should the application for same be approved, such testing shall be done at least monthly. Applications of this nature shall only be approved when the applicant files with the sSupervisor an executed copy of an agreement in which all royalty and working interest owners in the leases affected have voluntarily agreed to the proposal.~~

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

~~1040-04-05-.08~~ 0400-54-05-.08 Retention of Reports.

Should approval be given, the applicant shall indicate in the "Remarks" column on the current ~~R-MP-1 and R-MP-4~~ CN-0239 form~~s~~ that appropriate well tests have been conducted. The applicant shall retain the actual reports of such tests and such reports shall be kept on file, and available for inspection by the Supervisor or any party at interest for a period of not less than ~~three (~~3~~)~~ years.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-06
Limiting Production

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0400-54-06-.01 Prorating a Pool

~~1040-04-06-.01~~ 0400-54-06-.01 Prorating a Pool

The ~~Oil and Gas~~ Board, after public hearing, may prorate a pool for the purpose of protecting correlative rights and to minimize the waste of oil and/or gas. Prior to prorating a pool, its wells may be shut-in until subparagraph (1)(h) of Rule ~~1040-02-04-.01~~ 0400-52-04-.01 is complied with, or in lieu thereof, a poolwide unit is established.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-07
Regulating High Gas/Oil Ratio Wells and Preventing Waste of Gas

Table of Contents

0400-54-07-.01 Classification
0400-54-07-.02 Escaping Gas
0400-54-07-.03 Unitization
0400-54-07-.04 Wells Regulated
0400-54-07-.05 Gas-Lifted Wells
0400-54-07-.06 Application of Rules

~~1040-04-07-.01~~ 0400-54-07-.01 Classification.

An oil well with a gas/oil ratio in excess of ~~two thousand (~~2,000~~)~~ cubic feet of gas per barrel of oil (2,000:1) shall be considered a high gas/oil ratio well and may be limited by the Supervisor in the amount of gas permissible to produce.

~~1040-04-07-.02~~ 0400-54-07-.02 Escaping Gas.

No gas shall be flared or permitted to escape into the atmosphere, but ~~will~~ shall not be utilized without waste, except upon approval of the Supervisor or where special orders are operative. If necessary to prevent undue waste of gas or dissipation of reservoir energy, the ~~Oil and Gas~~ Board may limit venting of gas.

~~1040-04-07-.03~~ 0400-54-07-.03 Unitization.

An attempt shall be made to unitize all pools, or reservoir, with high gas/oil ratios.

~~1040-04-07-.04~~ 0400-54-07-.04 Wells Regulated.

Production from wells in pools or reservoirs that have both oil and gas production shall be regulated by the rules of this ~~Chapter~~ chapter.

~~1040-04-07-.05~~ 0400-54-07-.05 Gas-Lifted Wells.

Wells that are gas-lifted with gas from gas wells shall be prorated in the same manner as are high-ratio naturally flowing oil wells after subtracting the input gas from the output gas. The uneconomical or unreasonable use of gas for gas-lifting ~~will~~ shall not be permitted.

~~1040-04-07-.06~~ 0400-54-07-.06 Application of Rules.

If gas is produced from an oil reservoir or common source of supply and is returned to the same source, only gas not returned or utilized for lease or unit operations shall be considered in applying the rules of this ~~Chapter~~ chapter.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-08
Subterranean Gas Storage

Table of Contents

0400-54-08-.01 Conditioned Usage

~~1040-04-08-.01~~ 0400-54-08-.01 Conditioned Usage.

Application for usage of subterranean reservoirs for gas storage ~~must~~ shall be submitted to the ~~Oil and Gas~~ Board. The Board may, after public hearing, grant the applicant's request conditioned as follows:

(1) That the underground reservoir sought to be used for the injection, storage and withdrawal of natural gas is suitable and feasible for such use, provided no reservoir, any part of which is producing or is capable of producing oil and gas in paying quantities, shall be subject to such use, unless all owners in such underground reservoir shall have agreed thereto in writing; or

(2) Unless such reservoir has a greater value or utility as an underground reservoir for gas storage than for the production of the remaining volumes of original reservoir natural gas and condensate, and all owners, in interest shall have consented to such use in writing; and

(3) That the use of the underground reservoir for the storage of natural gas ~~will~~ shall not contaminate other formations containing fresh water, oil, gas, or other commercial mineral deposits; and

(4) That the proposed storage shall not endanger lives or property; and

(5) That the storage reservoir may be drilled through, in a prudent manner, for the purpose of exploration for, or producing, underlying oil and/or gas pools.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-54-09
Pressure Maintenance Projects and Secondary Recovery

Table of Contents

0400-54-09-.01 Application

0400-54-09-.02 Administrative Approval
0400-54-09-.03 Approval by Special Order
0400-54-09-.04 Poolwide Unit-Formation
0400-54-09-.05 Casing and Sealing Wells
0400-54-09-.06 Input Well Procedure
0400-54-09-.07 Pro-rata Payment
0400-54-09-.08 Application for Hearing

~~1040-04-09-.01~~ 0400-54-09-.01 Application.

Any person desiring to institute secondary recovery or pressure maintenance projects ~~must~~ shall apply to the Supervisor by letter setting forth the request, and submit a Pressure Maintenance and Secondary Recovery Questionnaire (Form ~~Q-PMSR~~ CN-0141).

~~1040-04-09-.02~~ 0400-54-09-.02 Administrative Approval.

If the common source of supply, for which such operations are to be instituted, lies within a single lease, or all interested parties voluntarily agree, the project may administratively be approved by the Supervisor.

~~1040-04-09-.03~~ 0400-54-09-.03 Approval by Special Order.

All other categories of secondary recovery and pressure maintenance projects ~~must~~ shall be approved by special order, after a public hearing and by determination of the ~~Oil and Gas~~ Board that waste ~~will~~ shall be prevented and the unit operation ~~will~~ shall increase ultimate recovery; that the unit operation is feasible; that each owner ~~will~~ shall receive his just and equitable share; and that ~~fifty percent (~~50%~~)~~ or more of the owners have approved the unit operation.

~~1040-04-09-.04~~ 0400-54-09-.04 Poolwide Unit-Formation.

When the common source of supply is not restricted to a single lease, a poolwide unit ~~must~~ shall be formed prior to the Oil and Gas Board granting approval for secondary recovery and pressure maintenance projects.

~~1040-04-09-.05~~ 0400-54-09-.05 Casing and Sealing Wells.

Wells drilled or reworked for use in the injection of fluids or gases shall be adequately cased and sealed to prevent injection or migration of injected substances into any strata or stratum other than the objective.

~~1040-04-09-.06~~ 0400-54-09-.06 Input Well Procedure.

The drilling and plugging of any input well shall follow the same procedure that is employed in drilling or plugging oil and gas wells.

~~1040-04-09-.07~~ 0400-54-09-.07 Pro-rata Payment.

The owners of working interest in secondary recovery and pressure projects are required to pay their pro-rata share of the cost of equipping and operating said project. If any working interest owner fails to tender this just and reasonable share of costs, the Board may provide that the operator shall withhold all proceeds and be reimbursed for the non-participating owner's share of the proceeds to the extent of ~~one hundred fifty percent (~~150%~~)~~ to ~~two hundred percent (~~200%~~)~~ of the amount advanced.

~~1040-04-09-.08~~ 0400-54-09-.08 Application for Hearing.

Any owner may apply for a hearing before the ~~Oil and Gas~~ Board to obtain relief from unjust and unreasonable costs assessed by the project operation, provided he shows that he has either conferred or attempted to confer with the operator for the purpose of settling the dispute prior to making application to the Board.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

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0400-55-01-.01 Unit Operation
0400-55-01-.02 Drilling and Production Units
0400-55-01-.03 Poolwide Units

~~1040-05-01-.01~~ 0400-55-01-.01 Unit Operation.

(1) Unit operations shall be ordered by the Board only after notice and hearing and shall be based on findings that:

(a) The order is reasonably necessary to conserve the natural resources of the State; ~~will~~ shall prevent waste of oil and gas, and the drilling of an unnecessary well or wells; ~~will~~ shall appreciably increase the ultimate recovery of oil and gas from the affected pool; is economically feasible; and ~~will~~ shall protect correlative rights of both landowners and owners of mineral rights.

(b) The order ~~will~~ shall provide for the allocation to each separate tract within the unit a proportionate share of the unit production, thereby ~~insuring~~ ensuring the recovery by the owners of that tract their just and equitable share of recoverable oil or gas in the unit.

(c) The order ~~will~~ shall provide the designation of a unit operator, but only with the consent of the designated person, and approve the terms and plans of the unit operating agreement in the absence of a voluntary agreement among the owners.

(d) The order shall make provision for the proportionate allocation of cost to the producers, which allocation shall be in the same proportion that the separately owned tracts share in unit production. The cost of capital investment in wells and physical equipment and intangible drilling cost shall be shared in like proportion, provided that no such producer or owner who has not consented to the unitization shall be required to contribute to the cost or expenses of the unit operation, or to the cost of capital investment in wells and physical equipment and intangible drilling cost, except out of proceeds of production accruing to the interest of such owners out of production from such unit operation. However, no well costs credit allowable shall be adjusted on the basis of less than the average well costs within the unitized area. If any producer or owner fails to tender his just and reasonable share of cost, the Board may provide that the operator shall withhold and be reimbursed for the non-participant's share of cost of the proceeds to the extent of ~~three hundred fifty percent (~~350%~~)~~ of the amount advanced.

(e) It is provided, however, that the order requiring unit operation shall not vary nor alter any of the terms of the required written contract or contracts evidencing approval nor impose any terms or operations upon the nonsigners of said contract or contracts more onerous than the terms and operations set out in said contract or contracts.

(f) The order ~~will~~ shall provide for the forced integration of separately owned tracts and other property ownership into drilling, production, or pool units. Continuous operations incident to the drilling of a well upon any portion of a unit shall be deemed, for all purposes, the conduct of such operations upon each separately owned tract in the unit. That portion of the production allocated to each separately owned tract included in a unit shall, when produced, be deemed for all purposes to have been actually produced from such tract by a well drilled thereon.

~~1040-05-01-.02~~ 0400-55-01-.02 Drilling and Production Units.

(1) Any owner with interest in a tract of land offsetting production and who cannot comply with the spacing rules for drilling a well on said tract may make application for a hearing before the ~~Oil and Gas~~ Board for the purpose of having the tract, or a portion thereof, included in a production unit.

(2) Drilling and production unit wells shall comply with the rules on spacing between wells and distance from property lines as prescribed in ~~Chapter 1040-02-01 through 1040-02-12~~ Chapters 0400-52-01 through 0400-52-12.

(3) The shape and pattern of production and drilling units should be designed to permit the attendant unit well to economically, efficiently and equitably drain the unit's pro-rata share of the pool's oil and/or gas, and shall be based on available geologic and engineering parameters. Length of any drilling unit shall not exceed twice its width.

~~1040-05-01-.03~~ 0400-55-01-.03 Poolwide Units

(1) Poolwide units may be formed on a volumetric or surface area basis provided that sufficient data are available to determine the geometry and to define the physical characteristics of the reservoir.

(2) Drilling, production, or poolwide units can only be revised by the ~~Oil and Gas~~ Board if new pertinent geological or engineering evidence becomes available which was not in existence at the time a unit was formed.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-56-01
Hearings and Administrative Approval

Table of Contents

0400-56-01-.01 Hearings
0400-56-01-.02 Administrative Approval

~~1040-06-01-.01~~ 0400-56-01-.01 Hearings.

(1) Public hearings, after legal notice, shall be held by the Board as needed by the Board to implement its responsibility and upon applications made for such hearings. A notice of public hearing as provided by T.C.A. § 60-1-204 shall be given by publishing ~~one (~~1~~)~~ notice of the time and place thereof in at least ~~three (~~3~~)~~ newspapers of general circulation in at least ~~three (~~3~~)~~ major cities in Tennessee, and such notice shall be published at least ~~ten (~~10~~)~~ days prior to the date of such hearing. Applicant ~~must~~ shall pay the cost incurred in publishing legal notices. The time and place for each public hearing shall be fixed by the Board as soon as reasonably possible and each public hearing ~~will~~ shall be conducted by the Board. If more than one hearing is to be held on a particular date, the Board conducting the hearings shall determine the order in which they ~~will~~ shall be held.

(2) The applicant ~~will~~ shall open the hearing and present the testimony and exhibits offered in support of the application. The applicant's witnesses ~~will~~ shall then be subject to cross-examination by the Board and by any person with an interest in the subject matter of the application. The Board shall determine the order of appearance of the other participants in the hearing.

(3) Each person having an interest in the subject matter of the application and who has complied with the rules and procedures may present testimony and exhibits in support of or in opposition to the applicant. All witnesses shall be subject to cross-examination as set forth ~~above~~ in paragraph (2) of this rule.

(4) The applicant may offer rebuttal testimony and exhibits, but the witness ~~will~~ shall again be subject to cross-examination. Surrebuttal testimony and exhibits and subsequent testimony and exhibits may be permitted at the discretion of the person conducting the hearing.

(5) All witnesses shall testify under oath.

(6) Closing statements and statements of position may be made by the participants and all other interested parties before the hearing is closed or at such time as designated by the Board.

(7) The Supervisor shall record each hearing showing appearances, testimony and exhibits, statements, and all other records submitted at the hearing.

~~1040-06-01-.02~~ 0400-56-01-.02 Administrative Approval.

(1) Administrative approval of certain matters of a routine nature may be granted by the Supervisor upon submission of an application showing all pertinent information and data and after due notice is given to all operators of interest.

(a) The application shall be made to the Supervisor with a copy to each known offset lease owner and such application shall include:

1. statement of reason and justification for requested relief,

2. map or sketch illustrating the information pertinent to the request relief,

3. list of names and addresses of all interested persons notified of the application.

(b) If the application meets with the approval of the Supervisor and no written protest is received by the Supervisor within ~~fifteen (~~15~~)~~ days following prescribed notice of the application, the Supervisor may grant the requested relief without the necessity of a public hearing.

(c) If the application is accompanied by a written waiver from all known offset lease owners, the ~~fifteen (~~15~~)~~ day delay ~~will~~ shall be unnecessary.

(d) If the Supervisor does not elect to approve the application administratively or if written protest is received within the ~~fifteen (~~15~~)~~ day period, the application may be set for public hearing.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-56-02
Rules of Procedure for Hearing Contested Cases

For Rules of Procedure for Hearing Contested Cases see Rules of the Secretary of State, Chapter 1360-04-01.

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-57-01
List of Forms

Table of Contents

0400-57-01-.01 Report and Permit Forms

~~1040-07-01-.01~~ 0400-57-01-.01 Report and Permit Forms.

(1) The report and permit forms designated below may be obtained from the ~~State Oil and Gas~~ Board, 401 Church St., Nashville, TN 37243-1534, and are hereby adopted and made a part of the rules set out in ~~Chapter 1040-01-01 through Chapter 1040-07-01~~ Chapters 0400-51-01 through 0400-57-01:

(a) Application to Amend Well Permit (Form ~~P-AD-2~~ CN-0228)

(b) Application to Change Operators (Form ~~P-AD-3~~ CN-0237)

(c) Application for Permit to Drill (Form ~~P-AD-1~~ CN-0211)

~~(d) Authority to Drill, Deepen, or Reopen a Well (Form P)~~

~~(e)~~(d) Gas Well Deliverability Tests (Form R-DT-1)

~~(f)~~(e) Monthly Gatherer's and/or Transporter's Natural Gas Report (Form ~~R-MP-5~~ CN-0244)

~~(g)~~(f) Organization Report (Form ~~R-O-1~~ CN-0219)

~~(h) Periodic GPM Test Report (Form R-GPM-1)~~

~~(i)~~(g) Plug and Abandon Report (Form ~~R-P&A-1~~ CN-0217)

~~(j)~~(h) Pooling Affidavit (Form ~~PA~~ CN-0690)

~~(k)~~(i) Pressure Maintenance and Secondary Recovery Questionnaire (Form ~~Q-PMSR~~ CN-0141)

~~(l)~~(j) Statement of No Objection to Proposed Surface Disturbance (Form ~~NO~~ CN-0691)

~~(m)~~(k) Surface Owners Notification Certification (Form ~~NC~~ CN-0694)

~~(n)~~(l) Transporter's and Storer's Monthly Report for Crude Oil and/or Condensate (Form ~~R-MP-2~~ CN-0229)

~~(o)~~(m) Well History, Work Summary, and Completion or Recompletion Report (Form ~~R-WH-1~~ CN-0221)

~~(p)~~(n) ~~Irrevocable Standby Letter of Credit Format~~ Comprehensive Bond Identification (Form ~~ILC~~ CN-0120)

Authority: T.C.A §§ 60-1-201 et seq., and 4-5-201 et seq.

Chapter 0400-58-01
Determinations Under Federal Natural Gas Policy Act of 1978

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~~1040-08-01-.01~~ 0400-58-01-.01 Definitions.

(1) "F.E.R.C." means the Federal Energy Regulatory Commission.

(2) "F.E.R.C. Rules" means rules or regulations adopted by F.E.R.C. implementing the NGPA.

(3) "NGPA" means the Natural Gas Policy Act of 1978 enacted by the United States Congress on November 9, 1978, and as that Act may subsequently be amended, supplemented, or superseded by subsequent legislation by Congress.

(4) "Application" shall mean a written request for status determination in accordance with Rule ~~1040-08-01-.03~~ 0400-58-01-.03 herein and shall also mean "petition" within the meaning of other rules, regulations, and orders by the Board, when applied to NGPA status determination proceedings by the Board.

(5) "Sections 102, 103, 107, and 108" or reference to any one or more of those sections shall mean and be in reference to those sections of the NGPA.

~~1040-08-01-.02~~ 0400-58-01-.02 Applicability of Other Rules.

Except where the same conflict with these rules pertaining to NGPA Determinations, F.E.R.C. rules, or the NGPA, all other rules, regulations, and orders of the Board are applicable thereto.

~~1040-08-01-.03~~ 0400-58-01-.03 Application and Filing Procedure.

Any interested person requesting the classification of a gas well under Sections 102, 103, 107 or 108 by the Board pursuant to the authority granted to the Board by Section 503 of the NGPA, in order to determine the applicable status for such wells, shall initiate such determination by:

(1) Filing with the Board NGPA Form No 121.

(2) Filing with the Board Forms TGP 102, TGP 103, TGP 107 or TGP 108, whichever is appropriate.

(3) Filing with the Board all forms, information, plats, exhibits, affidavits, documents, and evidence required by Part 274 of the F.E.R.C. rules, and other applicable ~~F.F.R.C.~~ F.E.R.C. rules, and required by these rules herein, and by ~~Oil and Gas~~ Board Forms TGP 102, 103, 107 and 108.

(4) Attesting to the application in the manner required by Section 274 and other applicable rules of the F.E.R.C. rules for such filings.

(5) Paying a fee of twenty-five dollars ($25~~.00~~) to the State of Tennessee through the Supervisor for each application filed. Checks should be made payable to the State of Tennessee ~~Oil and Gas Board~~.

~~1040-08-01-.04~~ 0400-58-01-.04 Evidence by Affidavit.

Applications may be considered and determined by the Board on the basis of information contained in the application provided such application complies with all other rules herein. If there are no objections to the applications by any interested parties, the Board may consider and act on sworn affidavits, as well as exhibits, forms and other matters filed with the Board and constituting a part of the record of the hearing of the application. If confidentiality applies (~~Oil and Gas Board~~ Rule ~~1040-02-10-.05~~ 0400-52-10-.05) to any items submitted as evidence, a separate letter identifying the items and giving the period of confidentiality should be included with the application.

~~1040-08-01-.05~~ 0400-58-01-.05 Intervention.

Any person may intervene in an application and become a proponent or opponent of any application.

~~1040-08-01-.06~~ 0400-58-01-.06 Attesting to Written Orders.

Written orders of the Board concerning applications may be signed by the Chairman of the Board and such orders certified by the Chairman as an order duly promulgated by the Board shall have full force and effect as orders signed by the Board members.

~~1040-08-01-.07~~ 0400-58-01-.07 List of Participants.

A list of participants in the proceedings, as well as any persons who submitted or sought an opportunity to submit written comment (whether or nor such persons participated in the proceedings) shall be made for each hearing.

~~1040-08-01-.08~~ 0400-58-01-.08 Forms.

(1) Applications shall be made upon Forms TGP 102 (Application for New Natural Gas Determination), TGP 103 (Application for New Production Well Determination), TGP 107 (Application for High Cost Natural Gas Determination), and/or TGP 108 ~~(~~ (Application for Stripper Well Natural Gas Determination), and any form required by F.E.R.C. The original and two copies of such application shall be filed with the Board, along with a self-addressed stamped envelope for return of one of the copies after the filing date and docket number have been noted by the Board. The F.E.R.C. 121 Form and Form TGP 102, 103, 107 and 108 may be submitted in lieu of the second complete copy of the application. All applications shall be fully completed as appropriate in conformance with Board rules as well as with F.E.R.C. rules, and the well for which a determination is being sought ~~must~~ shall have been classified by the Tennessee ~~Division~~ Office of Geology before such applications may be heard by the Board. Upon receipt of an application, the

Board shall notify the applicant of the receipt of such application and, should the application be incomplete in any respect, indicate the nature of the incompleteness. Upon the receipt of application, such application shall be considered filed with the Board, assigned a docket number, and notice duly published, provided all other rules referred to herein have been complied with.

(2) The date the application is received by the Board shall be considered the filing date or record, unless after a determination has become final it is determined that the application did not, in fact, qualify for the request status in the first place, in which case the Board ~~will~~ shall consider the filing date of record of a new application to be the date the disqualified application for a price determination for a particular reservoir was received by the Board. This exception ~~will~~ shall be allowed between categories as well as within a particular category, but shall only apply to those wells for which commercial sale of natural gas has occurred after the original determination was filed. Written notice shall be given to the F.E.R.C. and to the applicant for any determination for which this exception shall apply.

~~1040-08-01-.09~~ 0400-58-01-.09 Notice or Determination.

After making a determination that an application does or does not qualify for the requested status under the NGPA, the Board shall give written notice of such determination to F.E.R.C. in accordance with F.E.R.C. rules.

~~1040-08-01-.10~~ 0400-58-01-.10 Method of Determinations.

(1) The ~~State Oil and Gas~~ Board ~~of Tennessee, hereinafter referred to as the "Board"~~ hereby certifies that it ~~will~~ shall take such steps as are reasonably necessary or appropriate to perform its function in accordance with Part 214 of the ~~proposed~~ implementing rules of F.E.R.C.

(2) The method by which the Board ~~will~~ shall make determination is as follows:

(a) Applicants for determination shall file on forms required by the F.E.R.C. and by the Board in order to receive a hearing. Forms required by the Board are:

~~1. Form No. P (Authority to Drill Deepen, or Reopen a well)~~

~~2.~~1. Form ~~No. P-AD-1~~ CN-0211 (Application for Permit to Drill)

~~3.~~2. Form ~~No. P-AD-2~~ CN-0228 (Application to Amend Well Permit)

~~4.~~3. Form ~~No. P-AD-3~~ CN-0237 (Application to Change Operators) if applicable

~~5.~~4. Form ~~No. R-O-1~~ CN-0219 (Organization Report)

~~6.~~5. Form ~~No. R-WH-1~~ CN-0221 (Well History, Work Summary, and Completion or Recompletion Report)

~~7.~~6. Form ~~No.~~ R-DT-1 (Gas Well Deliverability Tests)

~~8.~~7. Form ~~No. R-MP-5~~ CN-0244 (Monthly Gatherer's and/or Transporter's Natural Gas Report)

~~9. Form No. R-MP-6 (Monthly Gasoline and/or Cycling Plant Report)~~

~~10.~~8. Form No. TGP 102 (Application for New Natural Gas Determination), TGP 103 (Application for New Production Well Determination), TGP 107 (Application for High Cost Natural Gas Determination), or TGP 108 (Application for Stripper Well Natural Gas Determination), whichever is appropriate.

(b) Notice of filing by applicants is required by the rules of the Board to be given by applicants to identified purchases, as required by Section 274.201(e) of the said ~~proposed~~ Regulations of F.E.R.C. (~~Board~~ paragraph (3) of Rule ~~1040-08-01-.03(3)~~ 0400-58-01-.03).

(c) Public notice of the filing, pending hearing, and pending determination of applications for

determinations shall be given by the Board at least ten (10) days prior to such hearing, giving the date, time, and place of such hearing. Such public notice shall be given by publication at least once in a newspaper of general circulation published in Nashville, Knoxville, and Chattanooga.

(d) ~~All rules, regulations, and orders of the Board require at least three affirmative votes by the five members of the Board.~~ All such rules and regulations and orders of the Board are required to be in writing, T.C.A. § 60-1-204(d). Petitions ~~must~~ shall be filed at least fifteen days prior to the hearing thereon. When a proceeding is instituted, the Board assigns a docket number to the application and records the fact and the dates of the filing of the application in a docket book provided for such purpose (~~Board Rule 1040-08-01-.10(2)(g)~~ subparagraph (g) of this paragraph). Testimony is recorded, transcribed, and preserved as a part of the permanent record of the hearing. Any person testifying is required to do so under oath; however, relevant unsworn statements, comments, and observations by any interested person may be heard and considered by the Board and included in the record. In matters where there are no objections of record, sworn affidavits of witnesses may be received in evidence (~~Board~~ Rule ~~1040-08-01-.04~~ 0400-58-01-.04). The relevancy of any testimony or other evidence is subject to challenge by any party to the hearing or any member of the Board. When so interposed, such objections are acted upon by the Chairman, his ruling being subject to challenge and overturning by a majority vote of the Board.

(e) Full opportunity is afforded all interested parties at a hearing to present evidence and to cross-examine witness.

(f) The Board maintains data files which contain the records on each individual well in the State. Such well records consist of the following:

1. Application to Amend Well Permit (Form ~~P-AD-2~~ CN-0228).
2. Application to Change Operators (Form ~~P-AD-3~~ CN-0237).
3. Application for Permit to Drill (Form ~~P-AD-1~~ CN-0211).
~~4. Authority to Drill, Deepen, or Reopen a Well (Form P).~~
~~5.~~4. Gas Well Deliverability Tests (Form R-DT-1).
~~6.~~5. Monthly Gatherer's and/or Transporter's Natural Gas Report (Form ~~R-MP-5~~ CN-0244).
~~7.~~6. Organization Report (Form ~~R-O-1~~ CN-0219).
~~8. Periodic GPM Test Report (Form R-GPM-1).~~
~~9.~~7. Plug and Abandon Report (Form ~~R-P&A-1~~ CN-0217).
~~10.~~8. Pressure Maintenance and Secondary Recovery Questionnaire (Form ~~Q-PMSR~~ CN-0141).
~~11. Production Test and Gas-Oil Ratio Report (Form R-PT-1).~~
~~12.~~9. Transporter's and Storer's Monthly Report for Crude Oil and/or Condensate (Form ~~R-MP-2~~ CN-0229).
~~13.~~10. Well History, Work Summary, and Completion or Recompletion Report (Form ~~RWH-1~~ CN-0221).
~~14.~~11. Application for New Natural Gas Determination (Form TGP-102).
~~15.~~12. Application for New Production Well Determination (Form TGP-103)
~~16.~~13. Application for High Cost Natural Gas Well Determination (Form TGP-107).

~~17.~~14. Application for Stripper Well Natural Gas Determination ~~(~~(Form TGP-108).

Further, the Board maintains a library of drill cuttings, cores and logs from wells in the state. Records of the Board include extensive geologic and engineering data, such as geologic structure, isopach, and cross-section maps, production data, well potential test results, bottom hole pressure surveys, fluid analyses, gas analyses, and other similar data.

The Board maintains field or reservoir base maps and all wells completed in or penetrating a reservoir are identified.

A monthly activity report is published by the Board for all wells being drilled or completed in the ~~s~~State and a monthly production report is available giving monthly production from all producing wells in the ~~s~~State.

(g) Applications for determinations ~~will~~ shall be filed and assigned a docket number upon receipt. The professional staff of the Board ~~will~~ shall then study the application and data submitted in conjunction with records of the Board as identified in subparagraph (f) of this paragraph. Information contained in the application ~~will~~ shall be verified to the extent possible with information on file with the Board. The staff of the Board includes professional engineers, geologists, and attorneys, as well as other support staff. The application and relevant data ~~will~~ shall be considered and discussed in a joint meeting of the professional staff, prior to the public hearing of the application before the Board. Requests for clarification of data or for additional data may be made, where deemed necessary by the staff. Unresolved questions may be asked of the applicant at the hearing.

(h) The initial authority of the Board for making determination in accordance with the ~~N.G.P.A.~~ NGPA was established by an emergency order of the Board, which was made at a scheduled hearing under the Uniform Administrative Procedures Act. This action was properly advertised in accordance with the state law and Board rules.

After studying the application, all data submitted by the applicant, all data available in the files of the Board, and hearing any additional evidence submitted at the hearing, the staff of the Board ~~will~~ shall make a recommendation to the Board. Where there is no objection, evidence may be submitted by affidavit without oral testimony. Regarding uncontested applications, the Board ~~will~~ shall hear them en masse and, where appropriate, grant the same by one order. A list of applications recommended for approval ~~will~~ shall be made available prior to the hearing so that comments or objections may be expressed when the applications are considered by the Board.

(i) The Board ~~will~~ shall give written notice to the F.E.R.C. of any change in the procedures described in these rules.

Authority: T.C.A §§60-1-105, 60-1-201 et seq., and 4-5-201 et seq.; Natural Gas Policy Act of 1978, Public Law No. 95-621, 92 Stat. 3350 (November 9, 1978).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Pete Claussen				✓	
Derek Gernt	✓				
Ken Haislip	✓				
Chuck Head	✓				
Brian Hensley	✓				
Jim Washburn	✓				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Oil & Gas Board on 09/28/2012, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 05/03/12

Rulemaking Hearing(s) Conducted on: (add more dates). 07/10/12

Date: September 28, 2012

Signature: Chuck Head

Name of Officer: Chuck Head

Title of Officer: Chairman

Subscribed and sworn to before me on: September 28, 2012

Notary Public Signature: Marcus D. Williams

My commission expires on: 08.11.2013

MARCUS D. WILLIAMS STATE OF TENNESSEE NOTARY PUBLIC WILLIAMSON COUNTY

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

RE Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

3-19-13
Date

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Filed with the Department of State on: 3/20/13

Effective on: 6/18/13

Tre Hargett
Secretary of State