G.O.C. STAFF RULE ABSTRACT

AGENCY:	Commission on Fire Fighting Personnel Standards and Education
SUBJECT:	Classifications for Full-Time and Volunteer Firefighters, Examinations, and Reciprocity
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 4-24-107(3) and 4-24-205
EFFECTIVE DATES:	September 1, 2016, through June 30, 2017
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	According to the Commission, the proposed rule clarifies that the 2008 edition of NFPA 1001, will no longer be allowed to be utilized as a standard for the live fire practical; the standard for the live fire practical will be the 2013 edition of NFPA 1001, which has been adopted in Rule 0360-06-01-.01. The proposed rule will require that a person's successful completion of a live burn practical be within 36 months of obtaining Fire Fighter I and Fire Fighter II certification. After 36 months, successful completion of another live burn practical will be necessary in order to obtain Fire Fighter I or Fire Fighter II certification. The proposed rule adds two new certifications: Hazardous Materials Technician and Hazardous Materials Incident Commander. These certifications appear in the most recently adopted edition of the standards for hazardous materials. The proposed rule will also revise and clarify the Commission's requirements for granting reciprocity of certifications to out-of-state applicants. Other minor grammatical and stylistic changes have also been made. Additionally, the Commission's rules currently provide that completion of a domestic violence course is a requirement for persons certified as a Fire Officer I or II. The proposed rule specifies that this requirement also applies to persons certified as a Fire Officer III or IV.

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 rules are not expected to affect or impact small businesses.

1. Types and estimated number of small businesses directly affected:

   It is anticipated that no small businesses will be affected by the promulgation of these rules.

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

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

3. Probable effect on small businesses:

   It is anticipated that no small businesses will be affected by the promulgation of these rules.

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

   Since the proposed rules will not impact small businesses, a less burdensome, intrusive or costly alternative method has not been identified or recommended for use.

5. Comparison with federal and state counterparts:

   There are no federal counterparts to the rules. The Commission on Fire Fighting Personnel Standards and Education routinely adopts rules (Chapter 0360) through the formal rulemaking process established by the Secretary of State.

6. Effect of possible exemption of small businesses:

   There are no exemptions for small businesses to the requirements contained in the proposed rules because the proposed rules are not anticipated to impact small businesses.

Impact on Local Governments

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

These rules may have a minimal impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The proposed rules will clarify that the 2008 edition of NFPA 1001, will no longer be allowed to be utilized as a standard for the live fire practical; the standard for the live fire practical will be the 2013 edition of NFPA 1001, which has been adopted in rule Tenn. Comp. R. & Regs. 0360-06-01-.01 Adoption By Reference. Additionally, the proposed amendments will require that a person's successful completion of a live burn practical be within thirty-six (36) months of obtaining Fire Fighter I and Fire Fighter II certification. After thirty- six (36) months, successful completion of another live burn practical will be necessary in order to obtain Fire Fighter I or Fire Fighter II certification. The proposed rules add two (2) new certifications in Chapter 0360-03-01: Hazardous Materials Technician and Hazardous Materials Incident Commander. These certifications appear in the most recently adopted edition of the standards for hazardous materials (2013 edition of NFPA 472 in rule Tenn. Comp. R. & Regs. 0360-06-01-.01). These certifications have not been previously issued by the Commission on Fire Fighting Personnel Standards and Education. The proposed amendments will also revise and clarify the Commission's requirements for granting reciprocity of certifications to out-of-state applicants in rule 0360-06-01-.05 Reciprocity. Other minor grammatical and stylistic changes have also been made as provided in the redline version of the amendments.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

These rules are promulgated pursuant to T.C.A. §§ 4-24-101 et seq. and 4-24-201 et seq.

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

These rules will likely impact those fire departments and the members of those fire departments which participate in the state's educational incentive pay program for fire fighters, and the paid and volunteer fire departments that participate in the commission's certification program.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None. The department is unaware of any opinions of the attorney general and reporter or any judicial ruling that directly relates to these rules.

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

It is anticipated that these rules will have no impact on state and local government revenues or expenditures.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, and Randy Fox, Director of the Commission for Firefighting Personnel Standards and Education.

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

Joseph Underwood, Chief Counsel for Fire Prevention and Law Enforcement, and Randy Fox, Director of the Commission for Firefighting Personnel Standards and Education.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Joseph Underwood (joseph.underwood@tn.gov), Chief Counsel for Fire Prevention and Law Enforcement, 500 James Robertson Parkway, Nashville, TN 37243, 615-741-3899; Randy Fox (randy.fox@tn.gov), Director of Commission for Firefighting Personnel Standards and Education, 500 James Robertson Parkway, Nashville, TN 37243 615-741-1788.

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

Not applicable.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-04-16
Rule ID(s): 6193-6195
File Date: 6/3/16
Effective Date: 9/1/16

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Commission on Fire Fighting Personnel Standards and Education
Division:	Department of Commerce and Insurance
Contact Person:	Joseph Underwood
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	(615) 741-3899
Email:	Joseph.Underwood@tn.gov

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

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

Chapter Number	**Chapter Title**
0360-03-01	Classifications For Full-Time and Volunteer Fire Fighters
Rule Number	**Rule Title**
0360-03-01-.12	Fire Officer III
0360-03-01-.13	Fire Officer IV
0360-03-01-.50	Hazardous Materials Technician
0360-03-01-.51	Hazardous Materials Incident Commander

Chapter Number	**Chapter Title**
0360-04-01	Examinations
Rule Number	**Rule Title**
0360-04-01-.06	Examination Form

Chapter Number	Chapter Title
0360-06-01	Miscellaneous Certification Standards
Rule Number	**Rule Title**
0360-06-01-.05	Reciprocity

RULES
OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING
PERSONNEL STANDARDS AND EDUCATION

CHAPTER 0360-03-01
CLASSIFICATIONS FOR FULL-TIME AND VOLUNTEER FIRE FIGHTERS

TABLE OF CONTENTS

0360-03-01-.01	Reserved
0360-03-01-.02	Fire Fighter I
0360-03-01-.03	Fire Fighter II
0360-03-01-.04	Fire Fighter I/II Combined
0360-03-01-.05	Fire Department Instructor I
0360-03-01-.06	Fire Department Instructor II
0360-03-01-.07	Fire Department Instructor I/II Combined
0360-03-01-.08	Fire Department Instructor III
0360-03-01-.09	Fire Officer I
0360-03-01-.10	Fire Officer II
0360-03-01-.11	Fire Officer I/II Combined
0360-03-01-.12	Fire Officer III
0360-03-01-.13	Fire Officer IV
0360-03-01-.14	Hazardous Materials Awareness Certification
0360-03-01-.15	Hazardous Materials Awareness Certification
0360-03-01-.16	Airport Firefighter
0360-03-01-.17	Wildland Firefighter I
0360-03-01-.18	Wildland Firefighter II
0360-03-01-.19	Fire and Life Safety Educator I
0360-03-01-.20	Fire and Life Safety Educator II
0360-03-01-.21	Fire Safety Compliance Officer I
0360-03-01-.22	Fire Safety Compliance Officer II
0360-03-01-.23	Fire Apparatus Operator I
0360-03-01-.24	Pumper Driver/Operator II
0360-03-01-.25	Aerial Apparatus Driver/Operator
0360-03-01-.26	Safety Officer
0306-03-01-.27	Incident Safety Officer I
0360-03-01-.28	Health & Safety Officer I
0360-03-01-.29	Reserved
0360-03-01-.30	Technical Rescuer
0360-03-01-.31	Rope Rescuer
0360-03-01-.32	Confined Space Rescuer
0360-03-01-.33	Trench Rescuer
0360-03-01-.34	Structural Collapse Rescuer
0360-03-01-.35	Vehicle Rescuer
0360-03-01-.36	Surface Water Rescuer
0360-03-01-.37	Swiftwater Rescuer I
0306-03-01-.38	Swiftwater Rescuer II
0306-03-01-.39	Dive Rescuer
0360-03-01-.40	Ice Rescuer
0360-03-01-.41	Surf Rescuer
0360-03-01-.42	Wilderness Rescuer
0360-03-01-.43	Mine and Tunnel Rescuer
0360-03-01-.44	Cave Rescuer
0360-03-01-.45	Machinery Rescuer
0360-03-01-.46	Exterior Industrial Fire Brigade Member
0360-03-01-.44	interior Structural Fire Brigade Member
0360-03-01-.45	Machinery Rescuer
0360-03-01-.46	Exterior Industrial Fire Brigade Member
0360-03-01-.47	Interior Structural Fire Brigade Member
0360-03-01-.48	Fire Inspector I
0360-03-01-.49	Fire Investigator I
0360-03-01-.50	Hazardous Materials Technician
0360-03-01-.51	Hazardous Materials Incident Commander

0360-03-01-.01 RESERVED.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-106(4), 4-24-107, 4-24-107(3) and 68-1-1102. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.02 FIRE FIGHTER I.

(1) A Fire Fighter I must meet the entrance requirements of NFPA 472, NFPA 1001, and T.C.A. § 4-24-112.

(2) A Fire Fighter I must satisfactorily pass the examination(s) for Fighter I as promulgated by the Commission.

(3) A Fire Fighter I must successfully obtain CPR certification through an entity recognized by the Commission. A copy of the CPR card must be attached to the "Application for Written Examination."

(Rule 0360-03-01-.02, continued)

(4) A Fire Fighter I must successfully complete a Commission approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(5) A Fire Fighter I must submit proof with his/her application of successfully completing NIMS IS-700: An Introduction and ICS-100: Introduction to ICS training or the equivalent of each.

(6) An individual having previously been certified by the Commission at a recognized level and whose certifications are current but wishes to re-challenge a level in order to obtain an IFSAC Seal on his/her certifications does not have to wait twelve (12) months before attempting to re-qualify at that level.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, 4-24-107, and 4-24-111.* ***Administrative History:*** *Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.03 FIRE FIGHTER II.

(1) A Fire Fighter I must meet the entrance requirements of NFPA 472, NFPA 1001, and T.C.A. § 4-24-112.

(2) A Fire Fighter I must satisfactorily pass the examination(s) for Fighter I as promulgated by the Commission.

(3) A Fire Fighter I must successfully obtain CPR certification through an entity recognized by the Commission. A copy of the CPR card must be attached to the "Application for Written Examination."

(4) A Fire Fighter I must successfully complete a Commission approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(5) A Fire Fighter I must submit proof with his/her application of successfully completing NIMS IS-700: An Introduction and ICS-100: Introduction to ICS training or the equivalent of each.

(6) An individual having previously been certified by the Commission at a recognized level and whose certifications are current but wishes to re-challenge a level in order to obtain an IFSAC Seal on his/her certifications does not have to wait twelve (12) months before attempting to re-qualify at that level.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111.* ***Administrative History:*** *Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Amendment filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.04 FIRE FIGHTER I/II COMBINED.

(1) A Fire Fighter I/II Combined must meet the entrance requirements of NFPA 472, NFPA 1001, and T.C.A. § 4-24-112.

(2) A Fire Fighter I/II Combined must satisfactorily pass the examination(s) for Fire Fighter I/II Combined as promulgated by the Commission.

(Rule 0360-03-01-.04, continued)

(3) A Fire Fighter I/II Combined must successfully obtain CPR certification through an entity recognized by the Commission. A copy of the CPR card must be attached to the "Application for Written Examination."

(4) A Fire Fighter I/II Combined must successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(5) A Fire Fighter I/II Combined must submit proof with his/her application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training, and ICS-200: ICS for Single Resources and Initial Action Incidents training or the equivalent of each.

(6) A Fire Fighter I/II Combined must successfully complete a Commission-approved Fire Fighter I/II Combined course of training.

***Authority**: T.C.A. §§ §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.05 FIRE DEPARTMENT INSTRUCTOR I.

(1) Qualifications. An applicant for Fire Department Instructor I may be certified by the Commission provided the applicant can meet the following requirements and show to the satisfaction of the Commission that he/she:

(a) is a member of the participating department; and

(b) is certified as a Journeyman Fire Fighter or Fire Fighter II pursuant to Rule 0360-03-01-.03; and

(c) has served for a minimum period of three (3) years as a fire fighter in a department; and

(d) has satisfactorily passed the examination(s) for Fire Department Instructor I given by the Commission; and

(e) agrees to conduct training and examinations, maintain records, and submit reports in a manner prescribed by the Commission.

***Authority**: T.C.A. §§ 4-24-106 and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1990. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.06 FIRE DEPARTMENT INSTRUCTOR II.

(1) Qualifications. An applicant for Fire Department Instructor II may be certified by the Commission provided the applicant can meet the following requirements and show to the satisfaction of the Commission that he/she:

(a) has successfully completed all of the requirements of the Fire Department Instructor I as prescribed in these rules and regulations; and

(Rule 0360-03-01-.06, continued)

(2) has satisfactorily passed the examination(s) for Fire Department Instructor II given by the Commission; and

(3) agrees to conduct training and examinations, maintain records, and submit reports as prescribed by the Commission.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History***: *Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.07 FIRE DEPARTMENT INSTRUCTOR I/II COMBINED.

(1) Qualifications. An applicant for Fire Department Instructor I/II Combined may be certified by the Commission provided the applicant can meet the following requirements and show to the satisfaction of the Commission that he/she:

(a) has successfully completed all of the requirements of the Fire Department Instructor I and Fire Department Instructor II as prescribed in these rules and regulations; and

(b) has satisfactorily passed the examination(s) for Fire Department Instructor I/II Combined given by the Commission; and

(c) agrees to conduct training and examinations, maintain records, and submit reports as prescribed by the Commission.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History***: *Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.08 FIRE DEPARTMENT INSTRUCTOR III.

(1) Qualifications. An applicant for Fire Department Instructor III may be certified by the Commission provided the applicant can meet the following requirements and show to the satisfaction of the Commission that he/she:

(a) has successfully completed all of the requirements of Fire Department Instructor II as prescribed in these rules and regulations; and

(b) satisfactorily passed the examination(s) for Fire Department Instructor III given by the Commission; and

(c) agrees to conduct training and examination(s), maintain records, and submit reports as prescribed by the Commission.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History***: *Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Repeal filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.09 FIRE OFFICER I.

(1) A Fire Officer I must successfully complete all of the requirements of Journeyman Fire Fighter or Fire Fighter II and Fire Department Instructor I as prescribed in these rules and regulations, and by Commission policy.

(2) A Fire Officer I must satisfactorily pass the examination(s) for Fire Officer I as promulgated by the Commission.

(3) A Fire Officer I must successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(4) A Fire Officer I who was not certified as a Fire Fighter II or Fire Department Instructor I by the Commission submit proof with their application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training and ICS-200: ICS for Single Resources and Initial Action Incidents training or the equivalent to each.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Amendment filed October 14, 1995; effective February 28, 1995. Amendment filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.10 FIRE OFFICER II.

(1) A Fire Officer II must successfully complete all of the requirements of Fire Officer I as prescribed in these rules and regulations, and by Commission policy.

(2) A Fire Officer II must satisfactorily pass the examination(s) for Fire Officer II as promulgated by the Commission.

(3) A Fire Officer II must successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(4) A Fire Officer II who was not certified as a Fire Officer I by the Commission shall submit proof with their application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training and ICS-200: ICS for Single Resources and Initial Action Incidents training or the equivalent to each.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.11 FIRE OFFICER I/II COMBINED.

(1) A Fire Officer I/II Combined must successfully complete all of the requirements of Journeyman Fire Fighter or Fire Fighter II and Fire Department Instructor I as prescribed in these rules and regulations, and by Commission policy.

(Rule 0360-03-01-.11, continued)

(2) A Fire Officer I/II Combined must complete a Commission-approved course of training and satisfactorily pass the examination(s) for Fire Officer I/II Combined as promulgated by the Commission.

(3) A Fire Officer I/II Combined must successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(4) A Fire Officer I/II Combined who was not certified as a Fire Fighter II or Fire Department Instructor I by the Commission shall submit proof with their application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training and ICS-200: ICS for Single Resources and Initial Action Incidents training or the equivalent to each.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-111. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.12 FIRE OFFICER III.

(1) A Fire Officer III ~~must~~shall successfully complete all of the requirements of Fire Officer II as prescribed in these rules and regulations, and by Commission policy.

(2) A Fire Officer III ~~must~~shall satisfactorily pass the examination(s) for Fire Officer III as promulgated by the Commission.

(3) A Fire Officer III shall successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(4) A Fire Officer III shall submit proof with his/her application of successfully completing ICS-300: Intermediate ICS training or its equivalent. A Fire Officer III who was not certified as a Fire Officer II by the Commission shall submit proof with his/her application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training, ICS-200: ICS for Single Resources and Initial Action Incidents training, and ICS-300: Intermediate ICS training or the equivalent to each.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1990. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1995; effective February 28, 1995. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.13 FIRE OFFICER IV.

(1) A Fire Officer IV ~~must~~shall successfully complete all of the requirements of Fire Officer III as prescribed in these rules and regulations, and by Commission policy.

(2) A Fire Officer IV ~~must~~shall satisfactorily pass the examination(s) for Fire Officer IV as promulgated by the Commission.

(3) A Fire Officer IV shall successfully complete a Commission-approved domestic violence course, a minimum of two (2) hours in length, within the previous three (3) years of the written test date.

(4) A Fire Officer IV shall submit proof with his/her application of successfully completing ICS-400: Advanced Incident Command System or its equivalent. A Fire Officer IV who was not

certified as a Fire Officer III by the Commission shall submit proof with his/her application of successfully completing NIMS IS-700: An Introduction, ICS-100: Introduction to ICS training, ICS-200: ICS for Single Resources and Initial Action Incidents training, ICS-300: Intermediate ICS training, and ICS-400: Advanced Incident Command System or the equivalent to each.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. Administrative History: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015.

0360-03-01-.14 HAZARDOUS MATERIALS AWARENESS CERTIFICATION.

(1) A candidate for Hazardous Materials Awareness certification must successfully pass the examination(s) for Hazardous Materials Awareness Certification as promulgated by the Commission.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.15 HAZARDOUS MATERIALS OPERATIONS CERTIFICATION.

(1) A candidate for Hazardous Materials Operations certification must successfully complete all of the requirements of Hazardous Materials Awareness as prescribed in these rules and regulations and by Commission policy or complete the hazardous materials portion of a Commission-approved recruit training program.

(2) A candidate for Hazardous Materials Operations certification must successfully pass the examination(s) for Hazardous Materials Operations Certification as promulgated by the Commission.

(3) This level may be taken at the same time as Hazardous Materials Awareness Certification. If the candidate does not successfully pass the examination for Hazardous Materials Awareness Certification, the examination for Hazardous Materials Operations Certification shall not be graded and shall be discarded. Both examinations must be challenged again.

***Authority**: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal filed October 14, 1995; effective February 28, 1995. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.16 AIRPORT FIREFIGHTER.

(1) An Airport Firefighter must successfully complete all of the requirements for Fire Fighter II and Hazardous Materials Operations Certification as prescribed in these rules and regulations and by Commission policy.

(2) An Airport Firefighter must successfully pass an examination(s) for Airport Firefighter as promulgated by the Commission.

***Authority:** T.C.A. §§ §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-110. **Administrative History:** Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.17 WILDLAND FIREFIGHTER I.

(1) A Wildland Firefighter I must successfully complete all of the requirements for Fire Fighter I as prescribed in these rules and regulations and by Commission policy.

(2) A Wildland Firefighter I must successfully pass the examination(s) for Wildland Firefighter I as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-10.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.18 WILDLAND FIREFIGHTER II.

(1) A Wildland Firefighter II must successfully complete all of the requirements for Wildland Firefighter I as prescribed in these rules and regulations and by Commission policy.

(2) A Wildland Firefighter II must successfully pass the examination(s) for Wildland Firefighter II as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed August 2, 2011; effective January 29, 2012. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.19 FIRE AND LIFE SAFETY EDUCATOR I.

(1) A Fire and Life Safety Educator I must successfully pass the examination(s) for Fire and Life Safety Educator I as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.20 FIRE AND LIFE SAFETY EDUCATOR II.

(1) A Fire and Life Safety Educator II must successfully complete all of the requirements for Fire and Life Safety Educator I as prescribed in these rules and regulations and by Commission policy.

(2) A Fire and Life Safety Educator II must successfully pass the examination(s) for Fire and Life Safety Educator II as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 27, 2015.*

0360-03-01-.21 FIRE AND LIFE SAFETY EDUCATOR I.

(1) A Fire Safety Compliance Officer I must successfully complete all of the requirements for Fire Fighter II as prescribed in these rules and regulations or be certified in compliance with T.C.A. § 68-120-113.

(2) A Fire Safety Compliance Officer I must successfully pass an examination(s) for Fire Safety Compliance Officer I as promulgated by the Commission.

(3) Certification as a Fire Safety Compliance Officer I does not qualify the individual as a fire prevention and building official under T.C.A. § 68-120-113.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.22 Fire Safety Compliance Officer II.

(1) A Fire Safety Compliance Officer II must successfully complete all of the requirements for Fire Safety Compliance Officer I as prescribed in these rules and regulations and by Commission policy.

(2) A Fire Safety Compliance Officer II must successfully pass the examination(s) for Fire Safety Compliance Officer II as promulgated by the Commission.

(3) Certification as a Fire Safety Compliance Officer II does not qualify the individual as a fire prevention and building official under T.C.A. § 68-120-113.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.23 FIRE APPARATUS OPERATOR.

(1) A Fire Apparatus Operator must successfully complete all of the requirements for Fire Fighter I as prescribed in these rules and regulations and by Commission policy.

(2) A Fire Apparatus Operator must successfully pass the examination(s) for Fire Apparatus Operator as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.24 PUMPER DRIVER/OPERATOR.

(1) A Pumper Driver/Operator must successfully complete all of the requirements for Fire Fighter I as prescribed in these rules and regulations and by Commission policy.

(2) A Pumper Driver/Operator must successfully pass the examination(s) for Pumper Driver/Operator as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.25 AERIAL APPARATUS DRIVER/OPERATOR.

(1) An Aerial Apparatus Driver/Operator must successfully complete all of the requirements for Fire Fighter I as prescribed in these rules and regulations and by Commission policy.

(2) An Aerial Apparatus Driver/Operator must successfully pass the examination(s) for Aerial Apparatus Driver/Operator as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.26 SAFETY OFFICER.

(1) A Safety Officer must successfully complete all of the requirements for Fire Officer I as prescribed in these rules and regulations and by Commission policy.

(2) A Safety Officer must successfully pass the examination(s) for Safety Officer as promulgated by the Commission.

(3) Safety Officer will not be available after July 1, 2015 and will be replaced by Incident Safety Officer I.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.27 INCIDENT SAFETY OFFICER I.

(1) An Incident Safety Officer I must successfully complete a Commission-approved training program compliant with the NFPA 1521, Standard for Fire Department Safety Officer.

(2) An Incident Safety Officer I must pass the examination(s) for Incident Safety Officer I as promulgated by the Commission.

Authority: *T.C.A. §§ §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.28 HEALTH & SAFETY OFFICER I.

(1) A Health and Safety Officer I must have successfully completed all of the requirements for Fire Officer I as prescribed in these rules and regulations and by Commission policy Fire Officer I.

(2) A Health and Safety Officer I must successfully complete a Commission-approved training program compliant with the NFPA 1521, Standard for Fire Department Safety Officer.

(3) A Health and Safety Officer I must pass the examination(s) for Health & Safety Officer I as promulgated by the Commission.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.29 RESERVED.

Authority: *T.C.A §§ 4-24-101, 4-24-106(4) and 4-24-107(3).* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.30 TECHNICAL RESCUER.

(1) A Technical Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Technical Rescuer must pass the examination(s) for Technical Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.31 INTERIOR STRUCTURAL FIRE BRIGADE MEMBER.

(1) A Rope Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Rope Rescuer must pass the examination(s) for Rope Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.32 CONFINED SPACE RESCUER.

(1) A Confined Space Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Confined Space Rescuer must pass the examination(s) for Confined Space Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-03-01-.33 TRENCH RESCUER.

(1) A Trench Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Trench Rescuer must pass the examination(s) for Trench Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.34 STRUCTURAL COLLAPSE RESCUER.

(1) A Structural Collapse Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Structural Collapse Rescuer must pass the examination(s) for Structural Collapse Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.35 VEHICLE RESCUER.

(1) A Vehicle Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Vehicle Rescuer must pass the examination(s) for Vehicle Rescuer as promulgated by the Commission.

(Rule 0360-03-01-.32, continued)

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.36 SURFACE WATER RESCUER.

(1) A Surface Water Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Surface Water Rescuer must pass the examination(s) for Surface Water Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.37 SWIFTWATER RESCUER I.

(1) A Swiftwater Rescuer I must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Swiftwater Rescuer I must pass the examination(s) for Swiftwater Rescuer I as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.38 SWIFTWATER RESCUER II.

(1) A Swiftwater Rescuer II must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2)) A Swiftwater Rescuer II must pass the examination(s) for Swiftwater Rescuer II as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.39 DIVE RESCUER.

(1) A Dive Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Dive Rescuer must pass the examination(s) for Dive Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.40 ICE RESCUER.

(1) An Ice Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(Rule 0360-03-01-.32, continued)

(2) An Ice Rescuer must pass the examination(s) for Ice Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.41 SURF RESCUER.

(1) A Surf Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Surf Rescuer must pass the examination(s) for Surf Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.42 WILDERNESS RESCUER.

(1) A Wilderness Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Wilderness Rescuer must pass the examination(s) for Wilderness Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.43 MINE AND TUNNEL RESCUER.

(1) A Mine and Tunnel Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Mine and Tunnel Rescuer must pass the examination(s) for Mine and Tunnel Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.44 CAVE RESCUER.

(1) A Cave Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(2) A Cave Rescuer must pass the examination(s) for Cave Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.45 MACHINERY RESCUER.

(1) A Machinery Rescuer must successfully complete a Commission-approved training program compliant with the NFPA 1006, Standard for Technical Rescue Professional Qualifications.

(Rule 0360-03-01-.32, continued)

(2) A Machinery Rescuer must pass the examination(s) for Machinery Rescuer as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.46 EXTERIOR INDUSTRIAL FIRE BRIGADE MEMBER.

(1) An Exterior Industrial Fire Brigade Member must successfully pass the examination(s) for Exterior Industrial Fire Brigade Member as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.47 Interior Structural Fire Brigade Member.

(1) An Interior Structural Fire Brigade Member must successfully complete all of the requirements for Exterior Industrial Fire Brigade Member as prescribed in these rules and regulations and by Commission policy.

(2) An Interior Structural Fire Brigade Member must successfully pass the examination(s) for Interior Structural Fire Brigade Member as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.48 FIRE INSPECTOR I.

(1) A Fire Inspector I must have successfully completed all of the requirements for Hazardous Materials Awareness Certification.

(2) A Fire Inspector I must successfully complete all of the requirements for Fire Inspector I as prescribed in NFPA 1031 and Commission rules, regulations and policy.

(3) A Fire Inspector I must complete a Commission-approved training course and successfully pass the examination(s) for Fire Inspector I as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.49 Fire Investigator I.

(1) A Fire Investigator I must successfully complete all of the requirements for Fire Investigator I as prescribed in NFPA 921, NFPA 1033, and Commission rules, regulations and policy.

(2) A Fire Investigator I must complete a Commission-approved training course and successfully pass the examination(s) for Fire Investigator I as promulgated by the Commission.

Authority: *T.C.A §§ 4-24-101, 4-24-106, and 4-24-107.* ***Administrative History:*** *Original rule filed October 27. 2014; effective January 25, 2015.*

0360-03-01-.50 Hazardous Materials Technician.

(1) A Hazardous Materials Technician shall successfully complete all of the requirements for Hazardous Materials Awareness Certification and Hazardous Materials Operations Certification as prescribed in NFPA 472 or NFPA 1072, and Commission rules, regulations and policy.

(2) A Hazardous Materials Technician shall successfully complete all of the requirements for Hazardous Materials Technician as prescribed in NFPA 472 and Commission rules, regulations and policy.

(3) A Hazardous Materials Technician shall successfully complete a Commission-approved training course and satisfactorily pass the examination(s) for Hazardous Materials Technician as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.

0360-03-01-.51 Hazardous Materials Incident Commander.

(1) A Hazardous Materials Incident Commander shall successfully complete all of the requirements for Hazardous Materials Technician as prescribed in NFPA 472, and Commission rules, regulations and policy.

(2) A Hazardous Materials Incident Commander shall successfully complete all of the requirements Hazardous Materials Incident Commander as prescribed in NFPA 472 and NFPA 1561 and Commission rules, regulations and policy.

(3) A Hazardous Materials Incident Commander shall complete a Commission-approved training course and satisfactorily pass the examination(s) for Hazardous Materials Incident Commander as promulgated by the Commission.

Authority: T.C.A. §§ 4-24-101, 4-24-106, and 4-24-107.

(Rule 0360-04-01-.06, continued)

RULES
OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING PERSONNEL STANDARDS AND EDUCATION

CHAPTER 0360-04-01
EXAMINATIONS

TABLE OF CONTENTS

0360-04-01-.01	General	0360-04-01-.06	Examination Form
0360-04-01-.02	Applications	0360-04-01-.07	Reserved
0360-04-01-.03	Character of Examinations	0360-04-01-.08	Written Examinations
0360-04-01-.04	Grading	0360-04-01-.09	Practical Examinations
0360-04-01-.05	Retesting		

0360-04-01-.06 EXAMINATION FORM.

(1) The examination for Fire Fighter I shall consist of a performance and a written examination. The subjects tested ~~will~~shall be substantially derived from the Performance Standards for Fire Fighter I as adopted in standards in Chapter 0360-06-01.

(a) The performance examination requirements for Fire Fighter I shall consist of all of the following:

1. A hands-on performance/practical administered on a regional basis. This practical shall be developed by the Commission based on and meeting the standards in NFPA 1001.

2. A live fire practical ~~must~~shall be completed. One of the following options ~~must~~shall be completed:

(i) Successful ~~C~~completion of the Tennessee Fire Service and Codes Enforcement Academy's Firefighter I Live Burn course or Firefighter I and II Live Burn course. A Live Fire Suppression Verification Form ~~must~~shall be completed and attached to the "Application for Written Examination~~.~~"; or

(ii) Successful ~~C~~completion of the live fire objectives in NFPA 1001 for Fire Fighter I during a live fire training. A~~LL~~ll of the exercises listed on the Live Fire Suppression Verification Sheet for the appropriate level ~~must~~shall be completed through the local department's training program. A Live Fire Suppression Verification Form ~~must~~shall be completed and attached to the "Application for Written Examination." The department ~~must~~shall provide the Commission with a minimum of fourteen (14) calendar days' notice by submitting an Application for Live Fire Training by e-mail, US mail, or fax. A Commission ~~member~~ or staff member may witness any live fire exercises conducted by a department. This option ~~must~~shall be completed during a training exercise; no working fires ~~can~~shall be utilized for this option.

(b) A live fire practical, as part of the Fire Fighter I performance examination requirements, based upon standards of NFPA 1001, 2008 edition shall not be accepted after July 31, 2016. After July 31, 2016, a live fire practical, as part of the Fire Fighter I performance examination requirements, must be based upon the current standard as adopted by reference in Chapter 0360-06-01-.01.

(c) An applicant shall obtain a Fire Fighter I certification within thirty six (36) months of

(Rule 0360-04-01-.06, continued)

completing a live fire practical. After thirty six (36) months, successful completion of another live fire practical shall be required in order to obtain a Fire Fighter I certification.

(2) The examination for Fire Fighter II shall consist of a performance and a written examination. The subjects tested ~~will~~shall be substantially derived from the Performance Standards for Fire Fighter II as adopted in standards in Chapter 0360-06-01.

(a) The performance examination requirements for Fire Fighter II shall consist of all the following:

1. A hands-on performance/practical administered on a regional basis. This practical shall be developed by the Commission based on and meeting the standards in NFPA 1001.

2. A live fire practical ~~must~~shall be completed. One of the following options ~~must~~shall be completed:

(i) Successful ~~C~~completion of the Tennessee Fire Service and Codes Enforcement Academy's Firefighter II Live Burn course or Firefighter I and II Live Burn course. A Live Fire Suppression Verification Form ~~must~~shall be completed and attached to the "Application for Written Examination~~.~~"; or

(ii) Successful ~~C~~completion of the live fire objectives in NFPA 1001 for Fire Fighter II during a live fire training. All of the exercises listed on the Live Fire Suppression Verification Sheet for the appropriate level ~~must~~shall be completed through the local department's training program. A Live Fire Suppression Verification Form ~~must~~shall be completed and attached to the "Application for Written Examination." The department ~~must~~shall provide the Commission with a minimum of fourteen (14) calendar days' notice by submitting an Application for Live Fire Training by e-mail, US mail, or fax. A Commission ~~member~~ or staff member may witness any live fire exercises conducted by a department. This option ~~must~~shall be completed during a training exercise; no working fires ~~can~~shall be utilized for this option.

(b) A live fire practical, as part of the Fire Fighter II performance examination requirements, based upon standards of NFPA 1001, 2008 edition shall not be accepted after July 31, 2016. After July 31, 2016, a live fire practical, as part of the Fire Fighter II performance examination requirements, must be based upon the current standard as adopted by reference in Chapter 0360-06-01-.01.

(c) An applicant shall obtain a Fire Fighter II certification within thirty six (36) months of successfully completing a live fire practical. After thirty six (36) months, successful completion of another live fire practical will be necessary in order to obtain a Fire Fighter II certification.

(3) The examination for Fire Fighter I/II Combined shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Fighter I/II Combined as adopted in standards in Chapter 0360-06-01.

(a) The performance examination requirements for Fire Fighter I/II Combined shall consist of all the following:

1. A hands-on performance/practical administered on a regional basis. This practical shall be developed by the Commission based on and meeting the standards in NFPA 1001.

2. A live fire practical must be completed. One of the following options must be

(Rule 0360-04-01-.06, continued)
completed:

(i) Completion of the Tennessee Fire Service and Codes Enforcement Academy's Firefighter II Live Burn course or Firefighter I and II Live Burn course. A Live Fire Suppression Verification Form must be completed and attached to the "Application for Written Examination."

(ii) Completion of the live fire objectives in NFPA 1001 for Fire Fighter II during a live fire training. All of the exercises listed on the Live Fire Suppression Verification Sheet for the appropriate level must be completed through the local department's training program. A Live Fire Suppression Verification Form must be completed and attached to the "Application for Written Examination." The department must provide the Commission with a minimum of fourteen (14) calendar days' notice by submitting an Application for Live Fire Training by e-mail, US mail, or fax. A Commission member or staff may witness any live fire exercises conducted by a department. This option must be completed during a training exercise; no working fires can be utilized for this option.

(4) The examination for Fire Department Instructor I shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Department Instructor I as set forth in Chapter 0360-06-01.

(a) Any applicant challenging the Fire Department Instructor I written examination must complete the Fire Department Instructor I Practical Skills Checklist provided by the Commission. This practical is to be graded by an individual certified by the Tennessee Commission on Fire Fighting as either a Fire Department Instructor I or a Vocational and Higher Education Instructor. A completed copy of the checklist must be attached to the "Application for Written Examination."

(5) The examination for Fire Department Instructor II shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Department Instructor II as set forth in Chapter 0360-06-01.

(a) The performance examination for the Fire Department Instructor II shall consist of completing a prescribed Fire Department Instructor II workbook meeting the current standard.

(b) After completion of these materials, the applicant shall return them to the Commission Office for grading on a pass/fail basis and will be notified of his/her results in writing. If the applicant is successful, he/she may apply for the written examination through established procedures; should the applicant be unsuccessful, the applicant will be notified of which areas need improvement and the workbook will be returned for revision.

(6) The examination for Fire Department Instructor I/II Combined shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Department Instructor I/II Combined as set forth in Chapter 0360-06-01.

(a) The performance examination for the Fire Department Instructor I/II Combined shall consist of completing a prescribed Fire Department Instructor II workbook meeting the current standard.

(b) After completion of these materials, the applicant shall return them to the Commission Office for grading on a pass/fail basis and will be notified of his/her results in writing. If the applicant is successful, he/she may apply for the written examination through

(Rule 0360-04-01-.06, continued)

established procedures; should the applicant be unsuccessful, the applicant will be notified of which areas need improvement and the workbook will be returned for revision.

(7) The examination for Fire Department Instructor III shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Department Instructor III as set forth in Chapter 0360-06-01.

(8) The examination for Fire Officer I shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Officer I as set forth in Chapter 0360-06-01.

(a) The performance examination for Fire Officer I shall be administered by the Commission in conjunction with written examinations. The practical requirement shall be completion of two projects assigned to the applicant at random which are derived from NFPA 1021. These projects will be graded by designated Commission representatives.

(9) The examination for Fire Officer II shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Officer II as set forth in Chapter 0360-06-01.

(a) The performance examination for the Fire Officer II shall consist of completing a workbook based on NFPA 1021 for Fire Officer II. The workbook may be obtained from the Commission. This project will be graded by the Commission.

(10) The examination for Fire Officer I/II Combined shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Officer I/II Combined as set forth in Chapter 0360-06-01.

(a) The performance examination for the Fire Officer I/II Combined shall consist of completing a workbook based on NFPA 1021 for Fire Officer II. The workbook may be obtained from the Commission. This project will be graded by the Commission.

(11) The examination for Fire Officer III shall consist of a performance and a written examination. The subjects tested will be substantially derived from the Performance Standards for Fire Officer III as set forth in Chapter 0360-06-01.

(a) The performance examination for the Fire Officer III shall consist of completing a workbook based on NFPA 1021 for Fire Officer III. The workbook may be obtained from the Commission. This project will be graded by the Commission.

(12) The examination for Fire Officer IV shall consist of a performance and a written examination. The subjects tested ~~will~~shall be substantially derived from the Performance Standards for Fire Officer IV as set forth in Chapter 0360-06-01.

(a) ~~The~~An applicant shall successfully complete the hands-on performance/practical examination for Fire Officer IV as promulgated by the Commission utilizing the standards outlined in NFPA 1021, Chapter 7 ~~for Fire Officer IV~~..

(13) The examination for Hazardous Materials Awareness Certification shall consist of a written examination. The subjects tested shall be substantially derived from the performance standards for Hazardous Materials Awareness as set forth in Chapter 0360-06-01.

(14) The examination for Hazardous Materials Operations Certification shall consist of a performance and a written examination. The subjects tested shall be substantially derived

(Rule 0360-04-01-.06, continued)

from the performance standards for Hazardous Materials Operations as set forth in Chapter 0360-06-01.

(a) The performance examination for Hazardous Materials Operations Level Certification shall be part of the Fire Fighter I hands-on practical or administered individually. A minimum of one evolution shall be selected from NFPA 472 Hazardous Materials Operations level.

(b) The written examination for Hazardous Materials Operations level will be administered in conjunction with the Hazardous Materials Awareness written examination or administered individually.

(15) The examination for Airport Firefighter shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Airport Firefighter as set forth in Chapter 0360-06-01.

(a) The performance examination requirements for Airport Firefighter shall consist of all the following:

1. A hands-on performance/practical administered on a regional basis. This practical shall be developed by the Commission based on the standards in NFPA 1003.

2. A live fire practical must be completed. One of the following options must be completed:

(i) Completion of a Federal Aviation Administration training course where, at minimum, all requirements of the Commission's Airport Live Fire Verification Sheet are accomplished.

(ii) All of the exercises listed on the Airport Live Fire Suppression Verification Sheet for the appropriate level must be completed through the local airport fire department's training program. An Airport Live Fire Suppression Verification Form must be completed and attached to the "Application for Written Examination". The department must provide the Commission with a minimum of seventy two (72) hours prior notification of live fire exercises, either by e-mail, US mail, or fax. A Commission member or staff may witness any live fire exercises conducted by a department. This option must be completed during a training exercise; no working fires can be utilized for this option.

(16) The examination for Wildland Firefighter I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Wildland Firefighter I as set forth in Chapter 0360-06-01.

(a) The performance examination for Wildland Firefighter I shall consist of one (1) of the following:

(i) Completion of a performance examination based upon NFPA 1051 which has been submitted to the Commission for approval, or

(ii) Completion of the "Task Book for the Position of Firefighter Type 2" offered by the Tennessee Division of Forestry.

(Rule 0360-04-01-.06, continued)

(17) The examination for Wildland Firefighter II shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Wildland Firefighter II as set forth in Chapter 0360-06-01.

(a) The performance examination for Wildland Firefighter II shall consist of one (1) of the following:

1. Completion of a performance examination based upon NFPA 1051 which has been submitted to the Commission for approval, or

2. Completion of the "Task Book for the Position of Advanced Firefighter/Squad Boss" offered by the Tennessee Division of Forestry.

(18) The examination for Fire and Life Educator I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire and Life Safety Educator I as set forth in Chapter 0360-06-01.

(a) The performance examination for Fire and Life Safety Educator I shall consist of completing a workbook based upon NFPA 1035 for the appropriate level and returning it to the Commission for grading. Once the performance examination has been passed, the applicant can submit his/her application for written examination. An applicant has one year from the completion of the workbook to pass the written examination or must redo the workbook. The workbook can be obtained upon request from the Commission.

(19) The examination for Fire and Life Educator II shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire and Life Safety Educator II as set forth in Chapter 0360-06-01.

(a) The performance examination for Fire and Life Safety Educator II shall consist of completing a workbook based upon NFPA 1035 for the appropriate level and returning it to the Commission for grading. Once the performance examination has been passed, the applicant can submit his/her application for written examination. An applicant has one (1) year from the completion of the workbook to pass the written examination or must redo the workbook. The workbook can be obtained upon request from the Commission.

(20) The examination for Fire Safety Compliance Officer I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Safety Compliance Officer I as set forth in Chapter 0360-06-01.

(a) The performance examination for personnel assigned to fire suppression shall consist of:

1. the applicant monitoring a minimum of eight (8) fire safety inspections conducted by a Fire Safety Compliance Officer II or an individual certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113 utilizing Standards outlined in NFPA 101 and 1031. Two (2) fire safety inspections of each of the four (4) occupancies, industrial, educational, general business, and institutional, as defined in the NFPA 101 Life Safety Code, are to be conducted; or

2. becoming certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113.

(Rule 0360-04-01-.06, continued)

(21) The examination for Fire Safety Compliance Officer II shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Safety Compliance Officer II as set forth in Chapter 0360-06-01.

(a) The performance examination for personnel assigned to fire suppression shall consist of:

1. the applicant conducting a minimum of eight (8) fire safety inspections under the supervision of a Fire Safety Compliance Officer II or an individual certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113 utilizing Standards outlined in NFPA 101 and 1031. Two (2) inspections of each of the four (4) occupancies, industrial, educational, general business, and institutional, as defined in the NFPA 101 Life Safety Code, are to be conducted. The evaluator shall evaluate each inspection on a pass/fail basis determining whether the applicant conducted a thorough and complete inspection ensuring compliance with NFPA Standards and any applicable local ordinances. In order to successfully complete the performance examination, the applicant must receive a passing grade for each of the inspections on each of the four (4) occupancies; or

2. becoming certified by the State Fire Marshal's Office in accordance with T.C.A. § 68-120-113.

(22) The examination for Fire Apparatus Operator shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Apparatus Operator as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1002, Chapters 4, 5, and 6. In order to challenge this level, the applicant must be able to perform the evolutions on both pumper and aerial apparatus equipment.

(23) The examination for Pumper Driver/Operator shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Pumper Driver/Operator as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1002, Chapters 4 and 5.

(24) The examination for Aerial Apparatus Driver/Operator shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Aerial Apparatus Driver/Operator as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1002, Chapters 4 and 6.

(25) The examination for Safety Officer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Safety Officer as set forth in Chapter 0360-06-01.

(a) The performance examination for Safety Officer shall be the completion of a written outline of the Safety Officer's role, duties, and responsibilities in accordance with NFPA 1521, OSHA, and other standards given an incident scenario provided by the Commission. The applicant will be provided the incident scenario in a written

(Rule 0360-04-01-.06, continued)

examination setting. This outline will be evaluated by a Committee of the Commission which will meet in conjunction with a regularly scheduled Commission meeting on an as-needed basis. Successful completion of this outline will qualify the applicant to take the written examination for Safety Officer.

(26) The examination for Incident Safety Officer I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Incident Safety Officer I as set forth in Chapter 0360-06-01.

(a) The performance examination for Incident Safety Officer I shall be the completion of a written outline of the Incident Safety Officer I's role, duties, and responsibilities in accordance with NFPA 1521, OSHA, and other standards given an incident scenario provided by the Commission. The applicant will be provided the incident scenario in a written examination setting. This outline will be evaluated by a Committee of the Commission which will meet in conjunction with a regularly scheduled Commission meeting on an as-needed basis. Successful completion of this outline will qualify the applicant to take the written examination for Incident Safety Officer I.

(27) The examination for Health & Safety Officer I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Health & Safety Officer I as set forth in Chapter 0360-06-01.

(a) The performance examination for Health & Safety Officer I shall be the completion of a written outline of the Health & Safety Officer I's role, duties, and responsibilities in accordance with NFPA 1521, OSHA, and other standards given an incident scenario provided by the Commission. The applicant will be provided the incident scenario in a written examination setting. This outline will be evaluated by a Committee of the Commission which will meet in conjunction with a regularly scheduled Commission meeting on an as-needed basis. Successful completion of this outline will qualify the applicant to take the written examination for Health and Safety Officer I.

(28) The examination for Technical Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Technical Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 4 and 5.

(29) The examination for Rope Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Rope Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 6.

(30) The examination for Confined Space Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Confined Space Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 7.

(Rule 0360-04-01-.06, continued)

(31) The examination for Trench Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Trench Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 8.

(32) The examination for Structural Collapse Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Structural Collapse Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 9.

(33) The examination for Vehicle Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Vehicle Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 10.

(34) The examination for Surface Water Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Surface Water Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 11.

(35) The examination for Swiftwater Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Swiftwater Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 12.

(36) The examination for Dive Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Dive Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 13.

(37) The examination for Ice Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Ice Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 14.

(Rule 0360-04-01-.06, continued)

(38) The examination for Surf Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Surf Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 15.

(39) The examination for Wilderness Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Wilderness Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 16.

(40) The examination for Mine and Tunnel Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Mine and Tunnel Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 17.

(41) The examination for Cave Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Cave Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 18.

(42) The examination for Machinery Rescuer shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Machinery Rescuer as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1006, Chapters 5 and 19.

(43) The examination for Exterior Industrial Fire Brigade Member shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Exterior Industrial Fire Brigade Member as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1081, Chapters 4 and 6.

(44) The examination for Interior Structural Fire Brigade Member shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Interior Structural Fire Brigade Member as set forth in Chapter 0360-06-01.

(Rule 0360-04-01-.09, continued)

(Rule 0360-04-01-.06, continued)

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1081, Chapters 4 and 7.

(45) The examination for Fire Inspector I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Inspector I as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1031, Chapter 4.

(46) The examination for Fire Investigator I shall consist of a performance and a written examination. The subjects tested shall be substantially derived from the performance standards for Fire Investigator I as set forth in Chapter 0360-06-01.

(a) The applicant must complete a hands-on performance/practical examination promulgated by the Commission utilizing the Standards outlined in NFPA 1033.

Authority: T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-110~~ and 68-1-102~~. **Administrative History**: Original rule filed August 27, 1979; effective October 10, 1979. Amendment filed November 8, 1990; effective December 23, 1990. Repeal and new rule filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Amendments filed October 5, 2010; effective March 31, 2011. Amendments filed August 2, 2011; effective January 29, 2012. Repeal and new rule filed October 27, 2014; effective January 25, 2015.

RULES
OF
THE TENNESSEE COMMISSION ON FIRE FIGHTING
PERSONNEL STANDARDS AND EDUCATION

CHAPTER 0360-06-01
MISCELLANEOUS CERTIFICATION STANDARDS

TABLE OF CONTENTS

0360-06-01-.01	Adoption by Reference	0360-06-01-.04	Progression
0360-06-01-.02	Repealed	0360-06-01-.05	Reciprocity
0360-06-01-.03	Domestic Violence Training		

0360-06-01-.01 ADOPTION BY REFERENCE.

(1) The Commission adopts by reference the following National Fire Protection Association (NFPA) Standards in their entirety as performance standards unless otherwise provided herein:

(a) 472 Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2013 Edition;

(b) 1001 Standard for Fire Fighter Professional Qualifications, 2013 Edition;

(c) 1002 Standard for Fire Apparatus Driver/Operator Professional Qualifications, 2009 Edition;

(d) 1003 Standard for Airport Fire Fighter Professional Qualifications, 2010 Edition;

(e) 1005 Standard for Professional Qualifications for Marine Fire Fighting for Land-Based Fire Fighters, 2014 Edition;

(f) 1006 Standard for Technical Rescuer Professional Qualifications, 2013 Edition;

(g) 1021 Standard for Fire Officer Professional Qualifications, 20~~09~~14 Edition;

(h) 1031 Standard for Professional Qualifications for Fire Inspector and Plan Examiner, 2014 Edition;

(i) 1033 Standard for Professional Qualifications for Fire Investigator, 2014 Edition;

(j) 1035 Standard for Professional Qualifications for Fire and Life Safety Educator, Public Information Officer, and Juvenile Firesetter Intervention, 2010 Edition;

(k) 1041 Standard for Fire Service Instructor Professional Qualifications, 2012 Edition;

(l) 1051 Standard for Wildland Fire Fighter Professional Qualifications, 2007 Edition;

(m) 1081 Standard for Industrial Fire Brigade Member Professional Qualifications, 2012 Edition;

(n) 1403 Standard on Live Fire Training Evolutions, 2012 Edition;

(o) 1500 Standard on Fire Department Occupational Safety and Health Program, 2013 Edition; and,

(Rule 0360-06-01-.01, continued)

(p) 1521 Standard for Fire Department Safety Officer, 2008 Edition.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-110.* ***Administrative History:*** *Original rule filed November 8, 1990; effective December 23, 1990. Amendment filed October 14, 1994; effective February 28, 1995. Repeal and new rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Amendments filed August 2, 2011; effective January 29, 2012. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-06-01-.02 REPEALED.

Authority: *T.C.A. §§ 4-24-106 and 4-24-107.* ***Administrative History:*** *Original rule filed October 14, 1995; effective February 28, 1995. Repeal filed April 25, 2005; effective July 9, 2005.*

0360-06-01-.03 DOMESTIC VIOLENCE TRAINING.

The Commission's curriculum requirements on firefighting standards and education will include materials concerning domestic violence training pursuant to T.C.A. § 4-24-111.

Authority: *T.C.A. §§ 4-24-107 and 4-24-111.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005.*

0360-06-01-.04 PROGRESSION.

(1) Fire service personnel who have been certified at a specific progression level may take the examination for a lower (regression) level.

(2) If an applicant who has already achieved certification at a particular level(s) under prior NFPA standards wishes to achieve certification for those levels after the date Tennessee becomes accredited, the applicant will be allowed to do so and the waiting period shall not apply. The applicant will be required to complete all the requirements for the level(s) of certification sought.

(3) Unless otherwise prescribed in these rules, an applicant may progress to the next level of certification after achieving the prior certification level.

Authority: *T.C.A. §§ 4-24-101 and 4-24-107.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Repeal and new rule filed October 27, 2014; effective January 25, 2015.*

0360-06-01-.05 RECIPROCITY.

(1) Reciprocity of certification shall be considered by the Commission for applicants who have achieved certification from another agency that has achieved national accreditation from an organization recognized by the Commission and who meet the criteria established by the Commission.

(2) The following ~~must~~shall be submitted to request reciprocity:

(a) ~~A~~application for ~~R~~reciprocity with a list of certification(s) for which the applicant is requesting reciprocity;

(b) ~~D~~documentation that the applicant has not been out of the fire service for a period of ~~greater than~~ three (3) years or more;~~, and~~

(c) ~~P~~proof of ~~C~~certification (copies of certificates). Certificates of ~~A~~attendance ~~do~~shall not constitute ~~P~~proof of ~~C~~certification~~.~~; and

(Rule 0360-06-01-.05, continued)

(d) proof of applicant's residency in Tennessee or documentation of support, sponsorship or employment by a fire chief or department recognized pursuant to TCA § 68-102-301, et seq.

(3) When considering whether to grant reciprocity to another jurisdiction's certifications, the Commission ~~will~~shall ~~only~~ grant reciprocity only if the following criteria are met:

(a) the Commission certifies an equivalent course;

(b) the certification ~~was~~is issued by an entity accredited by ~~the~~ IFSAC or ~~the National Fire Service Professional Qualifications~~ Pro Board, ~~and~~ the certification is in the registry of the national accrediting agency, and the certification ~~was~~is issued after the date the entity became accredited;

(c) the applicant has not been out of the fire service for a period of ~~greater than~~ three (3) years or more; and

(d) the Commission receives proof of the applicant's residency in Tennessee or a letter of support, sponsorship or employment from a fire chief or recognized department employing or appointing the applicant ~~has not previously failed a written or performance examination for that level of certification in the State of Tennessee~~.

(4) If reciprocity is granted, the Commission shall issue a letter recognizing the applicant's certifications in the State of Tennessee and this recognition shall meet the requirements of certification in Tennessee.

(5) For progression purposes in the Certification Program and for purposes related to Educational Incentive Pay, the date of recognition of the certification shall be used for "Date of Certification".

(6) If a fire department requires or an individual, who has received reciprocity of a level of certification, chooses to pursue certification in the State of Tennessee, the applicant ~~will~~shall be eligible to pursue certification but ~~will~~shall be required to meet all of the certification requirements in force.

(7) The Commission ~~will~~shall not recognize or grant reciprocity to a certification issued by a fire department in Tennessee even if that fire department is accredited by a national accrediting agency.

Authority: *T.C.A. §§ 4-24-101, 4-24-106, 4-24-107, and 4-24-202.* ***Administrative History:*** *Original rule filed April 25, 2005; effective July 9, 2005. Amendment filed December 14, 2009; effective March 14, 2010. Amendments filed October 27, 2014; effective January 25, 2015.*

* 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)
Commissioner Brian Biggs	X				
Commissioner Mark Finucane	X				
Commissioner Darryl Kerley	X				
Commissioner Thomas McCormack	X				
Commissioner Michael Naifeh	X				
Commissioner Michael Slay	X				
Commissioner Stephanie Specht	X				
Commissioner Matthew Sorge	X				
Commissioner Charles Vance	X				

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the (*board/commission/other authority*) on 04/29/2015 (*date as mm/dd/yyyy*), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 5/1/16

Signature:

Name of Officer: Joseph Underwood

Title of Officer: Chief Counsel for Fire Prevention & Law Enforcement

Subscribed and sworn to before me on: May 1, 2016

Notary Public Signature:

My commission expires on: 12/6/16

DAVID COMBS
STATE OF TENNESSEE NOTARY PUBLIC
WILSON COUNTY

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

Herbert H. Slatery III
Attorney General and Reporter

6/1/2016
Date

Department of State Use Only

Filed with the Department of State on: 6/3/16

Effective on: 9/1/16

Tre Hargett
Secretary of State

RECEIVED
2016 JUN -3 PM 3:44
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Tennessee Motor Vehicle Commission
SUBJECT:	Motor Vehicle Dealer Facilities
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 55-17-107(1)
EFFECTIVE DATES:	September 22, 2016 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The proposed rule allows for mobile or cellular phones to be used as the primary business phone of a motor vehicle dealer.

Regulatory Flexibility Addendum

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

Regulatory Flexibility Analysis - Methods of Reducing Impact of Rule on 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.

It is believed that allowing for the use of cell phones as a primary business phone will directly benefit small businesses. There are approximately 3,802 licensed motor vehicle dealers in Tennessee. Using the guidelines set by the Governor's Office of Diversity Business Enterprise, a small business is considered one that has total gross receipts of no more than ten million dollars ($10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis. Given this definition, it is believed that the vast majority of motor vehicle dealers in Tennessee would qualify as a small business and, therefore, this rule will impact substantially all of those identified above.

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

This rule is not expected to have any substantial reporting, recordkeeping or other administrative costs.

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

This rule is expected to have a positive impact on small businesses by allowing more flexibility in compliance with the standards for having a primary business phone. Allowing use of cellular and mobile phones is expected to have a positive impact for consumers by allowing motor vehicle dealers to be easier to reach. Other changes are not expected to have a probable 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.

The Commission believes that this change is not burdensome, intrusive or costly and – as such – there do not appear to be any alternatives that would reasonably be expected to be less burdensome.

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

Some states, such as New Jersey and Louisiana appear to require landlines for some or all motor vehicle dealers. Other states, such as New York and North Dakota appear to either allow cell phones or not provide guidance regarding the type of phone that is acceptable. There are no known federal counterparts to these rules.

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

Exemption from these rules would not be expected to be beneficial for small businesses, as existing standards are either stricter or less clear.

Impact on Local Governments

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

This rule has no projected impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Rule 0960-01-.21 [MOTOR VEHICLE DEALER FACILITIES] is amended by allowing for mobile or cellular phones to be used as the primary business phone of a motor vehicle dealer.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

This rule is not mandated by any federal or state law or regulation.

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

This rule affects all licensed motor vehicle dealers. This rule was urged by the Tennessee Automotive Association.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no opinions of the Attorney General and Reporter or any other judicial ruling that directly relates to the rule.

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

There is no expected substantial impact on state or local government revenue and expenditures.

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

Paula Shaw 500 James Robertson Parkway Davy Crockett Tower 5th Floor Nashville, TN 37243 (615) 741-2711	Matthew Reddish 500 James Robertson Parkway Davy Crockett Tower 5th Floor Nashville, TN 37243 (615) 770-0089

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

Paula Shaw, Executive Director, Motor Vehicle Commission
Matthew Reddish, Assistant General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Paula Shaw 500 James Robertson Parkway Davy Crockett Tower 5th Floor	Matthew Reddish 500 James Robertson Parkway Davy Crockett Tower 5th Floor

Nashville, TN 37243 (615) 741-2711	Nashville, TN 37243 (615) 770-0089	

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

None

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-21-16
Rule ID(s): 6203
File Date: 6/24/16
Effective Date: 9/22/16

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Motor Vehicle Commission
Division:	Department of Commerce and Insurance
Contact Person:	Matthew Reddish
Address:	500 James Robertson Parkway, Nashville, TN
Zip:	37243
Phone:	615-741-3072
Email:	Matthew.E.Reddish@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**
0960-01	General Rules
Rule Number	**Rule Title**
0960-01-.21(3)	Motor Vehicle Dealer Facilities

Chapter 0960-01
General Rules
Amendments

Rule 0960-01-.21 [MOTOR VEHICLE DEALER FACILITIES] is amended by deleting the phrase "Mobile and/or cellular telephones are not acceptable as the primary business telephone." in paragraph (3) of the rule so that, as amended, paragraph (3) shall read:

(3) The facility shall have a primary telephone number listed in the local directory under the name of the dealership. ~~Mobile and/or cellular telephones are not acceptable as the primary business telephone.~~ The primary phone number of the dealership shall be posted either on the door to the dealership, in a window of the dealership or on the dealership's sign.

Authority: T.C.A. §§ 55-17-107 and 55-17-114.

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

Board Member (if required)	Aye	No	Abstain	Absent	Signature
Eddie Roberts	X				
Stan Norton	X				
George Bass		X			
Nathaniel Jackson	X				
Don Parr		X			
Billy Keck				X	
Lynn Webb	X				
B. Joe Clayton		X			
Ronald Fox	X				
Stan McNabb		X			
Reed Trickett	X				
Jim Galvin Jr.	X				
John S. Murrey	X				
Donnie Hatcher	X				
Farrar Schaeffer Vaughan		X			

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Commission on 07/13/2015, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

Date: 5-4-16

Signature: Matt Reddish

Name of Officer: Matthew Reddish

Title of Officer: Assistant General Counsel, Regulatory Boards

VANESSA HUNTSMAN STATE OF TENNESSEE NOTARY PUBLIC SUMNER COUNTY MY COMMISSION EXPIRES 11-21-2017

Subscribed and sworn to before me on: May 4, 2016

Notary Public Signature: Vanessa Huntsman

My commission expires on: Nov. 21, 2017

Rules of the Tennessee Motor Vehicle Commission
Chapter 0960-01 General Rules
Rule 0960-01-.21(3) Motor Vehicle Dealer Facilities

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

Herbert H. Slatery III
Herbert H. Slatery III
Attorney General and Reporter

6/16/2016
Date

Department of State Use Only

Filed with the Department of State on: 6/24/16

Effective on: 9/22/16

Tre Hargett
Tre Hargett
Secretary of State

RECEIVED
2016 JUN 24 PM 1:02
SECRETARY OF STATE
PUBLICATIONS

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Labor and Workforce Development
DIVISION:	Bureau of Workers' Compensation
SUBJECT:	Medical Impairment Rating Registry Program
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 50-6-233, 50-6-246
EFFECTIVE DATES:	September 8, 2016, through June 30, 2017
FISCAL IMPACT:	According to the Bureau, local governments that opt-in to the workers' compensation laws the fiscal impact of the rules will be minimal as these are largely procedural rules. The state government is subject to some provisions of the workers' compensation laws, but not all, and will not be impacted by these rule amendments.
STAFF RULE ABSTRACT:	The rulemaking hearing rule makes various changes to the rules concerning the medical impairment rating registry program (the "program"). Many of the changes in this rule are minor grammatical and stylistic changes. Among the more significant substantive changes are the following: 1. Under current rules, a dispute of the degree of medical impairment that may be resolved by accessing the program exists when there are conflicting impairment ratings or there is no impairment rating but permanent restrictions have been issues. This rule adds that such a dispute exists when the employer and employee agree that the treating physician's impairment rating is incorrect and both parties want to access the program; 2. This rule specifies that a evaluating physician (essentially a second opinion physician to whom the employee is referred solely to determine the employee's impairment rating) may not apportion permanent impairment unless directed to do so by written agreement of all parties, as submitted to the program coordinator;

3. This rule requires that evaluating physicians conduct program evaluations within 30 days of a referral, except when good cause is shown for a delay;

4. This rule specifies that a party who disagrees with the program coordinator's decision to accept or deny a request for a list of physicians for the purpose of performing an evaluation may petition for benefits determination with the court of workers' compensation claims;

5. This rule specifies that each party must obtain the medical records that it sends to the evaluating physician at the party's own expense;

6. This rule revises the amount of the fee that must be paid to a program physician for performing an evaluation.

Under the current rules, the evaluation fees are:

(i) Completed reports received and accepted by the program coordinator within 30 calendar days of completing the examination ... $1,000;

(ii) Completed reports received and accepted by the program coordinator between 31 and 45 calendar days of the completing the examination ... $850;

(iii) Completed reports received and accepted by the program coordinator between 46 and 60 calendar days of the completing the examination ... $500; and

(iv) Completed reports received and accepted by the program coordinator later than 60 calendar days of completing the examination ... No fee paid.

Under this rule, the evaluation fees will be:

(a) Completed reports that do not require a psychiatric evaluation:

(i) Completed reports received and accepted by the program coordinator within 30 calendar days of completing the examination ... $1,500;

(ii) Completed reports received and accepted by the program coordinator between 31 and 45 calendar days of the completing the examination ... $1250;

(iii) Completed reports received and accepted by the program coordinator between 46 and 60 calendar days of the completing the examination ... $750; and

(iv) Completed reports received and accepted by the program coordinator later than 60 calendar days of completing the examination ... No fee paid.

(b) Completed reports that do require a psychiatric evaluation:

(i) Completed reports requiring a psychiatric evaluation and received and accepted by the program coordinator within 30 calendar days of completing the examination ... $2,000;

(ii) Completed reports requiring a psychiatric evaluation and received and accepted by the program coordinator between 31 and 45 calendar days of completing the examination ... $1500;

(iii) Completed reports requiring a psychiatric evaluation received and accepted by the program coordinator between 46 and 60 calendar days of the completing the examination ... $1,000; and

(iv) Completed reports requiring a psychiatric evaluation received and accepted by the program coordinator later than 60 calendar days of completing the examination ... No fee paid.

In cases requiring non-routine evaluations, this rule increases the amount by which an evaluation fee may be increased from up to an additional $250 to up to an additional $500;

7. This rule provides for the program coordinator's preapproval of certain lung functioning tests before such tests are ordered by the evaluation physician;

8. The current rules provide that an employee's workers' compensation may be suspended if the employee fails to appear at two or more evaluations without good cause.

This rule instead authorizes an employer to seek reimbursement of cancellation fees that the employer incurs as a result of an employee untimely cancelling or failing to appear at an evaluation without good cause. This rule also specifies that the program coordinator may authorize an evaluating physician to

prepare a medical impairment rating report without conducting a physical examination if the employee untimely cancels or fails to appear at two or more evaluations without good cause;

9. This rule requires that an evaluating physician complete a medical impairment rating report even if the evaluating physician does not determine the employee to be a maximum medical improvement at the time of the evaluation;

10. In cases where an evaluating physician violates a program requirement, the current rules authorize the Bureau's administrator to remove a physician from the program's list of approved evaluating physicians.

This rule adds authorization for the administrator to place an evaluating physician on inactive status pending additional training or other administrative requirements;

11. The current rules authorize assessment of a $250 penalty against an employer who does not pay an evaluation cancellation fee in the amount of $300. An additional $500 penalty is authorized at the end of any 30-day period when any portion of the cancellation fee or a penalty is unpaid.

This rule clarifies that the $250 penalty will be triggered when the cancellation fee is not paid within 15 days of the program coordinator's written request for the fee;

12. Under the current rules, failure by an evaluating physician to timely refund any unearned evaluation fee authorizes the employer or insurer to recover in addition to the unearned fee a $100 late fee from that physician. If the unearned fee and/or late fee remains unpaid 15 days following the date of the evaluation, an additional $250 penalty against the physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional 30-day period, an additional $500 penalty is authorized, and again for each additional 30-day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

Under this rule, failure by an evaluating physician to refund any unearned evaluation fee within 15 days of the program's coordinator's written request for a refund will authorize a $250 penalty against the

physician. If any portion of the unearned fee or penalty remains unpaid after an additional 30-day period, an additional $500 penalty is authorized, and again for each additional 30-day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid;

13. This rule increases the penalty for unauthorized communication with an evaluating physician from up to $500 to $50 to $5,000 per violation; and

14. This rule increases the general penalty for violations of the rules when a higher penalty is not specified from up to $100 to $50 to $5,000 per violation.

Public Hearing Comments

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

Public Comments and Responses

Comment: Regarding Rule 0800-02-20-.07, an increase in fees by 50% is excessive and will decrease the use of the MIRR.
Response: The Bureau disagrees with this comment. The fees have not been increased since 2005 and the proposed fees are in line with fees charged for records reviews and Independent Medical Evaluations used in other circumstances in Tennessee and in other states. The request for extra reimbursement presently comes from the evaluating physician. The aim is to attract the best practitioners who go through extra training to do this work. As in other fields, quality costs more.

Comment: Most reports are straightforward and do not warrant the increase in fees.
Response: The Bureau disagrees with the comment. Although seemingly straightforward, the report requirements are exacting and are peer reviewed. The Bureau does not judge the complexity of the calculations ahead of time.

Comment: Give the program coordinator greater discretion by allowing extra payment of up to $800 instead of $250 and add more direction to the program coordinator by adding qualifiers: 1) medical records in excess of 100 pages, 2) diagnoses of two or more chapters in the Guides®, 3) multiple diagnoses, 4) consultations with other physicians.
Response: The Bureau agrees with the comment in part. The program coordinator does not receive the medical records and usually does not know of the number of pages being asked for by the parties or the number of diagnoses that will eventually be used by the MIRR physician. The fee is prepaid. The request for extra reimbursement presently comes from the evaluating physician. The program rules allow for the approval of the extra payment for three or more chapters of the Guides®. The qualifier for two or more chapters and for consultations with other providers has been added. The additional discretionary fee has been increased to $500.

Comment: Regarding the cancellation fee, if the claimant cancels without reasonable notice given or fails to show, without good cause, the claimant should be responsible for the $300 cancellation fee.
Response: The Bureau agrees with the comment and a revision was made to allow the payor to request an order from the court of workers' compensation claims for reimbursement by the employee.

Comment: The process is unclear when the program coordinator's decision not to accept an MIR application is final for administrative purposes.
Response: The Bureau has added a clarifying statement that the parties may file a petition for benefit determination with the Bureau as needed.

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)

Statement Of Economic Impact To 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 amended rules will affect small employers under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry with at least one employee. The rules address the medical impairment rating registry program, which may affect those employees with a permanent impairment rating.

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: Generally, record keeping and administrative duties will be performed by employers' insurance carriers or third party administrators. Accordingly, any administrative impact to small businesses should be minimal.

3. A statement of the probable effect on impacted small businesses and consumers: Any impact on small businesses and consumers should be minimal.

4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.

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

6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: It would be detrimental to small businesses that fall under the Tennessee Workers' Compensation Laws to be exempt from these rules because they are intended to ensure the effective administration of claims. It is expected that these rules would promote better outcomes in workers' compensation claims which should prove beneficial to the overall health of the Tennessee economy.

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)

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the impact of the rule amendments will be minimal.

Additional Information Required by Joint Government Operations Committee

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

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

These rules provide changes to the existing medical impairment rating registry rules

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 50-6-204(d) provides for the establishment of a medical impairment rating registry program to be provided to injured workers under the workers' compensation law.

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

Insurance carriers and injured workers will be directly affected by these rules. Comments were received by the bureau and were addressed and some suggested changes were made.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

None

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

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the fiscal impact of the rule amendments will be minimal as these are largely procedural rules. The state government is subject to some provisions of the workers' compensation laws, but not all, and will not be impacted by these rule amendments.

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

Troy Haley, Administrative Attorney and Legislative Liaison, Bureau of Workers' Compensation

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

Troy Haley, Administrative Attorney and Legislative Liaison, Bureau of Workers' Compensation

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

220 French Landing
Drive Floor 1-B
Nashville, TN 37243
(615) 532-0179
troy.haley@tn.gov

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

None

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-07-16
Rule ID(s): 6198
File Date: 6/10/16
Effective Date: 9/8/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Bureau of Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Drive 1-B, Nashville, TN
Zip:	37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

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

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

Chapter Number	**Chapter Title**
0800-02-20	Medical Impairment Rating Registry Program
Rule Number	**Rule Title**
0800-02-20-.01	Definitions
0800-02-20-.02	Purpose and Scope
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	Requests for a MIR Registry Physician
0800-02-20-.07	Payments/Fees
0800-02-20-.09	Communication with Registry Physicians
0800-02-20-.10	Requirements for the Evaluation
0800-02-20-.11	Requirements for the "MIR Report"
0800-02-20-.13	Removal of a Physician from the Registry
0800-02-20-.14	Penalties
0800-02-20-.15	Time Limits
0800-02-20-.16	Cooperation

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

Chapter Number	**Chapter Title**
0800-02-20	Medical Impairment Rating Registry Program
Rule Number	**Rule Title**
0800-02-20-.01	Definitions
0800-02-20-.02	Purpose and Scope
0800-02-20-.03	Severability
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	Requests for a MIR Registry Physician
0800-02-20-.07	Payments/Fees
0800-02-20-.08	Multiple Impairment Rating Evaluations
0800-02-20-.09	Communication with Registry Physicians
0800-02-20-.10	Requirements for the Evaluation
0800-02-20-.11	Requirements for the MIR Report"
0800-02-20-.12	Peer Review
0800-02-20-.13	Removal of a Physician from the Registry
0800-02-20-.14	Penalties
0800-02-20-.15	Time Limits
0800-02-20-.16	Cooperation
0800-02-20-.17	Overturning a MIR Physician's Opinion

(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)

0800-02-20-.01 DEFINITIONS.

(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 Bureau of Workers' Compensation ~~Division of the Tennessee Department of Labor and Workforce Development~~ with full authority over the MIR Registry Program, or the Administrator's designee.

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

(4) "Bureau" means the Bureau of Workers' Compensation.

(5) "Conflict of Interest" means a conflict between the professional or personal interests and needs of a health care provider and his or her professional responsibilities toward a patient or consumer.

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

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

(7) ~~(6)~~ "Dispute of degree of medical impairment" means one or more of the following: ~~of two things: either~~

(a) 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,~~

(b) ~~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 or mental (psychiatric) restrictions to the injured employee; or

(c) the employer and employee both wish to access the Medical Impairment Rating Registry because they agree that the permanent medical impairment rating issued by the authorized treating physician is incorrect.

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

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

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

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

(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 self-insured employer, self-insured pool, or self-insured trust pursuant to the requirements of Tenn. Code Ann. § 50-6-405 and Chapter 0780-01-54, Self-Insured Pools, of the Rules of the Department of Commerce and Insurance, Insurance Division.

(Rule 0800-02-20-.01, continued)

~~(12) "Medical Director" means the Division's Medical Director, appointed by the Administrator pursuant to T.C.A. § 50-6-126 (Repl. 1999) or the Medical Director's designee.~~

(12) ~~(13)~~"Medical Impairment Rating Registry" or "MIR Registry" means the registry or listing of physicians established by the Administrator pursuant to Tenn. Code Ann. § 50-6-204 ~~(2005)~~ to perform independent medical impairment ratings when there is a dispute as to the degree of medical impairment, as defined in 0800-02-20-.01(5) above.

(13) ~~(14)~~"Party" means any person or entity which either could be liable for payment of workers' compensation benefits or a person who has a potential right to receive workers' compensation benefits. "Party" shall include a legal representative of a party.

(14) ~~(15)~~"Physician" means a person currently licensed in good standing to practice as a doctor of medicine or doctor of osteopathy.

(15) ~~(16)~~"Program Coordinator" means the ~~chief~~ administrative officer of the MIR Registry Program, appointed by the Administrator~~, or the Program Coordinator's Designee~~.

Authority: *T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 ~~(2005)~~, 50-6-205, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendment filed November 8, 2011; effective April 29, 2012. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-20-.02 PURPOSE AND SCOPE.

(1) Purpose. The purpose of the Medical Impairment Rating Registry Program is to comply with and implement Tenn. Code Ann. § 50-6-204(d)(5) and (6) (Repl. 2005) by establishing a resource to resolve disputes regarding the degree of permanent medical impairment ratings for injuries or occupational diseases to which the Act is applicable. In order to ensure high-quality independent medical impairment evaluations, the Department establishes these Rules for parties and physicians. MIR Registry physicians shall provide evaluations in a manner consistent with the standard of care in their community and in compliance with these Rules, as well as issue opinions based upon the applicable edition of the AMA Guides™ to the Evaluation of Permanent Impairment or other appropriate method pursuant to the Act.

(2) Scope. The MIR Registry is available to any party with a dispute of the degree of medical impairment rating as defined herein for injuries or any occupational disease which occurred on or after July 1, 2005. The only aspect considered by a MIR Registry physician shall be the degree of permanent medical impairment and shall not be apportioned unless directed to do so by the written agreement of all parties, as submitted to the Program Coordinator. If multiple pathologies are present in the same disputed body part or organ system, the MIR Physician may address causation solely as a means of obtaining the correct degree of permanent medical impairment, as stipulated by AMA Guides™ methodology..

Authority: *T.C.A. §§ 4-5-202 and 50-6-204 ~~(2005)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.*

0800-02-20-.03 SEVERABILITY.

(1) If any provision of these Rules or the application thereof to any person or circumstance is, for any reason, held to be invalid, the remainder of the Rules and the application of the provisions to other persons or circumstances shall not be affected in any respect whatsoever.

Authority: *T.C.A. §§ 4-5-202 and 50-6-204 ~~(2005)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.*

0800-02-20-.04 REQUISITE PHYSICIAN QUALIFICATIONS FOR INCLUSION ON MEDICAL IMPAIRMENT RATING REGISTRY.

(1) A physician seeking appointment to the MIR Registry shall make application and must satisfy the following qualifications:

(a) Possess a license to practice medicine or osteopathy in Tennessee which is current, active, and unrestricted;

(b) Be board-certified in his/her medical specialty by a board recognized by the American Board of Medical Specialties, the American Osteopathic Association or another organization acceptable to the Administrator;

(c) Have successfully completed a training course, approved by the Administrator, dedicated to the proper application of the applicable edition of the American Medical Association Guides to the Evaluation of Permanent Impairment™ (hereafter the "AMA Guides™") in impairment evaluations and furnish satisfactory evidence thereof; and

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

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

Authority: *T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 ~~(2005)~~, 50-6-205, 50-6-233. ~~, and Public Chapters 282 & 289 (2013).~~* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.*

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

(1) 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,~~ A~~a~~n 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 Bureau~~Department~~. Each panelist ~~member of the panel~~ shall ~~vote to~~ either recommend or not recommend to the Administrator the applicant for inclusion on the MIR Registry. The Administrator~~, 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.

(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 http://www.tn.gov/assets/entities/labor/attachments/MIR_appl_registry.pdf ~~www.state.tn.us/labor-wfd/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 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) Agree to conduct all evaluations within 30 days of receiving referrals, except when good cause is shown. Consideration will be given to a physician's schedule and other previously arranged or emergency obligations; ~~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 Administrator 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 immediately notify the Administrator 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 Adminstrator; and

~~(a)~~ (l) For each MIR Registry case assigned, address only the issue of permanent impairment rating.
~~(b)~~
~~(c)~~ (m) While on the MIR Registry, agree to carry at least the minimum malpractice insurance policy coverage as provided in T.C.A. § 29-20-403.

(3) Bureau employees may be appointed to the MIR Registry in compliance with Rules 0800-02-20-.04 and 0800-.02-20.05.

(4) ~~(3)~~Physicians denied appointment to the MIR Registry by the Administrator or Administrator'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 Administrator may affirm or reverse the initial determination upon reconsideration of the initial decision. The Administrator shall issue a Notice of Final Determination which shall be the final decision. If the Administrator 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.

(Rule 0800-02-20-.05, continued)

Authority: *T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 ~~(2005)~~, 50-6-205, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-20-.06 REQUESTS FOR A MIR REGISTRY PHYSICIAN.

(1) When a dispute of the degree of medical impairment, as defined in Rule 0800-02-20-.06 exists, any party may request a listing of physicians from the Administrator'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.~~ http://www.tn.gov/workforce/section/injuries-at-work. The completed Form must then be returned to the Program Coordinator via electronic mail, facsimile or U.S. Mail.

(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. If a party disagrees with the decision, then the parties may file a Petition for Benefits Determination (PBD) with the Court of Workers' Compensation Claims.

(3) The request for a MIR Registry physician shall designate~~The Administrator 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. 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;

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

(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 Program Coordinator shall issue a listing of all qualified physicians in the appropriate geographic area (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 pursuant to T.C.A. § 50-6-204(d)(5).

(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

(Rule 0800-02-20-.06, continued)

Program Coordinator may produce a state-wide listing of all registry physicians qualified to give the rating.

(5) If the parties cannot agree upon selection of a MIR Registry physician from the Administrator's listing of MIR Registry physicians provided within fifteen (15) calendar days of the Program Coordinator issuing the requested listing, it shall be the responsibility of the employer to provide a written request to the 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, pursuant to T.C.A. § 50-6-204(d)(5).

(6) 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.

(7) 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 Administrator'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.

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

(8) 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 Administrator ~~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 Administrator ~~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 Administrator ~~Medical Director~~ will issue one replacement physician name.

(9) 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 of the date and time of the

(Rule 0800-02-20-.06, continued)

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.~~

(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 obtained at their own expense 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 Program Coordinator 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."

(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, contextual letters, commentaries, depositions, or any other document deemed by the Program Coordinator ~~Administrator~~ to compromise the impartiality of the review shall not be submitted to the MIR Registry physician.

(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.

(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.

(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, 50-6-102, 50-6-204 ~~(2005)~~, 50-6-205, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-20-.07 PAYMENTS/FEES.

(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 timetable as outlined below

(Rule 0800-02-20-.07, continued)

~~(a) Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of 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 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 completing the examination ..... $500.00~~

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

(a) Completed reports that do not require a psychiatric evaluation:

1. Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of completing the examination: $1,500.00.

2. Completed reports received and accepted by the Program Coordinator between thirty- one (31) and forty-five (45) calendar days of the completing the examination: $1250.00.

3. Completed reports received and accepted by the Program Coordinator between forty- six (46) and sixty (60) calendar days of the completing the examination: $750.00 .

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

(b) Completed reports that do require a psychiatric evaluation:

1. Completed reports requiring a psychiatric evaluation and received and accepted by the Program Coordinator within thirty (30) calendar days of completing the examination: $2,000.00.

2. Completed reports requiring a psychiatric evaluation and received and accepted by the Program Coordinator between thirty- one (31) and forty-five (45) calendar days of the completing the examination: $1500.00.

3. Completed reports requiring a psychiatric evaluation received and accepted by the Program Coordinator between forty- six (46) and sixty (60) calendar days of the completing the examination: $1,000.00.

4. Completed reports requiring a psychiatric evaluation received and accepted by the Program Coordinator later than sixty (60) calendar days of completing the examination: No fee paid.

(2) The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Report." At the Program Coordinator's ~~Administrator's sole~~ discretion, the evaluation fee may be increased up to an additional $500.00 if the MIR Report appropriates diagnoses from two or more chapters of the AMA Guides™ or if the time required for the record review, evaluation, or production of the MIR Report is extraordinary, or if the production of the report requires consultation with other providers. 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. More involved lung function testing including additional spirometry because the results in the medical record do not demonstrate that acceptability and repeatability criteria have been satisfied, measurement of DLCO and Vo2 Max, and pre- and post-bronchodilator spirometry or methacholine challenge tests in cases of asthma, if not reasonably current and available in the medical record should be discussed with the Program Coordinator, and if approved can then be ordered by the MIR physician at a testing facility reasonably near the worker's residence, with the employer/insurer financially responsible for the testing. 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.

(3) 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 Program Coordinator~~Administrator~~. The Program Coordinator ~~Administrator~~ shall decide whether an evaluation may be rescheduled within ten (10) calendar days of a request to cancel. If the request is not timely, the MIR Registry physician shall be entitled to collect/retain a $300.00 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.

(a) If the employee cancels untimely with good cause or fails to appear for the evaluation with good cause, as determined by the Program Coordinator, the Program Coordinator ~~shall~~ may reschedule the evaluation, and the employer shall pay the cancellation fee.

(b) If the employee untimely cancels an appointment with the MIR registry physician without good cause or fails to appear without good cause, as determined by the Program Coordinator, the employer shall pay the cancellation fee(s) and may seek to recover said fee(s) upon proper application to the Court of Workers' Compensation Claims at any subsequent hearing, upon written motion, before the Court, including a settlement approval.

(c) If the employee untimely cancels without good cause or fails to appear without good cause more than once, the Program Coordinator may authorize the MIR Physician to produce an MIR Report in compliance with Rule 0800-02-20-.11; provided, however, the MIR Physician shall not conduct a physical evaluation.

~~1.~~

~~2. If the claimant fails to appear for the evaluation without good cause as determined by the Administrator, 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, 50-6-102, 50-6-204 ~~(2005)~~, 50-6-205, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-20-.08 MULTIPLE IMPAIRMENT RATING EVALUATIONS.

(1) In instances of more than one impairment rating being disputed in more than one medical specialty, and there is an insufficient number of physicians on the Registry who are qualified to perform all aspects of the evaluation, separate evaluations may be required, each being separate application and physician-selection processes and fees.

(Rule 0800-02-20-.08, continued)

Authority: *T.C.A. §§ 4-5-202 and 50-6-204 ~~(2005)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.*

0800-02-20-.09 COMMUNICATION WITH REGISTRY PHYSICIANS.

(1) During the MIR physician selection process, registry physicians cannot render opinions as to the impairment relating to the subject injury to a party to the case in cases in which the physician's name appears on the three-physician listing. MIR Registry physicians who have rendered an opinion as to the impairment relating to the subject injury to a party to the case must disclose the nature and extent of those discussions to the Program Coordinator~~Administrator~~ immediately upon their selection as the MIR registry physician. The Program Coordinator~~Administrator, in his or her sole authority,~~ will determine whether or not a conflict of interest exists. Failure to disclose a potential conflict of interest may result in a physician's removal from the MIR Registry. While removed from the Registry, physicians shall not be eligible to perform MIR evaluations.

(2) If selected as the MIR physician, there shall be no communication with the parties or their representatives prior to the Program Coordinator's acceptance and distribution of the final MIR Report, unless allowed by the Rules or approved by the 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.

(3) A party who seeks the presence of the MIR physician as a witness at a proceeding for any purpose, by subpoena, deposition or otherwise, shall be responsible for payment for those services to the MIR physician. Deposition fees shall be in accordance with applicable state rules and laws.

(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, 50-6-102, 50-6-204 ~~(2005)~~, 50-6-205, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.*

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 Report";

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

(Rule 0800-02-20-.10, continued)

(c) ~~(d)~~Send that complete report with all required attachments to the Program Coordinator only, via electronic mail, U.S. 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)~~. **Administrative History:** Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.*

0800-02-20-.11 REQUIREMENTS FOR THE "MIR REPORT."

(1) After conducting the evaluation, the MIR physician shall produce the "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/labor-wfd/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

(Rule 0800-02-20-.11, continued)
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. Even if the claimant is determined not to be at MMI by the MIR physician, the MIR physician will still issue a completed MIR report with a permanent medical impairment rating based upon the findings at the time of evaluation

(4) 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.

(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)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendments filed March 25, 2013; effective June 23, 2013.*

0800-02-20-.12 PEER REVIEW.

(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.

(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.

(Rule 0800-02-20-.12, continued)

Authority: *T.C.A. §§ 4-5-202 and 50-6-204 ~~(2005)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Repeal and new rule filed March 25, 2013; effective June 23, 2013.*

0800-02-20-.13 REMOVAL OF A PHYSICIAN FROM THE REGISTRY.

(1) The Administrator~~, upon the advice of the Medical Director,~~ may remove a physician from the MIR Registry permanently or temporarily. In doing so, the Administrator shall first notify the physician in writing that he or she is at risk of being removed from the MIR Registry. The procedures followed for removal under this section shall follow the same procedures as those set forth below in Rule 0800-02-20-.13(2) and (3). The Administrator may remove a physician from the MIR Registry permanently or temporarily based upon any of the following grounds:

(a) Misrepresentation on the "Application for Appointment to the MIR Registry" as determined by the Administrator;

(b) Failure to timely report a conflict of interest in a case assignment, as determined by the Administrator;

(c) Refusal or substantial failure to comply with the provisions of these Rules, including, but not limited to, failure to determine impairment ratings correctly using the AMA Guides™, as determined by the Administrator~~Medical Director~~;

(d) Failure to maintain the requirements of the Rules, as determined by the Administrator; or

(e) Any other reason for the good of the Registry as determined solely and exclusively by the Administrator.

(2) Written complaints regarding any MIR Registry physician shall be submitted to the Program Coordinator. Upon receipt of a complaint regarding a MIR Registry physician, the Administrator shall send written notice of the complaint (or in cases arising under Rule 0800-02-20-.13(1), notice and grounds for possible removal) to such physician, stating the grounds, and notifying the physician that he or she is at risk of being removed from the MIR Registry.

(a) The physician shall have thirty (30) calendar days from the date the Notice of Complaint in which to respond in writing to the complaint(s), and may submit any responsive supporting documentation to the Program Coordinator for consideration. Failure of the physician to submit a timely response to the Notice of Complaint may result in removal of the physician from the MIR Registry.

(b) The Administrator, in consultation with the Medical Director, shall consider the complaint(s) and any response(s) from the physician in reaching a decision as to whether the physician shall be removed from the MIR Registry, and if removed, whether the removal will be permanent or temporary.

(c) Upon reaching a determination on the complaint(s), the Administrator shall issue a written Notice of Determination and set forth the basis for the decision in such Notice. The determination set forth shall become final fifteen (15) calendar days after issuance of the Notice of Determination, unless a timely request for reconsideration is received.

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

(Rule 0800-02-20-.13, continued)
issuance of the Notice of Determination. The Administrator may affirm, modify or reverse the initial determination upon reconsideration of the initial decision. The Administrator shall issue a Notice of Determination upon Reconsideration which shall be the final decision. If the Administrator 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.

(3) A physician who has been removed from the MIR Registry by the Administrator may apply for reinstatement one year ~~six (6) months~~ after the date of removal by submitting a written request to the Program Coordinator.

(4) In lieu of removing a physician from the MIR Registry, the Administrator, at his or her sole discretion, may move the physician to inactive status pending the fulfillment of additional AMA Guides™ training or other administrative requirements, as designated in writing to the physician. MIR Registry physicians moved to inactive status shall remain on the MIR Registry, but may not:
   a) be placed on the list of qualified physicians pursuant to Rule 0800-2-20-.06(4)(a);
   b) perform MIR evaluations; or
   c) have recourse through reconsideration of the Administrator's decision to move the physician to inactive status.

Authority: *T.C.A. §§ 4-5-202, 50-6-102, 50-6-204 ~~(2005)~~, 50-6-205, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendment filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-20-.14 PENALTIES.

(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.

(2) If an employer or insurer fails to pay the cancellation fee of $300.00 within fifteen(15) calendar days of the Program Coordinator's written request for the fee, 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 against the employer 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) ~~Failure by a~~ MIR Registry physician fails to ~~timely~~ refund any unearned evaluation fee within fifteen calendar days of the Program Coordinator's written request for the refund, an additional $250 penalty is authorized. ~~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 any portion of the refund ~~the unearned fee~~ or penalty ~~and/or late fee~~ remains unpaid after an additional thirty (30) calendar day period ~~fifteen (15) calendar days following the date of the evaluation,~~ an additional $500~~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.

(4) If any party engages in unauthorized communications with the MIR physician, then the Administrator ~~or Administrator's designee~~ is authorized to assess a penalty of $50.00 up to $5000.00 per violation, as determined by the Administrator ~~against that party~~.

(Rule 0800-02-20-.13, continued)

(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 $50.00 up to $50~~1~~00.00 per violation, as determined by the Administrator.

(6) Any party assessed a monetary penalty by the Bureau~~Division~~ may request a contested case hearing in accordance with the Penalty Program Rules of the Bureau~~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.

(Rule 0800-02-20-.14, continued)

Authority: *T.C.A. §§ 4-5-202, 50-6-102, 50-6-118, 50-6-204, 50-6-205, 50-6-233~~ (2005), and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Repeal and new rule filed March 25, 2013; effective June 23, 2013. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-20-.15 TIME LIMITS.

(1) All time limits referenced in these Rules may be extended by the Administrator ~~in his or her sole and exclusive discretion~~or Program Coordinator.

Authority: *T.C.A. §§ 4-5-202, 50-6-102, 50-6-204~~ (2005)~~, 50-6-205, 50-6-233~~, and Public Chapters 282 & 289 (2013)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006. Amendment filed December 26, 2013; effective March 26, 2014.*

0800-02-20-.16 COOPERATION.

(1) Injured workers, employers, insurers and carriers shall cooperate in good faith with the Bureau~~Department~~ in scheduling MIR Registry evaluations. They shall also cooperate in good faith with all reasonable requests made by any MIR Registry physician.

Authority: *T.C.A. §§ 4-5-202 and 50-6-204~~ (2005)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.*

0800-02-20-.17 OVERTURNING A MIR PHYSICIAN'S OPINION.

(1) Parties are prohibited from seeking a second MIR Registry impairment rating for the same injury if an impairment rating was issued after the first MIR Registry evaluation.

Authority: *T.C.A. §§ 4-5-202 and 50-6-204~~ (2005)~~.* ***Administrative History:*** *Public necessity rule filed June 15, 2005; effective through November 27, 2005. Public necessity rule filed November 16, 2005; effective through April 30, 2006. Original rule filed January 30, 2006; effective April 15, 2006.*

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Bureau of Workers' Compensation on _____ 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 October 23, 2015.

Rulemaking Hearing Conducted on December 17, 2015.

Date: 2/29/16

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation

Subscribed and sworn to before me on: February 29, 2016

Notary Public Signature: Pauline Carver McDonald

My commission expires on: May 8, 2017

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

Herbert H. Slatery III
Attorney General and Reporter

6/1/2016
Date

RECEIVED
2016 JUN 10 PM 1:16
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 6/10/16

Effective on: 9/8/16

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Board of Boiler Rules
SUBJECT:	Boiler Inspections
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section
EFFECTIVE DATES:	September 14, 2016, through June 30, 2017
FISCAL IMPACT:	None.
STAFF RULE ABSTRACT:	The proposed rule makes various changes to the rules concerning boiler inspections. According to the Board, the rule provides the necessary direction and details for the safe operation of pressure equipment in Tennessee and affects the lives of all citizens in Tennessee due to the use of pressure equipment in industry, manufacturing, schools and universities, hospitals, hotels, public utilities, etc. This rule makes various technical changes to the current rules. This rule also adds provisions addressing construction standards, installation requirements, inspection requirements, inspector qualifications, repairs and alterations, requirements for boilers, and requirements for fire jacketed steam kettles.

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)

These proposed rules will not affect small businesses.

Impact on Local Governments

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

These proposed rules will not have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

Rule 0800-03-03 provides the necessary direction and details for the safe operation of pressure equipment in Tennessee. Rule 0800-03-03 affects the lives of all citizens in Tennessee due to the use of pressure equipment in industry, manufacturing, schools and universities, hospitals, hotels, public utilities, etc.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

There are no federal or state laws mandating promulgation of this proposed rule change.

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

Rule 0800-03-03 sets forth the safety requirements to owners/users, manufacturers, repairers and erectors, authorized inspection agencies, and the jurisdiction for the design, fabrication, inspection, testing, operation, and repairs and alterations of boilers and pressure vessels in Tennessee. None of these people or entities have advocated rejection of this proposed rule.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Division is not aware of any Opinions of the Attorney General and Reporter or any judicial rulings that directly relate to this proposed rule change.

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

This proposed rule change will have no effect on state and local government revenues and expenditures.

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

Tennessee Department of Labor and Workforce Development, Division of Workplace Regulations and Compliance, Chief Boiler Inspector Sam Chapman and Legal Counsel for the Board of Boiler Rules, Dan Bailey, have substantial knowledge and understanding of this proposed rule change

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

Sam Chapman and Dan Bailey identified in response to (F) above will explain the rule at a scheduled meeting of the committee.

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Sam Chapman, Tennessee Department of Labor and Workforce Development, Division of Workplace Regulations and Compliance, Boiler Unit, 220 French Landing Drive, Nashville, TN 37243, 615-532-1337, sam.chapman@tn.gov ; and Dan Bailey, same address as Mr. Chapman, 615-741-9550, daniel.a.bailey@tn.gov

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

Any additional information that the Committee requests will be provided.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-13-16
Rule ID(s): 6199
File Date: 6/16/16
Effective Date: 9/14/16

Proposed Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development, Board of Boiler Rules
Division:	Workplace Regulations and Compliance, Boiler Unit
Contact Person:	Sam Chapman, Chief Boiler Inspector
Address:	220 French Landing Drive
Zip:	37243-1002
Phone:	844-224-5818
Email:	sam.chapman@tn.gov

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

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

Chapter Number	**Chapter Title**
0800-03-03	Boiler Inspections
Rule Number	**Rule Title**
0800-03-03-.01	Definitions
0800-03-03-.02	Adoption by Reference
0800-03-03-.03	Construction Standards
0800-03-03-.04	Installation Requirements
0800-03-03-.05	Inspection Requirements
0800-03-03-.06	Inspector Qualifications
0800-03-03-.07	Repairs and Alterations
0800-03-03-.08	Requirements for Boilers
0800-03-03-.09	Requirements for Fired Jacketed Steam Kettles
0800-03-03-.10	Existing Power Boilers
0800-03-03-.11	Existing Heating Boilers
0800-03-03-.12	Existing Pressure Vessels

0800-03-03-.13	Historic Boilers
0800-03-03-.14	Fees

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

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to http://sos.tn.gov/sites/default/files/forms/Rulemaking_Guidelines_August2014.pdf)

Amendments

The caption for Chapter 0800-3-3 Boiler Inspections is amended by updating the division name, adding the unit name, and changing the single digits to double digits so that, as amended, the caption shall read:

Rules
of
Tennessee Department of Labor and Workforce Development
Division of Workplace Regulations and Compliance
Boiler Unit
Board of Boiler Rules

Chapter 0800-03-03
Boiler Inspections

The Table of Contents is amended by changing the titles in Rules 0800-3-3-.3 through 0800-3-3-.9, changing their single digits to double digits, and adding new Rules 0800-03-03-.10 through 0800-03-03-.14 so that, as amended, the Table of Contents shall read:

Table of Contents

0800-03-03-.01 Definitions
0800-03-03-.02 Adoption by Reference
0800-03-03-.03 Construction Standards
0800-03-03-.04 Installation Requirements
0800-03-03-.05 Inspection Requirements
0800-03-03-.06 Inspector Qualifications
0800-03-03-.07 Repairs and Alterations
0800-03-03-.08 Requirements for Boilers
0800-03-03-.09 Requirements for Fired Jacketed Steam Kettles
0800-03-03-.10 Existing Power Boilers
0800-03-03-.11 Existing Heating Boilers
0800-03-03-.12 Existing Pressure Vessels
0800-03-03-.13 Historic Boilers
0800-03-03-.14 Fees

Rule 0800-3-3-.01 Definitions is amended by changing the single digits to double digits, changing the authority, rearranging the subparagraphs of paragraph (9) "boiler" definitions alphabetically, inserting references to relevant publications, and inserting the phrase "or Chief Inspector's Designee" wherever the words "Chief Inspector" appears other than the definition of "Chief Inspector" so that, as amended, the title, rule, and authority shall read:

0800-03-03-.01 Definitions

(1) "Act" means the provisions of Tennessee Code Annotated (T.C.A.), Title 68, Chapter 122.

(2) "Alteration" means a change in any item described on the original Manufacturer's Data Report which affects the pressure containing capability of the boiler or pressure vessel. Non-physical changes, such as an increase in the maximum allowable working pressure (internal or external), increase in

Rules
of
Tennessee Department Of Labor And Workforce Development
Division of ~~Boiler And Elevator Inspection~~ Workplace Regulations And Compliance
Boiler Unit
Board of Boiler Rules

Chapter 0800-3-3
Boiler Inspections

Table of Contents

0800-3-3-.01 Definitions
0800-33-.02 Adoption by Reference
0800-3-3-.03 ~~Administration~~ Construction Standards
0800-3-3-.04 ~~General~~ Installation Requirements
0800-3-3-.05 ~~Existing Power Boilers~~ Inspection Requirements
0800-3-3-.06 ~~Existing Heating Boilers~~ Inspector Qualifications
0800-3-3-.07 ~~Existing Pressure Vessels~~ Repairs and Alterations
0800-3-3-.08 ~~Historic~~ Requirements for Boilers
0800-3-3-.09 ~~Fees~~ Requirements for Fired Jacketed Steam Kettles
0800-03-03-.10 Existing Power Boilers
0800-03-03-.11 Existing Heating Boilers
0800-03-03-.12 Existing Pressure Vessels
0800-03-03-.13 Historic Boilers
0800-03-03-.14 Fees

0800-3-3-.01 Definitions.

(1) "Act" means the provisions of Tennessee Code Annotated (T.C.A.), Title 68, Chapter 122.

(2) "Alteration" means a change in any item described on the original Manufacturer's Data Report which affects the pressure containing capability of the boiler or pressure vessel. Non-physical changes, such as an increase in the maximum allowable working pressure (internal or external), increase in design temperature, or a reduction in minimum temperature of a boiler or pressure vessel shall be considered an alteration.

(3) "ANSI" means the American National Standards Institute.

(4) "API" means the American Petroleum Institute.

(5) "Approved" means approved by the Board of Boiler Rules.

(6) "ASME Code" means the American Society of Mechanical Engineers Code.

(7) "Authorized Inspection Agency" means:

(a) A jurisdiction as defined by paragraph (21) of this rule; or

(b) An insurance company which has been licensed or registered by the appropriate authority of a state of the United States or a province of Canada to write boiler and pressure vessel insurance and to provide all inspection services required by the Act for boilers and pressure vessels insured by such company in this State.

(8) "Board" means the Board of Boiler Rules.

(9) "Boiler" means and includes a closed vessel or vessels intended for use in heating water or other liquids or for generating steam or other vapors under pressure or vacuum by the direct

application of heat from combustible fuels, electricity, or nuclear energy, and also includes an unfired pressure vessel, meaning a vessel in which pressure is obtained from an external source or from an indirect application of heat.

(a) ~~"Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig.~~

"Electric boiler" means a power or heating boiler in which the source of heat is electricity. See ASME Code, Section I, PEB-2 and Section IV, Preamble.

~~(b) "High-temperature water boiler" means a water boiler intended for operation at pressures in excess of 160 psig or temperatures exceeding 250°F.~~

~~(c)~~(b) "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding 15 psig or a hot water boiler operating at pressures not exceeding 160 psig or temperatures not exceeding 250°F.

~~(d) "Electric boiler" means a power or heating boiler in which the source of heat is electricity.~~

(c) "Heat recovery boiler" means a vessel or system of vessels comprised of one (1) or more heat exchanger surfaces used for the recovery of waste heat. See ASME Code, Section VIII, Division 1, U-1(g)(2).

(d) "High-temperature water boiler" means a water boiler intended for operation at pressures in excess of 160 psig or temperatures exceeding 250°F. See ASME Code, Section I, PG-2.1(b).

(e) ~~"Miniature boiler" means a power or high-temperature water boiler which does not exceed the following limits:~~

~~1. 16 inches inside diameter of shell;~~

~~2. 20 square feet of heating surface (not applicable to electric boilers);~~

~~3. 5 cubic feet of gross volume exclusive of casing and insulation; and~~

~~4. 100 psig maximum allowable working pressure.~~

"Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which is operated at a pressure not exceeding 160 psig and/or a temperature of 250°F at or near the boiler outlet. See ASME Code, Section IV, HG-101.1(b) and (c).

(f) ~~"Unfired steam boiler" means an unfired pressure vessel or system of unfired pressure vessels intended for operation at a pressure in excess of 15 psig steam for the purpose of producing and controlling an output of thermal energy.~~

"Hot water supply boiler" means a boiler completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig and/or a temperature of 250°F at or near the boiler outlet. See ASME Code, Section IV, HG-101.1(b) and (c).

(g) ~~"Waste heat boiler" means an unfired pressure vessel or system of unfired pressure vessels intended for operation in excess of 15 psig steam for the purpose of producing and controlling an output of thermal energy.~~

"Miniature boiler" means a power or high-temperature water boiler which does not exceed the following limits:

1. 16 inches inside diameter of shell;

2. 20 square feet of heating surface (not applicable to electric boilers);

3. 5 cubic feet of gross volume exclusive of casing and insulation; and

4. 100 psig maximum allowable working pressure. See ASME Code, Section I, PMB-2.1.

(h) ~~"Heat recovery boiler" means a vessel or system of vessels comprised of one or more heat exchanger surfaces used for the recovery of waste heat.~~

"Portable boiler" means a boiler which is primarily intended for temporary location, where the construction and usage permits it to be readily moved from one (1) location to another.

(i) ~~"Steam heating boiler" means a steam boiler for operation at pressures not exceeding 15 psig.~~

"Potable water heater", including an instantaneous water heater, means a heater supplying potable water for commercial purposes in which the pressure does not exceed 160 psig and the temperature does not exceed 210°F. See ASME Code, Section IV, Part HLW Introduction.

(j) ~~"Hot water heating boiler" means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which is operated at a pressure not exceeding 160 psig and/or a temperature of 250°F at or near the boiler outlet.~~

"Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig. See ASME Code, Section 1, PG-2.1(a).

(k) ~~"Hot water supply boiler" means a boiler completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig and/or a temperature of 250°F at or near the boiler outlet.~~

"Steam heating boiler" means a steam boiler for operation at pressures not exceeding 15 psig. See ASME Code, Section IV, HG-101.1(a).

(l) ~~"Portable boiler" means a boiler which is primarily intended for temporary location, where the construction and usage permits it to be readily moved from one location to another.~~

"Unfired steam boiler" means an unfired pressure vessel or system of unfired pressure vessels intended for operation at a pressure in excess of 15 psig steam for the purpose of producing and controlling an output of thermal energy. See ASME Code, Section I Preamble and Section VIII, Division 1, U-1(g)(1).

(m) ~~"Potable hot water heater" means a heater supplying potable water for commercial purposes in which the pressure does not exceed 160 psig and the temperature does not exceed 210ºF.~~

"Waste heat boiler" means an unfired pressure vessel or system of unfired pressure vessels intended for operation in excess of 15 psig steam for the purpose of producing and controlling an output of thermal energy. See ASME Code, Section VIII, Division 1, U-1(g)(2).

(10) "BTU/hr" means British Thermal Units per hour.

(11) "Certificate inspection" means an inspection, the report of which is used by the Chief Inspector as justification for issuing, withholding, suspending or revoking a certificate of inspection. This certificate inspection shall be an internal inspection when required; otherwise, it shall be as complete an inspection as possible.

(a) "Internal inspection" means an inspection that can reasonably be conducted as assessed by the inspector according to the inspection or review on the internal and external surfaces of a boiler or pressure vessel while it is shut down and the manhole plates, handhole plates or other inspection opening closures are removed.

(b) "External inspection" means an inspection made when a boiler or pressure vessel is in operation, if possible.

(12) "Certificate of competency" means a certificate issued to a person who has passed the examination prescribed by the Board pursuant to T.C.A. § 68-122-109.

(13) "Certificate of inspection" means a certificate issued for operation of a boiler or pressure vessel as required in T.C.A. § 68-122-111.

(14) "Commission" means the commission issued by the National Board of Boiler and Pressure Vessel Inspectors to a holder of a certificate of competency who desires to make shop or field inspections in accordance with the National Board Rules for Commissioned Inspectors, and whose employer submits the inspector's application to the National Board for such commission. See Footnote in ASME Code, Section VIII, Division 1, UW-2(a).

(15) "Condemned boiler or pressure vessel" means a boiler or pressure vessel that has been inspected and declared unsafe, or disqualified by legal requirements, by an inspector qualified to take such action who has applied a stamping or marking designating its rejection.

(16) "Department" means the Tennessee Department of Labor and Workforce Development.

(17) "Existing installation" means any boiler constructed, installed, placed in operation, or contracted for before July 1, 1955.

(18) "Historic power boilers" means any steam traction engine, portable or stationary, standard or nonstandard power boiler, including free-lance and scale models, owned by publicly operated museums, non-profit organizations and individuals who preserve, maintain, exhibit and only occasionally operate these boilers on a not-for-profit basis and for the primary purpose of perpetuating the agricultural and pioneer heritage of Tennessee.

(a) This definition shall be interpreted to include the following two (2) types of historic boilers:

1. Traditional: Any steam traction engine, portable or stationary, standard or nonstandard power boiler that was constructed prior to July 1, 1949.

2. Nontraditional: Any free-lance and scale models, standard or nonstandard power boiler that was constructed after July 1, 1949.

   (i) Free-lance is any nontraditional historic power boiler built without original drawings, calculations or blueprints.

   (ii) Scale model is any nontraditional historic power boiler built as an exact or scale replica of a traditional historic power boiler.

(19) "Inspector" means the Chief Inspector, Deputy Inspector, or Special Inspector.

(a) Chief Inspector is the Chief Boiler and Pressure Vessel Inspector appointed pursuant to T.C.A. § 68-122-106.

(b) Deputy Inspector is any inspector appointed pursuant to T.C.A. § 68-122-107.

(c) Special Inspector is an inspector holding a Tennessee certificate of competency, and who is continuously employed by an insurance company authorized to insure against loss from explosion of boilers or pressure vessels in this State, or a company owning or operating pressure vessels (Owner-User Inspection Agency) in this State for the purposes of making inspections of pressure vessels used or to be used by such company, and provided such company complies with the requirements of T.C.A. § 68-122-108.

1. A special inspector shall receive no salary from, nor shall any of their expenses be paid by, the State, and the continuance of a special inspector's commission shall be conditioned upon the special inspector continuing in the employ of a boiler insurance company duly authorized as aforementioned or upon continuing in the employ of a company operating unfired pressure vessels in this State, and upon the special inspector's maintenance of the standards imposed by the Act.

2. A special inspector of a company operating unfired pressure vessels shall not be authorized to inspect boilers.

3. A special inspector shall inspect all boilers and unfired pressure vessels insured or all unfired pressure vessels operated by their respective companies and, when so inspected, the owners and users of such boilers and unfired pressure vessels shall be exempt from the payment to the State of the inspection fees as provided for in T.C.A. § 68-122-113.

4. A special inspector shall submit inspection reports in accordance with ~~paragraph (13) of this rule~~ as assessed by the inspector according to the inspection or review.

(20) "Installation permit" means a permit issued by the Chief Inspector or Chief Inspector's Designee for authorization to install a boiler or pressure vessel in accordance with Rule ~~0800-3-3-.03(5)~~ 0800-03-03-.04(1).

(21) "Jurisdiction" means a state, commonwealth, county or municipality of the United States or a province of Canada which has adopted one (1) or more sections of the ASME Code, one (1) of which is Section I, and maintains a duly constituted department, bureau or division for the purpose of enforcement of such Code.

(22) "Lethal service (pressure vessel)" means a pressure vessel stamped "lethal service" which contains, under pressure, poisonous gas or liquids of such a nature that a very small amount

of the gas or of the vapor of the liquid mixed or unmixed with air is dangerous to life when inhaled. See Footnote in ASME Code, Section VIII, Division 1, UW-2(a).

(23) "Licensed~~ boiler and pressure vessel contractor~~ Boiler Erectors and Repairers Contractor" means a person, corporation, partnership or firm authorized to engage in the repair or erection ~~and/or repair~~ of steam boilers, ~~and pressure vessels~~ steam kettles, pressure tanks or steam generators.

(24) "Lined potable water heater" means a water heater with a corrosion-resistant lining used to supply potable hot water. See ASME Code, Section IV, Part HLW.

(25) "National Board (NB)" " means the National Board of Boiler and Pressure Vessel Inspectors (NB), 1055 Crupper Avenue, Columbus, Ohio 43229.

(26) "National Board Inspection Code (NBIC)" means the code for the repair, alteration and inspection of boilers and pressure vessels published by the ~~National Board~~ NB's publishing partner, ViaTech.

(27) "New installation" means any boiler constructed, installed, placed in operation or contracted for after July 1, 1949 and any pressure vessel constructed, installed, placed in operation or contracted for after July 1, 1955.

(28) "NFPA" means the National Fire Protection Association, Inc.

(29) "Non-certificate inspection" means any inspection of a boiler or pressure vessel the result of which does not warrant the issuance of a certificate of inspection.

(30) Non-standard boiler or pressure vessel" means a boiler or pressure vessel that does not bear the ASME ~~code symbol stamp~~ Certification Mark and Certification Designator, the API-~~ASME~~ ~~c~~Code symbol stamp, or the stamp of any jurisdiction which has adopted a standard of construction equivalent to that required by the Board.

(31) "Nuclear power plant" means one (1) or more nuclear power systems and containment systems.

(32) "Nuclear power system" means a system that serves the purpose of producing and controlling an output of thermal energy from nuclear fuel and those associated systems essential to the functions of the power system. The components of the system include such items as pressure vessels, piping systems, pumps, valves and storage tanks.

(33) "Owner or User" means any person, firm or corporation legally responsible for the safe installation, operation and maintenance of any boiler or pressure vessel within the jurisdiction.

(34) "Owner-User Inspection Agency" means an owner or user of pressure vessels who maintains a regularly established inspection department, whose organization and inspection procedures generally meet the requirements of the ~~National Board~~ NB rules and are acceptable to the Board. See NB-371, Accreditation of Owner-User Inspection Organizations (OUIO).

(35) "Pressure vessel" means a vessel in which the pressure is obtained from an external source, or by the application of heat from an indirect source, or from a direct source other than those boilers defined in subparagraphs (a) – (m) of paragraph (9) of this rule.

(36) "Psig" means pounds per square inch gauge.

(37) "Reinstalled boiler or pressure vessel" means a boiler or pressure vessel removed from its original setting and reinstalled at the same location without change of ownership.

(38) "Repair" means the work necessary to restore a boiler or pressure vessel to a safe and satisfactory operating condition provided there is no deviation from the original design. See NB--23, NBIC Part 3, Section 3, Repairs and Alterations.

(39) "Second-hand boiler or pressure vessel" means a boiler or pressure vessel which has changed ~~both~~ location ~~and ownership~~ since last used.

(40) "Special Inspection" means:

(a) Inspection of a boiler or pressure vessel (stamped lethal service) upon installation by permit, subject to the fees in accordance with Rule ~~0800-3-3-.09(10)~~ 0800-03-03-.14(10);

(b) Boilers and pressure vessels (stamped lethal service) discovered to be installed without an installation permit. The owner or user shall be assessed a fee set by the Chief Inspector or Chief Inspector's Designee in accordance with T.C.A. § 68-122-113 plus all expenses allowed therein and Rule ~~0800-3-3-.09(10)~~ 0800-03-03-.14(10); or

(c) An additional inspection deemed appropriate and necessary by the Chief Inspector Chief Inspector's Designee, subject to a fee in accordance with T.C.A. § 68-122-113 plus all expenses allowed therein and Rule ~~0800-3-3-.09(10)~~ 0800-03-03-.14(10).

(41) "Standard boiler or pressure vessel" means a boiler or pressure vessel which bears the stamp of this State, the ASME ~~code symbol stamp~~ Certification Mark and Certification Designator, the API~~-ASME~~ eCode symbol stamp, ~~both the ASME and National Board stamps,~~ or the stamp of another jurisdiction which has adopted a standard of construction equivalent to that required by the Board.

(42) "Supplemental documentation" means additional material used in the determination of a safe and proper construction, installation, repair, use and operation of boilers and pressure vessels in this State.

Authority: T.C.A. §§~~4-5-202~~, 68-122-101, 68-122-102, 68-122-104, 68-122-106, 68-122-107, 68-122-108, 68-122-109, 68-122-111, ~~and~~ 68-122-113 and 68-122-202. Administrative History: Original rule filed May 16, 1986; effective June 15, 1986. (Formerly rule 0780-2-11-03) Amendment filed March 27, 1991; effective June 29, 1991. Amendment filed May 7, 1992; effective August 29, 1992. Amendment filed June 27, 2000; effective October 28, 2000. Amendment filed March 30, 2001; effective July 30, 2001. Amendment filed June 17, 2002; effective October 28, 2002. Repeal and new rule filed November 21, 2005; effective March 30, 2006.

0800-3-3-.02 Adoption by Reference. Unless otherwise provided by applicable law or the provisions of this Chapter, the required minimum standard for the construction, installation, operation, maintenance, repair, alteration, testing and inspection of boilers and pressure vessels in the State of Tennessee shall be those prescribed in the following publications; as amended per adopted edition and addenda:

(1) Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers (ASME Code), published by the American Society of Mechanical Engineers, ~~Three~~ Two Park Avenue, New York, New York 10016-5990, Phone: 800.843.2763, E-mail: CustomerCare@asme.org, web site: www.asme.org.

(2) ~~National Board Inspection Code (NBIC), published by the National Board of Boiler and Pressure Vessel Inspectors (NB), 1055 Crupper Avenue, Columbus, Ohio 43229.~~

National Board Inspection Code (NBIC), The National Board of Boiler and Pressure Vessel Inspectors, the latest edition, 1055 Crupper Avenue, Columbus, Ohio 43229-1183, Phone: 614.888.8320, Fax: 614.888.0750, E-mail: information@nationalboard.org, web site: www.nationalboard.org/. The publishing partner for the NB is ViaTech, dalorder@viatechpub.com, Phone: 1.877.699.4801.

(3) ~~Code for Unfired Pressure Vessels for Petroleum Liquids and Gases (API-ASME Code), published by the American Society of Mechanical Engineers in conjunction with the American Petroleum Institute.~~

Code for Unfired Pressure Vessels for Petroleum Liquids and Gases (API-ASME Code), Linda Hall Library of Science, Engineering, and Technology, 5109 Cherry Street, Kansas City, Missouri 64110-2498, Phone: 800.662.1545, web site: www.lindahall.org/. The following editions of the API-ASME Code are available:

(a) 3rd edition (1938) with the library's catalog record - http://lhall.hosted.exlibrisgroup.com/vwebv/holdingsInfo?sk=LHL&bibId=275504;

(b) 4th edition (1943) with the library's catalog record - http://lhall.hosted.exlibrisgroup.com/vwebv/holdingsInfo?sk=LHL&bibId=197459;

(c) 5th edition (1951) with the library's catalog record - http://lhall.hosted.exlibrisgroup.com/vwebv/holdingsInfo?sk=LHL&bibId=124091.

1. To inquire about getting copies of pages or sections from these publications or if you want to inquire about possibly borrowing the publications through Interlibrary Loan, you may contact the library's Document Delivery Services Department.

(4) Controls and Safety Devices for Automatically Fired Boilers (ASME-CSD-1), published by the American Society of Mechanical Engineers.

(5) Boiler and Combustion Systems Hazards Code (NFPA 85), published by the National Fire Prevention Association, International, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, Phone: 617.770.3000, Fax: 617.770.0700, E-mail: custserv@nfpa.org, Phone: 800.344.3555, Fax: 800.593.6372 or 508.895.8301, web site: www.nfpa.org. To review codes and standards online, go to www.nfpa.org/freeaccess.

Authority: T.C.A. §§~~4-5-202, 4-5- 202(a)(3), 68-122-101, and~~ 68-122-102. Administrative History: Original rule filed May 16, 1986; effective June 15, 1986. Amendment filed September 30, 1986; effective December 29, 1986. (Formerly rule 0780-2-11-.02). Amendment filed March 27, 1991; effective June 29, 1991. Amendment filed June 27, 2000; effective October 28, 2000. Amendment filed June 17, 2002; effective October 28, 2002.

0800-3-3-.03 ~~Administration.~~ Construction Standards.

~~(1) Construction Standards.~~

~~(a)~~ (1)No boiler or unfired pressure vessel shall be installed for operation in the State unless it is designed, constructed, inspected, stamped, and installed for the desired pressure and temperature in accordance with the provisions of this Chapter, the applicable section of the ASME Code, and other applicable law.

~~(b)~~ (2)Boilers and pressure vessels shall bear the ~~National Board~~ NB stamping and the manufacturer's NB number as registered with the ~~National Board~~ NB. A copy of the

Manufacturer's Data Report signed by the manufacturer's representative and the ~~National Board~~ NB commissioned inspector employed by the third party inspection agency shall be filed with the Chief Inspector or Chief Inspector's Designee when the boiler or pressure vessel is shipped into this State for installation.

~~(c)~~ (3) Electrically heated boilers subject to the ASME Code requirements shall bear the "Underwriters Laboratory" label in addition to the required ASME ~~Code symbol stamp~~ Certification Mark and Certification Designator. This means that the boiler shall be supplied by the manufacturer as a complete unit and not converted in the field.

~~(d)~~ (4) Piping.

~~1.~~ (a) Power piping external to power boilers from the boiler to the first stop valve of a single boiler, and to the second stop valve in a battery of two (2) or more boilers, is subject to the requirements of the ASME Code, Power Boilers, Section I. The design, fabrication, installation and testing of the valves and piping shall be in accordance with ASME ~~B~~31.1.

~~2.~~ (b) Welded piping is subject to the ASME Code requirements for proper code certification, including stamping in conformance with the code and furnishing of applicable ASME data report forms for the owners and the Chief Inspector or Chief Inspector's Designee.

~~(2)~~ (5) Exemptions. Potable ~~hot~~ water heaters are exempt from the ~~"Construction Standards"~~ requirements of ~~subparagraphs~~ paragraphs ~~(a)~~ (1) and ~~(b)~~ of this ~~Rule 0800-3-3-.03(1)~~ rule when neither of the following limitations are exceeded:

(a) Heat input of 199,999 BTU/hr.

(b) Water temperature of 210°F. However, such potable ~~hot~~ water heaters, including instantaneous water heaters, with a heat input of between 100,000 and 199,999 BTU/hr.~~,~~ are subject to registration, inspection and inspection certificate requirements.

(c) These vessels are required to have an NB rated, ASME constructed, test-lever pressure-temperature activated safety relief device.

~~(3)~~ (6) "Tennessee Special" Boilers and Pressure Vessels. If a boiler or pressure vessel is of special design, or one that cannot bear the ASME and ~~National Board~~ NB stamping, details of the proposed construction (including shop drawings) shall be submitted to the Chief Inspector or Chief Inspector's Designee. Approval for construction and installation as a "Tennessee Special" boiler or pressure vessel must be obtained from the Board before construction is started.

~~(4)~~ (7) Tennessee Standard Pressure Vessels.

(a) Vessels constructed by an owner-user who is authorized by the State as an Owner-User Inspection Agency and who holds a valid ~~certificate of authorization~~ Certificate of Authorization to use the ASME ~~"U" Stamp~~ Certification Mark with Certification Designator shall be stamped "Tennessee Standard", provided the vessels are:

1. Inspected by an owner-user inspector holding a valid certificate of competency issued by the State; and

2. To be used exclusively by the owner-user and not for resale.

(b) Such vessels shall meet all requirements of the ASME Code, Section VIII, Division 1, except that they are inspected by an owner-user inspector.

Authority: T.C.A. §§68-122-102, 68-122-103, and 68-122-108.

0800-03-03-.04 Installation Requirements

~~(5)~~ (1)Permission to Install.

(a) All installers of boilers or pressure vessels shall be knowledgeable in the proper installation of the boiler or pressure vessel they are requesting to install.

(b) The company or person responsible for the installation of the boiler or pressure vessel (stamped lethal service) shall obtain an installation permit for the boiler or pressure vessel prior to any work being performed. An "Application for Permission to Install a Boiler or Pressure Vessel (stamped lethal service)", boiler room layout drawings/dimensions, Manufacturer's Data Report, and a copy of any applicable local/municipal building or like permit shall be forwarded to the Tennessee Department of Labor and Workforce Development, ~~Boiler Inspection Division~~ Division of Workplace Regulations and Compliance, Boiler Unit . "Tennessee Special" boilers and pressure vessels are subject to the requirements of this rule.

(c) All boiler installations between 400,000-12,500,000 BTU/hr (excluding hot water heaters) shall meet all the requirements of ASME-CSD-1. Boilers 12,500,000 BTU/hr and over shall meet any additional requirements of NFPA 85. A copy of the "Controls and Safety Devices" section of the installation application must accompany all submitted Applications for Permission to Install a Boiler or Pressure Vessel (stamped lethal service). Failure to comply with the requirements of this rule, without significant explanation, could delay the permission to install approval or warrant non-acceptance of the application.

(d) After the application has been reviewed by the Chief Inspector or Chief Inspector's Designee, an installation permit shall be issued.

(e) All newly installed boilers and pressure vessels (stamped lethal service) shall be inspected by a Deputy Inspector before the boiler or pressure vessel is put into service. The company or person performing the installation is responsible for notifying the Tennessee Department of Labor and Workforce Development, ~~Boiler Inspection Division~~ Division of Workplace Regulations and Compliance, Boiler Unit, when the boiler or pressure vessel (stamped lethal service) is ready for inspection. The inspection upon installation by permit is subject to the fees in accordance with Rule ~~0800-3-3-.09(10)~~ 0800-03-03-.14(10).

(f) A revised application shall be submitted to the Chief Inspector or Chief Inspector's Designee by the installer if there is a change to the original application. A copy of the original installation permit and supplemental documentation shall accompany the revised application.

(g) All installation permits shall be issued for a period of twelve (12) months. If the boiler or pressure vessel (stamped lethal service) is not installed during this period, the installation permit shall expire and the file shall be closed. When a file has been closed, the installer shall be required to apply for another installation permit in accordance with subparagraph (b) of this rule.

(h) A boiler or pressure vessel may be installed prior to submission of the "Application for Permission to Install a Boiler or Pressure Vessel (stamped lethal service)" when it has been determined by the Chief Inspector or Chief Inspector's Designee that the installation is an emergency situation. Immediately thereafter, the installer shall submit an application, layout drawings/dimensions, Manufacturer's Data Report and a copy of any applicable local/municipal building or like permit in accordance with subparagraph (b) of this rule.

(i) When it is discovered that a boiler or pressure vessel (stamped lethal service) has been installed without an approved installation permit prior to installation, the Chief Inspector or Chief Inspector's Designee shall notify the owner or user. The Chief Inspector or Chief Inspector's Designee shall take appropriate action in accordance with T.C.A. § 68-122-106. The owner or user shall be assessed a special inspection fee set by the Chief Inspector or Chief Inspector's Designee in accordance with T.C.A. § 68-122-113 and Rule ~~0800-3-3-.09(10)~~ 0800-03-03-.14(10). Any owner or user aggrieved by an order or act of the Chief Inspector or Chief Inspector's Designee may, within fifteen (15) days after notice thereof, appeal from such order or act to the Board.

~~(6)~~ (2)Permission to Reinstall.

(a) Reinstallation of Boilers or Pressure Vessels (Removed from the State). When a standard boiler or pressure vessel located in this State is moved outside the State for temporary use or repair, the owner or user shall apply to the Chief Inspector or Chief Inspector's Designee for permission to reinstall the boiler or pressure vessel in this State. After the owner or user files the "Application for Permission to Reinstall" and it is approved, the Deputy Inspector shall conduct an inspection. When a non-standard boiler or pressure vessel is removed from this State, it shall not be reinstalled within this State without additional approval of the Board.

(b) Installation of Second-Hand Boilers or Pressure Vessels. Second-hand boilers and pressure vessels may not be installed unless the Chief Inspector or Chief Inspector's Designee approves an "Application for Permission to Reinstall". After the owner or user files the "Application for Permission to Reinstall" and it is approved, the Deputy Inspector shall conduct an inspection.

(c) Reinstallation of Boilers or Pressure Vessels (Not Second-Hand). The owner or user shall apply to the Chief Inspector or Chief Inspector's Designee for permission to reinstall a boiler or pressure vessel in this State. After the owner or user files the "Application for Permission to Reinstall" and it is approved, the Deputy Inspector shall conduct an inspection.

(d) An owner or user of the boiler and pressure vessel described in subparagraphs (a), (b) and (c) of this rule is subject to the ~~permitting~~ installation requirements in accordance with Rule ~~0800-3-3-.03(5)~~ 0800-03-03-.04(1), and the Special Inspection fee requirements of Rule ~~0800-3-3-.09(10)~~ 0800-03-03-.14(10). An "Application for Permission to Reinstall" form must accompany all permit applications for these installations.

(e) For reinstalled boilers and pressure vessels with a current certificate of inspection, the Deputy Inspector shall submit a reinspection report in accordance with Rule ~~0800-3-3-.03(13)(b)~~ 0800-03-03-.05(10)(b). The comment that the boiler or pressure vessel is "reinstalled" shall be noted on the reinspection report. The reinspection shall be a non-certificate inspection.

(3) Safety Appliances.

(a) No person shall attempt to remove, or do any work on, any safety appliance prescribed by this Chapter while the appliance is subject to pressure.

(b) Should any such appliance be removed for repair during an outage of a boiler or pressure vessel, it shall be reinstalled and in proper working order before the object is again placed in service.

(c) No person shall alter any safety or safety relief valve or pressure relief devices in any manner to maintain a working pressure in excess of that stated on the boiler or pressure vessel inspection certificate.

(d) Only the holder of a valid Certificate of Authorization for use of the NB "VR" stamp, or an owner-user's maintenance organization approved by the Chief Inspector or Chief Inspector's Designee, may repair safety or safety relief valves. An owner-user maintenance organization shall be limited to repairing such valves for its own use.

(4) Pressure Reducing Valves.

(a) Where pressure-reducing valves are used, one (1) or more safety or safety relief valves shall be provided on the low pressure side of the reducing valve when the piping or equipment on the low pressure side does not meet the requirements for the full initial pressure. The safety or safety relief valves shall be located adjoining or as close as possible to the reducing valve.

(b) Proper protection shall be provided to prevent injury or damage caused by escaping vapor or fluid from the discharge of safety or safety valves if vented to the atmosphere. The combined discharge capacity of the safety or safety relief valves shall be such that the pressure rating of the lower pressure piping equipment will not be exceeded in case the reducing valve fails in the open position.

(c) Use of hand-controlled bypasses around reducing valves is permissible. If a bypass is used around the reducing valve, the safety valve required on the low pressure side shall be of sufficient capacity to relieve all the vapor or fluid that can pass through the bypass without overpressuring the low pressure side.

(d) A pressure gauge shall be installed on the low pressure side of a reducing valve.

(5) Location of Discharge Piping Outlets. The discharge of safety valves, blowoff pipes and other outlets shall be located and supported so as to prevent injury to personnel.

~~(7)~~ (6)Application of State Serial Numbers. Upon completion of the installation of a boiler or pressure vessel, or at the time of the initial certificate inspection of an existing installation, the inspector shall tag each boiler or pressure vessel in the vicinity of the code stamping with a Board approved and Department supplied registration tag.

~~(8)~~ (7)Accessibility to Code Stamping. Code stamping shall not be concealed by lagging or paint. The stamping shall be exposed at all times, unless a suitable record is kept of the location of the stamping so that it may be readily uncovered when desired.

~~(9) Frequency of Inspections. All boilers and pressure vessels subject to inspection under the Act shall be inspected in accordance with the requirements of T.C.A. § 68-122-110.~~

~~(10) Notification of Inspection.~~

(a) Certificate inspections, as required, shall be carried out no more than two (2) months prior to the expiration date of the certificate or within the two (2) month period following the expiration date at a time mutually agreeable to the inspector and owner or user.

(b) External inspections may be performed by the inspector during reasonable hours and without prior notification.

(c) When, as a result of external inspection or determination by other objective means, it is the inspector's opinion that continued operation of the boiler or pressure vessel constitutes a danger to life or property, the inspector may order an internal inspection or an appropriate pressure test, or both, to evaluate conditions. In such instances, the owner or user shall prepare the boiler or pressure vessel for such inspections or tests as the inspector designates.

(11) External Inspection Disclosure of Defective Conditions. If, upon an external inspection, there is evidence of a leak or crack, sufficient covering of the boiler or pressure vessel shall be removed to permit the inspector to determine satisfactorily the safety of the boiler or pressure vessel. If the covering cannot be removed at that time, the inspector may order the operation of the boiler or pressure vessel stopped until the covering can be removed and proper examination made. The Chief Inspector shall be notified immediately.

(12) Notification of an Incident or Accident. The owner or user shall promptly submit to the Chief Inspector a detailed report of any incident or accident that occurs to a boiler or pressure vessel. In the event of a personal injury, incident, accident, or explosion, the owner or user shall immediately give notice to the office of the Chief Inspector. Neither the boiler or pressure vessel, nor any parts thereof, shall be removed or disturbed without the permission of the Chief Inspector, except for the purpose of saving human life or limiting consequential damage.

(13) Inspection reports.

(a) Deputy and Special Inspectors shall submit to the Chief Inspector on a form approved by the Board, an initial inspection report for each boiler and pressure vessel subject to inspection in this State. Complete data shall be submitted on a form approved by the Board for each non-standard boiler or pressure vessel.

(b) Deputy and Special Inspectors shall submit to the Chief Inspector on a form approved by the Board, reinspection reports of subsequent inspections of both standard and non-standard boilers and pressure vessels.

(c) Owner-User Inspection Agencies shall submit reports in accordance with subparagraphs (a) and (b) of this rule. Said reports shall be filed as provided in paragraph (20) of this rule.

(d) Inspection reports required by subparagraphs (a), (b), and (c) of this rule shall be submitted within thirty (30) days after the date of inspection.

(14) Working Pressure for Existing Installations. With the approval of the Chief Inspector, any inspector may decrease the maximum working pressure on any existing installation if the condition of the boiler or pressure vessel warrants.

(15) Repairs and Alterations.

(a) Repairs and alterations shall not be made without the permission of an inspector employed by the Authorized Inspection Agency responsible for the in-service inspection of the subject boiler or pressure vessel. Such repairs and alterations shall be

~~done in accordance with the National Board Inspection Code. The inspector authorizing the repair or alteration shall sign the necessary National Board "NB-R" form or forms.~~

~~(b) The person, corporation, partnership or firm performing the repair or alteration shall have a valid license in accordance with T.C.A. §§ 68-122-201 through 68-122-209. In order to qualify for such license, the applicant shall have a valid Certificate of Authorization from the National Board for the use of a Repair Code Symbol stamp.~~

~~(c) A copy of the signed applicable "NB-R" form or forms shall be submitted to the Chief Inspector for each repair or alteration performed.~~

~~(16) Safety Appliances.~~

~~(a) No person shall attempt to remove, or do any work on, any safety appliance prescribed by this Chapter while the appliance is subject to pressure.~~

~~(b) Should any such appliance be removed for repair during an outage of a boiler or pressure vessel, it shall be reinstalled and in proper working order before the object is again placed in service.~~

~~(c) No person shall alter any safety or safety relief valve or pressure relief devices in any manner to maintain a working pressure in excess of that stated on the boiler or pressure vessel inspection certificate.~~

~~(d) Only the holder of a valid certificate of authorization for use of the National Board "VR" stamp, or an owner-user's maintenance organization approved by the Chief Inspector, may repair safety or safety relief valves. An owner-user maintenance organization shall be limited to repairing such valves for its own use.~~

~~(17)~~ (8) Restamping of Boilers and Pressure Vessels.

(a) When the Code stamping of a boiler or pressure vessel becomes indistinct, the inspector shall instruct the owner or user to have it restamped. The owner or user shall submit a request for authorization of restamping to the Chief Inspector or Chief Inspector's Designee on the appropriate "Replacement of Stamped Data Form". Proof of the original stamping shall accompany the request.

(b) If the Chief Inspector authorized restamping, it shall be done only in the presence of an inspector, and shall be identical with the original stamping.

(c) The ASME Code symbol may be restamped only by the original manufacturer of the boiler or pressure vessel in the presence of an inspector of the Authorized Inspection Agency who signed the Manufacturer's Data Report or a Deputy Inspector. The witnessing inspector shall file with the Chief Inspector the completed and signed "Replacement of Stamped Data Form" with a facsimile of the stamping applied.

(9) Working Pressure for Existing Installations. With the approval of the Chief Inspector or Chief Inspector's Designee, any inspector may decrease the maximum working pressure on any existing installation if the condition of the boiler or pressure vessel warrants.

(10) Supports. Each boiler and pressure vessel shall be supported by masonry or structural supports of sufficient strength and rigidity to safely support the boiler or pressure vessel and its contents. There shall be no excessive vibration in either the boiler, pressure vessel or its connecting piping.

(11) Ladders and Runways. When necessary for safety, there shall be a steel runway or platform of standard construction installed across the tops of adjacent boilers or pressure vessels or at some other convenient level for the purpose of affording safe access. All walkways shall have at least two (2) means of exit, each to be remotely located from the other.

~~(18) Condemned Boilers and Pressure Vessels. The Chief Inspector or a Deputy Inspector shall stamp on any boiler or pressure vessel declared unfit for further service the letters "XXX" on either side of the State number. Such stamping (XXX 00 XXX) shall designate a condemned boiler or pressure vessel.~~

~~(19) Insurance.~~

~~(a) An insurance company shall notify the Chief Inspector within thirty (30) days of all boilers or pressure vessels, on which insurance is written, cancelled, not renewed or suspended.~~

~~(b) An insurance company shall conduct all required inspections to boilers and pressure vessels that are covered in the insurance policy, where premiums for specific inspection requirements are specified.~~

~~(c) If a Special Inspector employed by the insurance company does not perform the inspection required in subparagraph (b) of this rule within ninety (90) days of the expiration date of the certificate of inspection, or required external inspection on a power boiler, a Deputy Inspector may be called upon by the Chief Inspector to perform such inspection to determine the safety compliance of such boiler or pressure vessel. In the event that a Deputy Inspector performs an inspection on an insured boiler or pressure vessel, the insurance company in question shall be assessed a special inspection fee set by the Chief Inspector in accordance with T.C.A. § 68-122-113.~~

~~(20) Owner-User Inspection Agency. Each Owner-User Inspection Agency shall:~~

~~(a) Conduct inspections of pressure vessels (not exempt under T.C.A. § 68-122-105), utilizing only qualified inspection personnel, as provided in this Chapter;~~

~~(b) Retain on file where the equipment is inspected a true record or copy of each of the latest inspection reports submitted by the inspector;~~

~~(c) Execute and deliver to the Chief Inspector and those responsible for the operation of the pressure vessel a true report of each inspection, together with appropriate requirements or recommendations that result from such inspections;~~

~~(d) Promptly notify the Chief Inspector of any pressure vessel which does not meet the applicable requirements; and~~

~~(e) Maintain inspection records, which shall be readily available for examination by the Chief Inspector or his authorized representatives during business hours. Such records shall include:~~

~~1. A list of each pressure vessel covered by the Act, showing a serial number and such abbreviated descriptions as may be necessary for identification; and~~

~~2. The date of the last inspection of each unit, and the approximate date for the next inspection (arrived at by applying the appropriate rules to all data available when the inspection record is complete).~~

~~(21) Special Inspectors - Notification of Unsafe Boilers and Pressure Vessels.~~

(a) If a Special Inspector, upon first inspection of a new risk, finds that a boiler or pressure vessel, or any appurtenance thereof, is in such condition that his company would refuse insurance, the inspector shall immediately notify the Chief Inspector and submit a report about the defects.

(b) If, upon inspection, a Special Inspector finds a boiler or pressure vessel to be unsafe for further operation, he shall promptly notify the owner or user and state what repairs or other corrective measures are required to bring the boiler or pressure vessel into compliance with this Chapter. Unless the owner or user makes such repairs or adopts other corrective measures promptly, the Special Inspector shall immediately notify the Chief Inspector. Until such corrections have been made, no further operation of the boiler or pressure vessel involved shall be permitted. If a certificate of inspection is required and is in force, it shall be suspended by the Chief Inspector. When a reinspection establishes that the boiler or pressure vessel is safe to operate, the Chief Inspector shall be notified. At that time, a certificate of inspection (where applicable) may be issued.

(c) If a Special Inspector, while making required inspections, becomes aware of any other boiler or pressure vessel on the premises which are not registered in accordance with applicable law, he shall report this information to the owner or user of the boiler or pressure vessel and to the Chief Inspector within thirty (30) days.

(22) Examination for Certificate of Competency.

(a) Unless other arrangements are made, the examination for an inspector's certificate of competency shall be held in conjunction with a quarterly meeting of the Board at such location as it designates.

(b) An applicant for examination shall have education and experience equal to at least one of the following:

1. A degree from an accredited school in mechanical engineering, plus one year of experience in design, construction, operation or inspection of high-pressure boilers and pressure vessels;

2. A degree from an accredited school in a branch of engineering other than mechanical engineering, or an associate degree in mechanical technology, plus two years of experience in design, construction, operation or inspection of high-pressure boilers and pressure vessels; or

3. A high school education (or the equivalent) plus three years of experience:

(i) In high-pressure boiler and pressure vessel construction or repair; or

(ii) As an operating engineer in charge of high-pressure boiler operation; or

(iii) As an inspector of high-pressure boilers and pressure boiler operation.

(c) An application for examination shall be submitted on the form prescribed by the Chief Inspector at least forty-five (45) days prior to the date of examination. Each application shall be accompanied by a nonrefundable fee of one hundred dollars ($100.00).

(d) The Board may reject any application containing a willfully false or misleading statement.

~~(e) The Board shall administer to qualified applicants a written examination dealing with the construction, maintenance, and repair of boilers and pressure vessels and their appurtenances.~~

~~(f) The Board may waive examination of an applicant who holds a valid commission or certificate of competency from a state that has a standard of examination substantially equal to that of this State, and a valid commission and current commission card issued by the National Board.~~

~~(23) Certificate of Competency and Identification Card.~~

~~(a) In order to be eligible to receive a certificate of competency, the applicant shall be in the regular employment of, and exclusively engaged by, an Authorized Inspection Agency or Owner-User Inspection Agency.~~

~~(b) A request for a certificate of competency and identification card shall be submitted by the employer on the form prescribed by the Chief Inspector. The request shall be accompanied by a nonrefundable fee of fifty dollars ($50.00).~~

~~(c) When the holder of a certificate of competency ceases to be employed by the organization which requested the certificate, that organization shall return the certificate of competency and valid identification card to the Chief Inspector.~~

~~(d) Identification cards shall be renewable annually by application of the employer. The application shall be submitted not later than December 31 of each year, and shall be accompanied by a nonrefundable fee of twenty-five dollars ($25.00) for each card.~~

~~(24) Conflict of Interest. An inspector shall not engage in the sale of any service, article or device relating to boilers, pressure vessels, or their appurtenances.~~

Authority: T.C.A. §§~~4-5-202, 4-5-202(a)(3),~~ 68-122-102~~(a), 68-122-102(b)~~, 68-122-103, 68-122-104, 68-122-106, 68-122-107, 68-122-108, 68-122-110, 68-122-112, ~~through~~ 68-122-113, and ~~68-122-116~~ 68-122-115. ~~Administrative History: Original rule filed May 16, 1986; effective June 15, 1986. (Formerly rule 0780-2-11-03). Amendment filed March 27, 1991; effective June 29, 1991. Amendment filed May 7, 1992; effective August 29, 1992. Amendment filed June 27, 2000; effective October 28, 2000. Amendment filed March 30, 2001; effective July 30, 2001. Amendment filed June 17, 2002; effective October 28, 2002. Repeal and new rule filed November 21, 2005; effective March 30, 2006.~~

~~0800-3-3-.04 General Requirements.~~
0800-03-03-.05 Inspection Requirements.

(1) Notification of Inspection.

(a) Certificate inspections, as required, shall be carried out no more than two (2) months prior to the expiration date of the certificate or within the two (2) month period following the expiration date at a time mutually agreeable to the inspector and owner or user.

(b) External inspections may be performed by the inspector during reasonable hours and without prior notification.

(c) When, as a result of external inspection or determination by other objective means, it is the inspector's opinion that continued operation of the boiler or pressure vessel constitutes a danger to life or property, the inspector may order an internal inspection or an appropriate pressure test, or both, to evaluate conditions. In such instances, the

owner or user shall prepare the boiler or pressure vessel for such inspections or tests as the inspector designates.

(2) Frequency of Inspections. All boilers and pressure vessels subject to inspection under the Act shall be inspected in accordance with the requirements of T.C.A. § 68-122-110.

~~(1)~~ (3)Preparation for Inspection. The owner or user shall prepare each boiler or pressure vessel for inspection on the date assigned by the inspector. Whenever necessary, the owner or user shall prepare for and apply a hydrostatic or pressure test on the inspection date. The date of the inspection shall not be less than seven (7) days after the date of notification.

(a) The owner or user shall prepare a boiler for internal inspection in the following manner

1. Draw off water and wash the boiler thoroughly.

2. Remove manhole and handhole plates, washout plugs and inspection plugs in water column connections (as required by the inspector). Cool and clean the furnace and combustion chambers.

3. Remove all grates of internally fired boilers.

4. Remove insulation or brickwork (as required by the inspector) in order to determine the condition of the boiler, headers, furnace, supports or other parts.

5. Remove the pressure gauge for testing (as required by the inspector).

6. Prevent any leakage of steam or hot water into the boiler by disconnecting the pipe or valve at the most convenient point, or any other appropriate means approved by the inspector.

7. Before opening the manhole or handhole covers and entering any parts of the steam-generating unit connected to a common header with other boilers, close, tag and (preferably) padlock the steam-stop valves; and open drain valves or cocks between the two valves. After draining the boiler, close, tag, and (preferably) padlock the blowoff valves. Disconnect blowoff lines (where practicable) between pressure parts and valves. Open all drains and vent lines.

(b) The owner or user shall prepare a pressure vessel for inspection to the extent deemed necessary by the inspector and in accordance with the applicable procedures outlined in subparagraph (a) above.

(c) No employee or inspector shall be permitted to enter a boiler drum or pressure vessel until the plant inspector or supervisor and the person entering the pressure vessel have confirmed that all stop valves on inlet and outlet piping (not vented to atmosphere) have been closed and tagged. When not valved, the piping shall be disconnected or blanked. In addition, plant personnel shall make appropriate tests to assure that there is no oxygen deficiency or hazardous or toxic gases in the drums or pressure vessels to be entered by the inspector. The oxygen content of the breathable atmosphere shall be between 19.5% and 23.5%.

~~(2)~~ (4)Boilers and Pressure Vessels Improperly Prepared for Inspection. The inspector may decline to conduct an inspection or test, and withhold or suspend the inspection certificate, if the owner or user:

(a) Fails to properly prepare a boiler or pressure vessel for inspection; or

(b) Fails to comply with the requirements of this Chapter pertaining to pressure testing.

(5) External Inspection Disclosure of Defective Conditions.

~~(3)~~ (a) If, upon an external inspection, there is evidence of a leak or crack, sufficient covering of the boiler or pressure vessel shall be removed to permit the inspector to determine satisfactorily the safety of the boiler or pressure vessel. If the covering cannot be removed at that time, the inspector may order the operation of the boiler or pressure vessel stopped until the covering can be removed and proper examination made. The Chief Inspector or Chief Inspector's Designee shall be notified immediately.

(b) Jacketed. If a boiler or pressure vessel is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, the owner or user shall remove sufficient jacketing, setting wall, or other form of casting of housing to permit reasonable inspection of the seams and other areas necessary to determine the condition and safety of the boiler or pressure vessel, provided such information cannot be determined by other means.

~~(4)~~ (c) Lap Seam Crack. A boiler or pressure vessel shall be immediately discontinued from use if a lap seam crack is discovered along a longitudinal riveted joint of the shell or drum. Patching shall be prohibited. (A "lap seam crack" is a crack found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.)

(6) Special Inspectors - Notification of Unsafe Boilers and Pressure Vessels.

(a) If a Special Inspector, upon first inspection of a new risk, finds that a boiler or pressure vessel, or any appurtenance thereof, is in such condition that his company would refuse insurance, the inspector shall immediately notify the Chief Inspector or Chief Inspector's Designee and submit a report about the defects.

(b) If, upon inspection, a Special Inspector finds a boiler or pressure vessel to be unsafe for further operation, he shall promptly notify the owner or user and state what repairs or other corrective measures are required to bring the boiler or pressure vessel into compliance with this Chapter. Unless the owner or user makes such repairs or adopts other corrective measures promptly, the Special Inspector shall immediately notify the Chief Inspector or Chief Inspector's Designee. Until such corrections have been made, no further operation of the boiler or pressure vessel involved shall be permitted. If a certificate of inspection is required and is in force, it shall be suspended by the Chief Inspector or Chief Inspector's Designee. When a reinspection establishes that the boiler or pressure vessel is safe to operate, the Chief Inspector or Chief Inspector's Designee shall be notified. At that time, a certificate of inspection (where applicable) may be issued.

(c) If a Special Inspector, while making required inspections, becomes aware of any other boiler or pressure vessel on the premises which are not registered in accordance with applicable law, he shall report this information to the owner or user of the boiler or pressure vessel and to the Chief Inspector or Chief Inspector's Designee within thirty (30) days.

(7) Condemned Boilers and Pressure Vessels. The Chief Inspector or Chief Inspector's Designee or a Deputy Inspector shall stamp on any boiler or pressure vessel declared unfit for further service the letters "XXX" on either side of the State number. Such stamping (XXX 00 XXX) shall designate a condemned boiler or pressure vessel.

~~(5)~~ (8)Pressure Tests.

(a) A pressure test, when applied to boiler or pressure vessels, shall not exceed one and one half (1 ½) times the maximum allowable working pressure. The pressure shall be under proper control so that in no case shall the required test pressure exceed that which is allowed by the applicable ASME ~~c~~Code of ~~c~~Construction.

(b) During a pressure test, the safety valve or valves shall be removed, or each valve disc shall be held to its seat by means of a testing clamp (not by screwing down the compression screw upon the spring). A plug device designed for the purpose may be used.

(c) The temperatures of the water used to apply a pressure test shall not be less than 70°F and the temperature during inspection shall not exceed 120°F.

(d) When a pressure test is applied to determine tightness, the pressure shall be equal to the normal operating pressure, but need not exceed the release pressure of the safety valve having the lowest release setting.

(e) When the contents of the vessel prohibit contamination by any other medium or when a pressure test is not possible, other testing media may be used providing the precautionary requirements of the applicable section of the NBIC are followed.

(9) Notification of an Incident or Accident. The owner or user shall promptly submit to the Chief Inspector or Chief Inspector's Designee a detailed report of any incident or accident that occurs to a boiler or pressure vessel. In the event of a personal injury, incident, accident, or explosion, the owner or user shall immediately give notice to the office of the Chief Inspector or Chief Inspector's Designee. Neither the boiler or pressure vessel, nor any parts thereof, shall be removed or disturbed without the permission of the Chief Inspector or Chief Inspector's Designee, except for the purpose of saving human life or limiting consequential damage.

(10) Inspection reports.

(a) Deputy and Special Inspectors shall submit to the Chief Inspector or Chief Inspector's Designee on a form approved by the Board, an initial inspection report for each boiler and pressure vessel subject to inspection in this State. Complete data shall be submitted on a form approved by the Board for each nonstandard boiler or pressure vessel.

(b) Deputy and Special Inspectors shall submit to the Chief Inspector or Chief Inspector's Designee on a form approved by the Board, reinspection reports of subsequent inspections of both standard and nonstandard boilers and pressure vessels.

(c) Owner-User Inspection Agencies shall submit reports in accordance with subparagraphs (a) and (b) of this rule. Said reports shall be filed in accordance with Rule 0800-03-03-.06(2).

(d) Inspection reports required by subparagraphs (a), (b), and (c) of this rule shall be submitted within thirty (30) days after the date of inspection.

~~(6) Automatic Low Water Fuel Cutoff and/or Water Feeding Device.~~

~~(a) Each automatically-fired boiler shall be equipped with one or more automatic low-water fuel cutoff device conforming to the requirements of ASME CSD-1, latest~~

~~edition/addenda adopted by the Board. If a waterfeeding device is installed, it shall be so constructed that the water inlet valve cannot feed water into the boiler through the float chamber, and so located as to supply requisite feedwater. The lowest safe waterline should not be lower than the lowest visible part of the water glass.~~

~~(b) Such fuel or feedwater control device may be attached directly to a boiler, or for low-pressure boiler to the tapped openings provided for attaching a water glass directly to a boiler, provided that such connections from the boiler are nonferrous tees or Y's not less than ½ inch pipe size between the boiler and the water glass, so that the water glass is attached directly and as close as possible to the boiler. The ends of all nipples shall be reamed to full-size diameter.~~

~~(c) Designs embodying a float and float bowl shall have a vertical straightway valve drain pipe at the lowest point in the water equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device tested.~~

~~(7) Pressure Reducing Valves.~~

~~(a) Where pressure-reducing valves are used, one or more safety or safety relief valves shall be provided on the low-pressure side of the reducing valve when the piping or equipment on the low-pressure side does not meet the requirements for the full initial pressure. The safety or safety relief valves shall be located adjoining or as close as possible to the reducing valve.~~

~~(b) Proper protection shall be provided to prevent injury or damage caused by escaping vapor or fluid from the discharge of safety or safety valves if vented to the atmosphere. The combined discharge capacity of the safety or safety relief valves shall be such that the pressure rating of the lower pressure piping equipment will not be exceeded in case the reducing valve fails in the open position.~~

~~(c) Use of hand-controlled bypasses around reducing valves is permissible. If a bypass is used around the reducing valve, the safety valve required on the low pressure side shall be of sufficient capacity to relieve all the vapor or fluid that can pass through the bypass without overpressuring the low pressure side.~~

~~(d) A pressure gauge shall be installed on the low pressure side of a reducing valve.~~

~~(8) Boiler Blowoff Equipment.~~

~~(a) The blowdown from a boiler or boilers that enters a sanitary sewer system or blowdown which is considered a hazard to life or property shall pass through some form of blowoff equipment that will reduce pressure and temperature as required hereunder.~~

~~1. The temperature of the water leaving the blowoff equipment shall not exceed 150ºF.~~

~~2. The pressure of the blowdown leaving any type of blowoff equipment shall not exceed 5 psig.~~

~~3. All blowoff equipment shall be fitted with openings to facilitate cleaning and inspection.~~

~~(9) Location of Discharge Piping Outlets. The discharge of safety valves, blowoff pipes and other outlets shall be located and supported so as to prevent injury to personnel.~~

~~(10) Repairs or Alterations.~~

(a) Before any necessary repairs or alterations are made, an inspector employed by the authorized inspection agency responsible for the in-service inspection of the boiler or vessel shall be consulted. After such repairs or alterations are made, they shall be reviewed and found acceptable by the authorizing inspector.

(b) Repairs shall be made by an organization holding a current National Board Repair Certificate of Authorization and the license required by Rule 0800-3-3-.03(15)(b).

(c) Alterations shall be made by an organization holding a current National Board Repair Certificate of Authorization and the license required by Rule 0800-3-3-.03(15)(b).

(d) In the application of riveted patches, the design of the patch and the method of installation shall be in accordance with the National Board Inspection Code, 1973 edition as amended.

(11) Supports. Each boiler and pressure vessel shall be supported by masonry or structural supports of sufficient strength and rigidity to safely support the boiler or pressure vessel and its contents. There shall be no excessive vibration in either the boiler, pressure vessel or its connecting piping.

(12) Boiler Door Latches.

(a) A watertube boiler shall have firing doors of the inward-opening type, unless such doors are provided with substantial and effective latching or fastening devices, or are otherwise so constructed as to prevent them, when closed, from being blown open by pressure on the furnace side. These latches or fastenings shall be of the positive self-locking type. Friction contacts, latches, or bolts actuated by springs shall not be used. The foregoing requirements for latches or fastenings shall not apply to coal openings of downdraft or similar furnaces.

(b) All other doors, except explosion doors, not used in the firing of the boiler, may be provided with bolts or fastenings in lieu of self-locking latching devices.

(c) Explosion doors, if used and if located in the setting walls within 7 feet of the firing floor or operating platforms shall be provided with substantial deflectors to divert the blast.

(13) Clearance.

(a) When boilers are replaced or new boilers are installed in either existing or new buildings, a height of at least 3 feet shall be provided between the top of the boiler proper and the ceiling or roof, and at least 3 feet between all sides of the boiler and adjacent walls or other structures. Boilers and pressure vessels having manholes shall have 5 feet clearance from the manhole opening and any wall, ceiling or piping that will prevent a person from entering the boiler or vessel. All boilers and pressure vessels shall be so located that adequate space will be provided for the proper operation of the boilers and pressure vessels and their appurtenances, for the inspection of all surfaces, tubes, waterwalls, economizers, piping valves and other equipment, and for the necessary maintenance, repair and replacement of tubes.

(b) A variance from the requirements of (a) above may be issued by the Chief Inspector for the installation of a Steam Heating, Hot Water Heating, Hot Water Supply, or Unfired Steam Boilers or Unfired Pressure Vessels. All requests must be submitted to the Chief Inspector prior to installation.

(14) Ladders and Runways. When necessary for safety, there shall be a steel runway or platform of standard construction installed across the tops of adjacent boilers or pressure vessels or at some other convenient level for the purpose of affording safe access. All walkways shall have at least two means of exit, each to be remotely located from the other.

(15) Exit from Boiler Room. Any boiler room exceeding 500 square feet floor area and containing one or more boilers having a fuel-burning capacity of 1,000,000 BTU/hr., or equivalent electrical heat input, shall have at least two means of exit. Each exit shall be remotely located from the other. Each elevation in such boiler room shall have two means of exit, each remotely located from the other.

(16) Air and Ventilation Requirements - Combustion Air Supply and Ventilation of Boiler Room. A permanent source of outside air shall be provided for each boiler room to permit satisfactory combustion of the fuel as well as proper ventilation of the boiler room under normal operating conditions.

(a) Total requirements of the burners for all fired pressure vessels in the boiler room must be used to determine the louver sizes, whether fired by coal, oil or gas; however, the minimum net free louvered area must not be less than one square foot. The following table or formula shall be used to determine the net louvered area in square feet:

Input BTU/Hour	Required Air Cu.Ft. /Min.	Min. Net Louvered Area Sq. Ft.
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3
5,000,000	1,250	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8
8,000,000	2,000	6.6

$$CFM = \frac{BTUH}{10,000} \times 2.5$$

$$\text{Min. Net Louvered Area Required (Sq. Ft.)} = \frac{CFM}{300}$$

(b) When mechanical ventilation is used in lieu of subparagraph (a) above, the supply of combustion and ventilation air to the boiler room and the firing devices shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilation fan shall not exceed 500 feet per minute, and the total air delivered shall be equal to or greater than shown in sub-paragraph (a) above.

(17) Gas Burners. For installations which are gas-fired, the burners used shall conform to the applicable requirements of the American Gas Association, or other nationally recognized standards acceptable to the Board.

(18) Prevention of Furnace Explosions. Fuel-burning equipment, the related safety devices and controls, and their operation shall be in accordance with the requirements of ASME CSD-1, or the NFPA 85 latest edition/addenda adopted by the Board, as applicable.

(19) Fired Jacketed Steam Kettles. Fired jacketed steam kettles may be constructed under the rules of the ASME Pressure Vessel Code, Section VIII, provided the following requirements are met:

(a) Welded joints in contact with products of combustion shall be of Type No. 1 of Table UW-12, ASME Code, Section VIII.

(b) When parts subjected to pressure are made of carbon steel material, the minimum thickness shall be ¼ inch. The minimum thickness of stainless steel or nonferrous pressure parts shall be as specified in the applicable part of Subsection C, ASME Code, Section VIII.

(c) When in contact with products of combustion, carbon steel material shall be pressure vessel quality and austenitic stainless steel parts shall be either extra-low carbon or stabilized grades.

(d) Structural grade carbon steel shall not be used for any pressure part.

(e) The operating pressure of the jacket shall not exceed 50 psig.

(f) Vessels constructed under this rule shall be inspected by an authorized inspector. Such vessels marked with the UM Symbol are not acceptable.

(g) No steam or water shall be withdrawn from the jacket for use externally to the vessel.

(h) The capacity of the safety valve in pounds of steam per hour shall be at least equal to the BTU rating of the burner divided by 1000.

(i) The jacket shall be equipped with the following minimum appurtenances and controls.

1. A pressure gauge;

2. A water gauge glass;

3. A separate connection, fitted with a check valve and stop valve, for adding water to the jacket;

4. An automatic gas valve controlled by pressure or temperature to maintain the steam pressure in the jacket below the safety valve setting;

5. A low water cutoff that will cut off the fuel to the burner if the water in the jacket drops below the lowest permissible water level as established by the manufacturer; and

6. A safety pilot control that will cut off the fuel to both the main burner and the pilot burner in case of pilot flame failure.

(20) Electric Boilers. All appliances required for electric steam boilers shall be attached in accordance with the following rules.

(a) The grounding of the boiler shall be permanently fastened on some part of the boiler, and shall be grounded in accordance with the National Electrical Code, NFPA 70.

(b) A suitable screen or guard shall be provided around high tension bushings; and a sign shall be posted warning of high voltage. This screen or guard shall be so located that it will be impossible for anyone working around the boiler to accidentally come in contact with the high tension circuits. During the adjustment of safety valves, the power circuit to the boiler shall be open. The boiler may be under steam or water pressure, but the power line shall be open while the operator is making the necessary adjustments.

~~(c) The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3½ pounds per hour per kilowatt input.~~

~~(21) Flue Connection. Each gas-fired boiler shall be equipped with a vent or flue which shall terminate at any acceptable location outside the building. The size of the vent or flue shall be that recommended by the boiler manufacturer.~~

~~(22) Attendants for Power Boilers.~~

~~(a) A power boiler having a rating of either 5 h.p. or 50 sq. ft. of heat- absorbing surface or greater shall not be operated for periods of longer than twenty (20) minutes without being checked by an attendant who has been qualified by the owner in its operation, regardless of whether the boiler is equipped with automatic feedwater regulator, fuel or damper regulator, high and low water alarm, or other form of automatic control.~~

~~(b) A variance from the requirements of (a) above may be issued by the Board. All requests must be submitted to the Chief Inspector no less than forty-five (45) days prior to the next regularly scheduled or called meeting of the Board.~~

~~(23) Conditions not Covered. The Chief Inspector shall be consulted for any conditions not covered by these requirements.~~

Authority: T.C.A. §§68-122-102, 68-122-103, 68-122-104, 68-122-106, 68-122-107, 68-122-108, and 68-122-110.

0800-03-03-.06 Inspector Qualifications.

(1) Insurance Inspectors (Authorized Inspection Agencies).

(a) An insurance company shall notify the Chief Inspector or Chief Inspector's Designee within thirty (30) days of all boilers or pressure vessels, on which insurance is written, cancelled, not renewed or suspended.

(b) An insurance company shall conduct all required inspections to boilers and pressure vessels that are covered in the insurance policy, where premiums for specific inspection requirements are specified.

(c) If a Special Inspector employed by the insurance company does not perform the inspection required in subparagraph (b) of this rule within ninety (90) days of the expiration date of the certificate of inspection, or required external inspection on a power boiler, a Deputy Inspector may be called upon by the Chief Inspector or Chief Inspector's Designee to perform such inspection to determine the safety compliance of such boiler or pressure vessel. In the event that a Deputy Inspector performs an inspection on an insured boiler or pressure vessel, the insurance company in question shall be assessed a special inspection fee set by the Chief Inspector or Chief Inspector's Designee in accordance with T.C.A. § 68-122-113.

(2) Owner-User Inspection Agency. Each Owner-User Inspection Agency shall:

(a) Conduct inspections of pressure vessels (not exempt under T.C.A. § 68-122-105), utilizing only qualified inspection personnel, as provided in this Chapter;

(b) Retain on file where the equipment is inspected a true record or copy of each of the latest inspection reports submitted by the inspector;

(c) Execute and deliver to the Chief Inspector or Chief Inspector's Designee and those responsible for the operation of the pressure vessel a true report of each inspection, together with appropriate requirements or recommendations that result from such inspections;

(d) Promptly notify the Chief Inspector or Chief Inspector's Designee of any pressure vessel which does not meet the applicable requirements; and

(e) Maintain inspection records, which shall be readily available for examination by the Chief Inspector or Chief Inspector's Designee or his authorized representatives during business hours. Such records shall include:

1. A list of each pressure vessel covered by the Act, showing a serial number and such abbreviated descriptions as may be necessary for identification; and

2. The date of the last inspection of each unit, and the approximate date for the next inspection (arrived at by applying the appropriate rules to all data available when the inspection record is complete).

(3) Examination for Certificate of Competency.

(a) Unless other arrangements are made, the examination for an inspector's certificate of competency shall be held in conjunction with a quarterly meeting of the Board at such location as it designates (see NB-411, *Candidate Handbook for the Inservice Commission Examination Administered at a National Board Member Jurisdiction*), or at an Applied Measurement Professionals (AMP) location, or during the last day of the National Board Inservice Commission (IC) two-week course (See NB-461, *Candidate Handbook for the Inservice Commission Examination*).

(b) An applicant for examination shall have education and experience equal to at least one (1) of the following: (See NB-263, Rules for National Board Inservice and New Construction Commissioned Inspectors)

1. A degree from an accredited school in mechanical engineering, plus one (1) year of experience in design, construction, operation or inspection of high-pressure boilers and pressure vessels;

2. A degree from an accredited school in a branch of engineering other than mechanical engineering, or an associate degree in mechanical technology, plus two (2) years of experience in design, construction, operation or inspection of high-pressure boilers and pressure vessels; or

3. A high school education (or the equivalent) plus four (4) years of experience:
   (i) In high-pressure boiler and pressure vessel construction or repair; or
   (ii) As an operating engineer in charge of high-pressure boiler operation; or
   (iii) As an inspector of high-pressure boilers and pressure boiler operation

(c) An application for examination shall be submitted on the form prescribed by the Chief Inspector or Chief Inspector's Designee at least forty-five (45) days prior to the date of examination. Each application shall be accompanied by a nonrefundable fee of one hundred dollars ($100.00).

(d) The Board may reject any application containing a willfully false or misleading statement.

(e) The Board shall administer to qualified applicants a written examination dealing with the construction, maintenance, and repair of boilers and pressure vessels and their appurtenances.

(f) The Board may waive examination of an applicant who holds a valid commission or certificate of competency from a state that has a standard of examination substantially equal to that of this State, and a valid commission and current commission card issued by the NB.

(4) Certificate of Competency and Identification Card.

(a) In order to be eligible to receive a certificate of competency, the applicant shall be in the regular employment of, and exclusively engaged by, an Authorized Inspection Agency or Owner-User Inspection Agency.

(b) A request for a certificate of competency and identification card shall be submitted by the employer on the form prescribed by the Chief Inspector or Chief Inspector's Designee. The request shall be accompanied by a nonrefundable fee of fifty dollars ($50.00).

(c) When the holder of a certificate of competency ceases to be employed by the organization which requested the certificate, that organization shall return the certificate of competency and valid identification card to the Chief Inspector or Chief Inspector's Designee.

(d) Identification cards shall be renewable annually by application of the employer. The application shall be submitted not later than December 31 of each year, and shall be accompanied by a nonrefundable fee of twenty-five dollars ($25.00) for each card.

(5) Conflict of Interest. An inspector shall not engage in the sale of any service, article or device relating to boilers, pressure vessels, or their appurtenances.

Authority: T.C.A. §§68-122-102, 68-122-105, 68-122-106, 68-122-107, 68-122-108, 68-122-109, 68-122-110, 68-122-111, and 68-122-113.

~~0800-3-3-.05 Existing Power Boilers.~~

~~(1) Age Limits.~~

~~(a) There shall be an age limit of 30 years for any nonstandard existing power boiler, except for the following:~~

~~1. Any such boiler not having a lap-riveted longitudinal joint may be continued in operation for so long as no distress or leakage develops during a pressure test with water temperature between 60° to 120° F, of no more than 90% of the set pressure of the lowest setting pressure relief device on the boiler, held for a period of at least thirty (30) minutes.~~

~~2. Any such boiler having lap-riveted longitudinal joints and operating at a pressure in excess of 50 psig shall have an age limit of 20 years. When removed from an existing setting, this type of boiler shall not be reinstated for a pressure in excess of 15 psig.~~

~~3. "Historic power boilers" as defined in T.C.A. § 68-122-104(c)(1) and Rule 0800-3-3-.01(18).~~

~~(b) The age limit for a standard existing power boiler shall be dependent upon the results of a thorough internal and external inspection and, where required by the inspector, a pressure test with water temperature between 60° to 120° F, of no more than 90% of the set pressure of the lowest setting pressure relief device on the boiler, held for a period of at least thirty (30) minutes.~~

~~(2) Maximum Allowable Working Pressure for Standard Boilers. The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed.~~

~~(3) Maximum Allowable Working Pressure for Non-standard Boilers.~~

~~(a) The maximum allowable working pressure of a non-standard boiler shall be determined in accordance with the following formula. Non-standard boilers with welded seams shall not be operated at pressures exceeding 15 psig. for steam or 30 psig for water.~~

$$\frac{TStE}{RFS} = \text{maximum allowable working pressure (psig.)}$$

~~Where:~~

~~TS = ultimate tensile strength of shell plate (psi)~~

~~t = minimum thickness of shell plate, in weakest course (inches)~~

~~E = efficiency of longitudinal joint (For tube ligaments, determine E by the rules provided in Section I of the ASME Code.~~

~~For riveted construction, refer to the National Board Inspection Code, 1973 edition.~~

~~For seamless construction, consider E to be 100%)~~

~~R = inside radius of weakest course of shell (inches)~~

~~FS = factor of safety permitted hereunder~~

~~(b) Tensile Strength - When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psi for steel and 45,000 psi for wrought iron.~~

~~(c) Crushing Strength of Mild Steel - The resistance to crushing of mild steel shall be taken as 95,000 psi.~~

~~(d) Strength of Rivets in Shear - When computing the ultimate strength of rivets in shear, the following values in pounds per square inch of the cross-sectional area of the rivet shank shall be used:~~

~~PSI~~	
~~Iron rivets in single shear~~	~~38,000~~
~~Iron rivets in double shear~~	~~76,000~~
~~Steel rivets in single shear~~	~~44,000~~
~~Steel rivets in double shear~~	~~88,000~~

~~When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one rivet in the body of the joint.~~

~~Table 1~~
~~Sizes of Rivets Based on Plate Thickness~~

~~Thickness of plate in.~~	~~¼~~	~~9/32~~	~~5/16~~	~~11/32~~	~~3/8~~	~~13/32~~
~~Diameter of rivet after driving in.~~	~~11/16~~	~~11/16~~	~~–~~	~~–~~	~~13/16~~	~~13/16~~
~~Thickness of plate in.~~	~~7/16~~	~~15/32~~	~~½~~	~~9/16~~	~~5/8~~	
~~Diameter of rivet after driving in.~~	~~15/16~~	~~15/16~~	~~15/16~~	~~1-1/16~~	~~1-1/6~~	

~~(e) Factors of Safety - The working pressure shall be decreased by the inspector if the condition and safety of the boiler warrant. The following factors of safety represent minimum values to be used:~~

~~The lowest factor of safety permissible on existing installation shall be 5.5; except that, for horizontal return-tubular boilers having continuous longitudinal lap-seams more than 12 feet in length, the factor of safety shall be 8. When this latter type of boiler is removed from its existing setting, it shall not be reinstalled for pressures in excess of 15 psig.~~

~~(4) Cast Iron Headers and Mud drums. The maximum allowable working pressure on a water tube boiler, the tubes of which are secured to cast iron or malleable iron headers, or which have cast iron mud drums, shall be 160 psig.~~

~~(5) Pressure on Cast Iron Boilers. The maximum allowable working pressure for any cast iron boiler, except hot water boilers, shall be 15 psig.~~

~~(6) Safety Valves.~~

~~(a) The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, is prohibited.~~

~~(b) Each boiler shall have at least one ASME/NB stamped safety valve; and if it has more than 500 square feet of water-heating surface, or an electric power input of more than 500 kw, it shall have two or more safety valves.~~

~~(c) The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as possible to the boiler, without unnecessary intervening pipe or fittings.~~

~~(d) No valve of any description shall be placed between the safety valve and the boiler, or on the escape pipe, if used. When an escape pipe is used, it shall be at least the full size of the safety valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or in the escape pipe. When an elbow is placed on a safety valve escape pipe, it shall be located close to the safety valve outlet; or the escape pipe shall be anchored and supported securely. All safety valve discharged shall be so located or piped as to be carried clear from walkways or platforms.~~

~~(e) The safety valve capacity of each boiler shall be such that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise to more than 6 percent above the highest pressure to which any valve is set, and in no case to more than 6 percent above the maximum allowable working pressure.~~

(f) One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3 percent above the maximum allowable working pressure, but the range of setting of all the safety valves on a boiler shall not exceed 10 percent of the highest pressure to which any valve is set.

(g) When two or more boilers operating at different pressures and safety valves settings are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

(h) Where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure greater than 94 percent of the lowest pressure obtained in the supply main feeding the boiler.

(i) The relieving capacity of the safety valves on any boiler shall be checked by one of the three following methods; and, if such capacity is found to be insufficient, additional valves shall be provided:

1. By making an accumulation test, which consists of shutting off all other steam discharge outlets from the boiler and forcing the fires to the maximum. The safety valve capacity shall be sufficient to prevent arise of pressure in excess of 6 percent of the maximum allowable working pressure. This method should not be used on a boiler with a superheater or reheater;

2. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam generating capacity) upon the basis of the heating value of this fuel. These computations shall be made as outlined in the Appendix of the ASME Code, Section I; or

3. By measuring the maximum amount of feedwater that can be evaporated.

(7) Boiler Feeding.

(a) Each boiler shall have a feed supply which will permit it to be fed at any time while under pressure.

(b) A boiler having more than 500 square feet of water-heating surface shall have at least two suitable means of feeding, one of which shall be a feed pump. A source of feed at a pressure 6 percent greater than the set pressure of the safety valve with the highest setting may be considered one of the means. Boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water, provided means are furnished for the shutoff of heat input prior to the water level reaching the lowest safe level.

(c) The feedwater shall be introduced into the boiler in such a manner that it will not be discharged close to riveted joints of shell or furnace sheets, or directly against surfaces exposed to products of combustion, or to direct radiation from the fire.

(d) The feed piping to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve near the boiler. When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and the source of supply. Whenever a globe valve is used on the feed piping, the inlet shall be under the disk of the valve.

(e) When deaerating heaters are not employed, it is recommended that the temperature of the feed water be not less than 120° F to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, it is recommended that the minimum feedwater temperature be not less than 215° F so that dissolved gases may be thoroughly released.

(8) Water Level Indicators.

(a) No outlet connections (except for damper regulator, feedwater regulator, low water fuel cutout, drains steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water there from) shall be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least ¾ inch pipe size, with the discharge to be piped to a safe location.

(b) Per ASME Section I, gauge cocks are no longer required.

(c) For all installations where the water gauge glass or glasses are more than 30 feet above boiler operating floor, remote water level indicating or recording gauges shall be installed at eye level.

(9) Steam Gauges.

(a) Each steam boiler shall have a steam gauge with dial range not less than 1½ times the maximum allowable working pressure, connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon (or equivalent device) of sufficient capacity to keep the gauge tube filled with water. Such siphon (or equivalent device) shall be so arranged that the gauge cannot be shutoff from the boiler, except by a cock with tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(b) When a steam gauge connection longer than 8 feet becomes necessary, a shut-off valve may be used near the boiler, provided the valve is of the outside-screw-and yoke type and is locked open. The line shall be of ample size, with provision for free blowing.

(c) Each boiler shall be provided with a ½ inch nipple and globe valve connected to the steam space, for the exclusive purpose of attaching a test gauge when the boiler is in service so that the accuracy of the boiler steam gauge may be ascertained.

(10) Stop Valves.

(a) Each steam outlet from boiler (except safety valve and water column connections) shall be fitted with a stop valve located as close as practicable to the boiler.

(b) When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location, and shall not be discharged on the top of the boiler or its setting.

(c) When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves having ample free blow drain between them. The discharge of the drain shall be visible to the operator while manipulating the valves, and shall be piped clear of the boiler setting. The stop valves should consist of one non-return valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type.

~~(11) Blowoff Connection.~~

~~(a) The construction of the setting around each blowoff pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blowoff piping.~~

~~(b) When exposed to furnace heat, all blowoff piping shall be protected by fire brick or other heat-resistant material, so constructed the piping may be inspected readily.~~

~~(c) Each boiler shall have a blowoff pipe, fitted with a valve or cock in direct connection with the lowest water space. Cocks shall be of the gland or guard type, and suitable for the pressure allowed. The use of globe valves is prohibited. When the maximum allowable working pressure exceeds 100 psig., each blowoff pipe shall be provided with two valves or a valve and cock.~~

~~(d) When the maximum allowable working pressure exceeds 100 psig., blowoff piping shall be at least extra-heavy steel from the boiler to the valve or valves, and shall be run full-size without use of reducers or bushings. The piping shall not be galvanized.~~

~~(e) All fittings between the boiler and blowoff valve shall be of steel. In case of renewal of blowoff pipe or fittings, they shall be installed in accordance with the rules for new installations. See Recommended Rules for National Board Boiler Blowoff Equipment.~~

~~(12) Repairs and Renewals of Boiler Fittings and Appliances. Whenever fittings or appliances are repaired or replaced, the work shall comply with the rules governing new installations.~~

~~(13) Conditions Not Covered by These Requirements. All cases not specifically covered by these requirements shall be treated as new installations, or may be referred to the Chief Inspector for instructions.~~

~~Authority: T.C.A. §§4-5-202, 4-5-202(a)(3), 68-122-101, 68-122-102, 68-122-104, and 68-122-104(c)(1). Administrative History: Original rule filed May 16, 1986; effective June 15, 1986. (Formerly rule 0780-2-11-.05) Amendment filed March 27, 1991; effective June 29, 1991. Amendment filed June 27, 2000; effective October 28, 2000. Amendment filed June 17, 2002; effective October 28, 2002. Amendment filed February 6, 2006; effective June 28, 2006.~~

~~0800-3-3-.06 Existing Heating Boilers.~~

~~(1) Standard Boilers. The maximum allowable working pressure of standard boilers shall in no case exceed the pressure indicated by the manufacturer's identification stamped or cast on the boiler, or on a plate secured on it.~~

~~(2) Non-standard Riveted Boilers. The maximum allowable working pressure on the shell of a nonstandard riveted heating boiler shall be determined in accordance with rule 0800-3-3-.05(3) except that in no case shall the maximum allowable working pressure of a steam heating boiler exceed 15 psig., or a hot water boiler exceed 160 psig. or 250 degrees F temperature.~~

~~(3) Non-standard Welded Boiler. The maximum allowable working pressure of a non-standard steel or wrought iron heating boiler of welded construction shall not exceed 15 psig. for steam. For other than steam service, the maximum allowable working pressure shall be calculated in accordance with Section IV of the ASME Code, but in no case shall it exceed 30 psig.~~

~~(4) Non-standard Cast Iron Boilers.~~

(a) A maximum allowable working pressure of a non-standard boiler composed principally of cast iron shall not exceed 15 psig. for steam service or 30 psig. for hot water service.

(b) The maximum allowable working pressure of a non-standard boiler having cast iron shell or heads and steel or wrought iron tubes shall not exceed 15 psig. for steam service or 30 psig. for hot water service.

(5) Safety Valves.

(a) Each steam boiler shall have one or more ASME/National Board stamped safety valves of the spring pop-type adjusted and sealed to discharge at a pressure not to exceed 15 psig. Seals shall be attached in a manner to prevent the valves from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. A body drain connection below seat level shall be provided by the manufacturer and this drain shall not be plugged during or after field installation. For valves exceeding two and one half (2½) inches pipe size, the drain holes or holes shall be tapped not less than three eighths (⅜) inch pipe size. For valves less than two and one half (2½) inches, the drain hole shall not be less than one fourth (¼) inch in diameter.

(b) No safety valve for a steam heating boiler shall be smaller than ½ inch unless the boiler and radiating surface consist of a self-contained unit. No safety valve shall be larger than 4½ inches. The inlet opening shall have an inside diameter equal to, or greater than, the seat diameter.

(c) The minimum relieving capacity of the valve or valves shall be governed by the capacity marking on the boiler.

(d) The minimum valve capacity in pounds per hour shall be the greater of that determined by dividing the maximum BTU output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000 or shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. In many cases, a greater relieving capacity of valves will have to be provided than the minimum specified by these rules. In every case, the requirements of Item 5, Paragraph (e) shall be met.

Table 2
Minimum Pounds of Steam Per Hour
Per Square Foot of Heating Surface

	Firetube Boilers	Watertube Boilers
Boiler Heating Surface:		
Hand fired	5	6
Stoker fired	7	8
Oil, gas or pulverized fuel fired	8	10
Waterwall Heating Surface:		
Hand fired	8	8
Stoker fired	10	12
Oil, gas or pulverized fuel fired	14	16

1. ~~When a boiler is fired only by a gas giving a heat value not in excess of 200 BTU per cubic foot, the minimum safety valve or safety relief valve relieving capacity may be based on the value given for hand-fired boilers above.~~

2. ~~The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3½ pounds per hour per kilowatt Input.~~

3. ~~For heating surface determination, see ASME Code, Section IV, Paragraph HG-403.~~

(e) ~~The safety valve capacity for each steam boiler shall be such that, with the fuel-burning equipment installed and operating at maximum capacity, the pressure cannot rise more than 5 psig. above the maximum allowable working pressure.~~

(f) ~~When operating conditions are changed, or additional boiler heating surface is installed, the valve capacity shall be increased (if necessary) to meet the new conditions and comply with this paragraph. When additional valves are required, they may be installed on the outlet piping, provided there is no intervening valve.~~

(g) ~~If there is any doubt as to the capacity of the safety valve, an accumulation test shall be run (see ASME Code, Section VI, Recommended Rules for Care and Operation of Heating Boilers).~~

(h) ~~No valve of any description shall be placed between the safety valve and the boiler, and on the discharge pipe between the safety valve and the atmosphere. The discharge pipe shall be at least full-size, and shall be fitted with an open drain to prevent water lodging in the upper part of the safety valve and in the discharge pipe. When an elbow is placed on the safety valve discharge pipe, it shall be located close to the safety valve outlet; and the discharge pipe shall be securely anchored and supported. All safety valve discharges shall be so located and piped as not to endanger persons in the area.~~

(6) ~~Safety Relief Valve Requirements for Hot Water Boilers.~~

(a) ~~Each hot water heating boiler shall have at least one ASME/National Board stamped safety relief valve set to relieve at or below the maximum allowable working pressure of the boiler. Each hot water supply boiler shall have at least one ASME/National Board Stamped safety relief valve of the automatic reseating type set to relieve at or below maximum allowable working pressure of the boiler Safety relief valves, ASME/National Board stamped as to capacity, shall have pop action when tested by steam. When more than one safety relief valve is used on either hot water heating or hot water-supply boilers, the additional valve or valves shall be ASME/NB rated, and may be set within a range not to exceed 6 psig. above the maximum allowable working pressure of the boiler up to and including 60 psig., and 5 percent for those having a maximum allowable working pressure exceeding 60 psig. Safety relief valves shall be spring loaded. Safety relief valves shall be so arranged that they cannot be reset at a higher pressure that the maximum permitted by this paragraph.~~

(b) ~~No materials liable to fail due to deterioration or vulcanization when subject to saturated steam temperature corresponding to capacity test pressure shall be used for any part.~~

(c) ~~No safety relief valve shall be smaller than ¾ inch nor larger than 4½ inches standard pipe size, except that boilers having a heat input not greater than 15,000 BTU per hour may be equipped with a safety relief valve of ½ inch standard pipe. The inlet opening~~

~~shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than ¼ inch in diameter or its equivalent area.~~

~~(d) The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in BTU at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000 or shall be determined on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. In many cases, a greater relieving capacity of valves will have to be provided than the minimum specified by these rules. In every case, the requirements of Item 6, Paragraph (f) shall be met.~~

~~(e) When operating conditions are changed, or additional boiler heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and shall be in accordance with Table 2 and Paragraph (f). The additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.~~

~~(f) The safety relief valve capacity for each boiler shall be such that, with the fuel burning equipment installed and operating at maximum capacity, the pressure cannot rise more than 5 psig. above the maximum allowable working pressure for steam heating boilers, and 10 percent above maximum allowable working pressures for hot water boilers.~~

~~(g) If there is any doubt as to the capacity of the safety relief valve, an accumulation test shall be run (see ASME Code, Section VI. Recommended Rules for Care and Operation of Heating Boilers).~~

~~(h) No valve of any description shall be placed between the safety relief valve and the boiler, and on the discharge pipe between the safety relief valve and the atmosphere. The discharge pipe shall be at least full size, and shall be fitted with an open drain to prevent water lodging in the upper part of the safety relief valve or in the discharge pipe. When an elbow is placed on the safety relief valve discharge pipe, it shall be located close to the safety relief valve outlet; and the discharge pipe shall be properly supported. All safety relief valve discharges shall be so located and piped as not to endanger persons in the area.~~

~~(7) Steam Gauges.~~

~~(a) Each steam boiler shall have a steam gauge connected to its steam space, its water column, or its steam connection, by means of a siphon or equivalent device exterior to the boiled. The siphon (or equivalent device) shall be a sufficient capacity to keep the gauge tube filled with water and shall be so arranged that the gauge cannot be shut off from the boiler except by a cock with tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.~~

~~(b) The scale on the dial of a steam gauge shall be graduated to not less than 30 psig. nor more than 60 psig. The gauge shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point. The travel of the pointer from zero to 30 psig. pressure shall be at least 3 inches.~~

~~(8) Pressure or Altitude Gauges and Thermometers.~~

~~(a) Each hot water boiler shall have a pressure or altitude gauge connected to it or to its flow connection in such a manner that it cannot be shut off from the boiler, except by a~~

~~cock with tee or lever handle placed on the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.~~

~~(b) The scale on the dial of the pressure or altitude gauge shall be graduated approximately to not less than 1½ nor more than 3 times the maximum allowable working pressure.~~

~~(c) Piping or tubing for pressure or altitude gauge connections shall be of nonferrous metal when smaller than 1 inch pipe size.~~

~~(d) Each hot water boiler shall have a thermometer so located and connected that it will be easily readable when observing the water pressure or altitude gauge. The thermometer shall be so located that it will at all times indicate the temperature in degrees Fahrenheit of the water in the boiler at or near the outlet.~~

~~(9) Water Gauge Glasses.~~

~~(a) Each steam boiler shall have one or more water gauge glasses attached to the water column or boiler by means of valved fittings. The lower fitting shall be provided with a drain valve of the straightaway type, with opening not less than ¼ inch diameter to facilitate cleaning. Gauge glass replacement shall be possible while the boiler is under pressure.~~

~~(b) Transparent material, other than glass, may be used for the water gauge, provided that the material has proven suitable for the pressure temperature and corrosive conditions encountered in service.~~

~~(10) Stop Valves and Check Valves.~~

~~(a) If a boiler may be closed off from the heating system by closing a steam stop valve, there shall be a check valve in the condensate return line between the boiler and the system.~~

~~(b) If any part of a heating system may be closed off from the remainder of the system by closing a steam stop valve, there shall be a check valve in the condensate return pipe from the part of the system.~~

~~(11) Feedwater Connections.~~

~~(a) Feedwater, make-up water, or water treatment shall be introduced into a boiler through the return piping system or through an independent feedwater connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater, make-up, or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, surface blowoff, water column water gauge glass, pressure gauge or temperature gauge.~~

~~(b) The feedwater pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.~~

~~(12) Return Pump. Each boiler equipped with a condensate return pump shall be provided with a water level control arranged to automatically maintain the water level in the boiler within the range of the gauge glass.~~

~~(13) Repairs and Renewals of Fittings and Appliances. Whenever fittings or appliances are repaired or replaced, the work shall comply with the rules governing new installations.~~

~~Authority: T.C.A. §§4-5-202, 4-5-202(a)(3), 68-122-101, 68-122-102 through 68-122-104, and 68-122-110. Administrative History: Original rule filed May 16, 1986; effective June 15, 1986. (Formerly rule 0780-2-11-.06). Amendment filed March 27, 1991; effective June 29, 1991. Amendment filed June 27, 2000; effective October 28, 2000. Amendment filed June 17, 2002; effective October 28, 2002. Amendment filed November 21, 2005; effective March 30, 2006.~~

0800-03-03-.07 Repairs and Alterations.

(1) Repairs and alterations shall not be made without the permission of an inspector employed by an accredited Authorized Inspection Agency responsible for the in-service inspection of the subject boiler or pressure vessel. Such repairs and alterations shall be done in accordance with the NB. The inspector authorizing the repair or alteration shall sign the necessary NB "NB-R" form or forms.

(2) The person, corporation, partnership or firm performing the repair or alteration shall have a valid license in accordance with T.C.A. §§ 68-122-202. In order to qualify for such license, the applicant shall have a valid Certificate of Authorization from the NB for the use of a Repair Code symbol stamp.

(3) Before any necessary repairs or alterations are made, an inspector employed by the Authorized Inspection Agency responsible for the in-service inspection of the boiler or vessel shall be consulted. After such repairs or alterations are made, they shall be reviewed and found acceptable by the authorizing inspector.

(4) Repairs shall be made by an organization holding a current National Board Repair Certificate of Authorization and the license required by paragraph (2) of this rule.

(5) Alterations shall be made by an organization holding a current National Board Repair Certificate of Authorization and the license required by paragraph (2) of this rule.

(6) In the application of riveted patches, the design of the patch and the method of installation shall be in accordance with the National Board Inspection Code, 1973 edition as amended.

Authority: T.C.A. §§68-122-102, 68-122-108, and 68-122-202.

~~0800-3-3-.07 Existing Pressure Vessels.~~

~~(1) Maximum Allowable Working Pressure for Standard Pressure Vessels. The maximum allowable working pressure for standard vessels shall be determined in accordance with the applicable provisions of the ASME Code or the API-ASME Code. The maximum allowable working pressure shall not be increased to a greater pressure than shown on the manufacturer's nameplate stamping and data report unless prior approval is obtained from the Chief Inspector.~~

~~(2) Maximum Allowable Working Pressure for Non-standard Pressure Vessels.~~

~~(a) The maximum allowable working pressure of a non-standard pressure vessel shall be determined in accordance with the following formula:~~

~~TStE = maximum allowable working pressure, (psig)~~
~~RFS~~

~~Where:~~

~~TS = ultimate tensile strength of shell plate (psi).~~

~~(When the tensile strength of carbon steel is not known, assume 55,000 psi for temperatures not exceeding 650°F. For other materials, use the lowest stress values for that material from Section VIII, ASME Code).~~

~~t = minimum thickness of shell of weakest course (inches)~~

~~E = efficiency of longitudinal joint depending upon construction.~~

~~(For riveted joints calculated riveted efficiency; for fusion-welded and brazed joint):~~

	Percent
Single lap weld	40
Double lap weld	50
Single butt weld	60
Double butt weld	70
Forge weld	70
Brazed steel	80

~~R = inside radius of weakest course in shell (inches), provided the thickness does not exceed 10% of the radius. If the thickness is over 10% of the radius, use the outer radius.~~

~~FS = factor of safety permitted hereunder.~~

~~(b) The minimum factor of safety shall in no case be less than 5 for existing installations. The working pressure shall be decreased when deemed necessary by the inspector to insure the operation of the vessel and the particular service to which it is subject will be the determining factors.~~

~~(c) The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the appropriate formulas from ASME Code Section VIII, Division 1,and the tensile strength and factors of safety given in this paragraph.~~

~~(d) The maximum allowable working pressure for non-standard pressure vessels subject to external pressure shall be determined by the rules of ASME Code Section VIII, Division 1.~~

~~(3) Inspection of Inaccessible Parts. Where, in the opinion of the inspector, as the result of conditions disclosed at the time of inspection, it may be necessary to remove interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit proper inspection and to determine remaining thickness.~~

~~(4) Overpressure Protection. Each pressure vessel shall be provided with safety relief valves and controlling devices as necessary to protect against overpressure. These devices shall be so constructed, located and installed that they cannot be rendered inoperative. The relieving capacity of such pressure relief devices shall be adequate to prevent a rise in pressure in the vessel of no more than 10 percent above the highest pressure to which any pressure relieving device is set. The opening pressure of the lowest set pressure relieving device shall be no greater than the maximum allowable working pressure of the vessel. Where an additional hazard is involved due to fire or other unexpected sources of external heat, the pressure relief devices shall meet the requirements of ASME Code Section VIII, Division 1, Paragraph UG-125 or Division 2, Paragraph AR-150, whichever is applicable.~~

~~(5) Repairs and Renewals of Fittings and Appliances. Whenever repairs are made to fittings and appliances or it becomes necessary to replace them, the work must comply with the requirements for new installations.~~

~~Authority: T.C.A. §§4-5-202, 4-5-202(a)(3), 68-122-101, 68-122-102, and 68-122-104. Administrative History: Original rule filed May 16, 1986; effective June 15, 1986. (Formerly rule 0780-2-11-.07) Amendment filed March 27, 1991; effective June 29, 1991. Amendment filed June 27, 2000; effective October 28, 2000. Amendment filed June 17, 2002; effective October 28, 2002.~~

0800-03-03-.08 Requirements for Boilers.

(1) Automatic Low Water Fuel Cutoff and/or Water Feeding Device.

(a) Each automatically-fired boiler shall be equipped with one (1) or more automatic low water fuel cutoff devices conforming to the requirements of ASME CSD-1, latest edition/addenda adopted by the Board. If a waterfeeding device is installed, it shall be so constructed that the water inlet valve cannot feedwater into the boiler through the float chamber, and so located as to supply requisite feedwater. The lowest safe waterline should not be lower than the lowest visible part of the water glass.

(b) Such fuel or feedwater control device may be attached directly to a boiler, or for low-pressure boiler to the tapped openings provided for attaching a water glass directly to a boiler, provided that such connections from the boiler are nonferrous tees or Y's not less than one half (1/2) inch pipe size between the boiler and the water glass, so that the water glass is attached directly and as close as possible to the boiler. The ends of all nipples shall be reamed to full-size diameter.

(c) Designs embodying a float and float bowl shall have a vertical straightway valve drain pipe at the lowest point in the water equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device tested.

(2) Boiler Blowoff Equipment.

(a) The blowdown from a boiler or boilers that enters a sanitary sewer system or blowdown which is considered a hazard to life or property shall pass through some form of blowoff equipment that will reduce pressure and temperature as required hereunder.

1. The temperature of the water leaving the blowoff equipment shall not exceed 150°F.

2. The pressure of the blowdown leaving any type of blowoff equipment shall not exceed 5 psig.

3. All blowoff equipment shall be fitted with openings to facilitate cleaning and inspection.

(3) Boiler Door Latches.

(a) A watertube boiler shall have firing doors of the inward-opening type, unless such doors are provided with substantial and effective latching or fastening devices, or are otherwise so constructed as to prevent them, when closed, from being blown open by pressure on the furnace side. These latches or fastenings shall be of the positive self-locking type. Friction contacts, latches, or bolts actuated by springs shall not be used.

The foregoing requirements for latches or fastenings shall not apply to coal openings of downdraft or similar furnaces.

(b) All other doors, except explosion doors, not used in the firing of the boiler, may be provided with bolts or fastenings in lieu of self-locking latching devices.

(c) Explosion doors, if used and if located in the setting walls within seven (7) feet of the firing floor or operating platforms shall be provided with substantial deflectors to divert the blast.

(4) Clearance.

(a) When boilers are replaced or new boilers are installed in either existing or new buildings, a height of at least three (3) feet shall be provided between the top of the boiler proper and the ceiling or roof, and at least three (3) feet between all sides of the boiler and adjacent walls or other structures. Boilers and pressure vessels having manholes shall have five (5) feet clearance from the manhole opening and any wall, ceiling or piping that will prevent a person from entering the boiler or vessel. All boilers and pressure vessels shall be so located that adequate space will be provided for the proper operation of the boilers and pressure vessels and their appurtenances, for the inspection of all surfaces, tubes, waterwalls, economizers, piping valves and other equipment, and for the necessary maintenance, repair and replacement of tubes.

(b) A variance from the requirements of subparagraph (a) of this rule may be issued by the Chief Inspector or Chief Inspector's Designee for the installation of a steam heating, hot water heating, hot water supply, or unfired steam boilers or unfired pressure vessels. All requests must be submitted to the Chief Inspector or Chief Inspector's Designee prior to installation.

(5) Exit from Boiler Room. Any boiler room exceeding five hundred (500) square feet floor area and containing one (1) or more boilers having a fuel-burning capacity of 1,000,000 BTU/hr, or equivalent electrical heat input, shall have at least two (2) means of exit. Each exit shall be remotely located from the other. Each elevation in such boiler room shall have two (2) means of exit, each remotely located from the other.

(6) Air and Ventilation Requirements. Combustion Air Supply and Ventilation of Boiler Room. A permanent source of outside air shall be provided for each boiler room to permit satisfactory combustion of the fuel as well as proper ventilation of the boiler room under normal operating conditions.

(a) Total requirements of the burners for all fired pressure vessels in the boiler room must be used to determine the louver sizes, whether fired by coal, oil or gas; however, the minimum net free louvered area must not be less than one (1) square foot. The following table or formula shall be used to determine the net louvered area in square feet:

Input BTU/Hour	Required Air Cu.Ft. /Min.	Min. Net Louvered Area Sq. Ft.
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3
5,000,000	1,250	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8

8,000,000	2,000	6.6

$$\text{CFM} = \frac{\text{BTUH} \times 2.5}{10{,}000}$$

$$\text{Min. Net Louvered Area Required (Sq. Ft.)} = \frac{\text{CFM}}{300}$$

(b) When mechanical ventilation is used in lieu of subparagraph (a) of this rule, the supply of combustion and ventilation air to the boiler room and the firing devices shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilation fan shall not exceed five hundred (500) feet per minute, and the total air delivered shall be equal to or greater than shown in sub-paragraph (a) of this rule.

(7) Gas Burners. For installations which are gas-fired, the burners used shall conform to the applicable requirements of the American Gas Association, or other nationally recognized standards acceptable to the Board.

(8) Prevention of Furnace Explosions. Fuel-burning equipment, the related safety devices and controls, and their operation shall be in accordance with the requirements of ASME CSD-1, or the NFPA 85 latest edition/addenda adopted by the Board, as applicable.

(9) Electric Boilers. All appliances required for electric steam boilers shall be attached in accordance with the following rules:

(a) The grounding of the boiler shall be permanently fastened on some part of the boiler, and shall be grounded in accordance with the National Electrical Code, NFPA 70.

(b) A suitable screen or guard shall be provided around high tension bushings~~;~~ and a sign shall be posted warning of high voltage. This screen or guard shall be so located that it will be impossible for anyone working around the boiler to accidentally come in contact with the high tension circuits. During the adjustment of safety valves, the power circuit to the boiler shall be open. The boiler may be under steam or water pressure, but the power line shall be open while the operator is making the necessary adjustments.

(c) The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be three and one half (3½) pounds per hour per kilowatt input.

(10) Flue Connection. Each fuel-fired boiler shall be equipped with a vent or flue which shall terminate at any acceptable location outside the building. The size of the vent or flue and type of material shall be that recommended by the boiler manufacturer.

(11) Attendants for Power Boilers.

(a) A power boiler having a rating of either 5 h.p. or 50 sq. ft. of heat-absorbing surface or greater shall not be operated for periods of longer than twenty (20) minutes without being checked pursuant to NB's recommendations, by an attendant who has been qualified by the owner/user in its operation, regardless of whether the boiler is equipped with automatic feedwater regulator, fuel or damper regulator, high and low water alarm, or other form of automatic control.

(b) A variance from the requirements of subparagraph (a) of this rule may be issued by the Board. All requests must be submitted to the Chief Inspector or Chief Inspector's Designee no less than forty-five (45) days prior to the next regularly scheduled or called meeting of the Board.

(12) Conditions not Covered. The Chief Inspector or Chief Inspector's Designee shall be consulted for any conditions not covered by these requirements.

Authority: T.C.A. §§68-122-101, 68-122-102, and 68-122-106.

~~0800-3-3-.08 Historic Boilers.~~

~~(1) These rules apply to "historic power boilers" as defined in Rule 0800-3-3-.01(18).~~

~~(2) Historic power boilers shall receive prior authorization from the Chief Inspector before entry and operation of the boiler in the state of Tennessee. Prior to entering the State with the boiler, the owner or user shall submit the proper Board approved application for operation of a historic power boiler.~~

~~(a) For historic power boilers located in the State, the owner or user shall be required to submit the initial application as long as he possesses a current Tennessee certificate of inspection. If the Tennessee certificate of inspection expires, the owner or user shall reapply to the Chief Inspector for permission to operate.~~

~~(b) For historic power boilers located outside of the State, with a valid Tennessee certificate of inspection, the owner or user is allowed to freely operate their boiler at events within the State. As long as the boiler has a valid Tennessee certificate of inspection, there is no need to reapply for permission to operate. If the Tennessee certificate of inspection remains expired for more than sixty (60) days without an inspection, or if the owner chooses to no longer operate the boiler or retain a Tennessee certificate of inspection, the boiler shall be placed in dormant status. If at any time the boiler is placed in dormant status, the owner or user shall reapply with the Chief Inspector for permission to operate.~~

~~(3) Design and Testing.~~

~~(a) For all traditional historic power boilers, both standard and nonstandard, and nontraditional nonstandard historic power boilers, the owner or user shall supply the Chief Inspector with reports of the maximum allowable working pressure calculations and ultrasonic testing at the time of application to operate.~~

~~The calculations and ultrasonic testing shall be completed by a knowledgeable individual familiar with the practice. All report results are subject to the acceptance of the Chief Inspector at time of application.~~

~~(b) A copy of the manufacturer's data report shall accompany all applications to operate nontraditional standard historic power boilers in the State.~~

~~(c) The Chief Inspector or Deputy Inspector may at anytime during the application and inspection process request additional information, such as, but not limited to, design, material, inspection or testing.~~

~~(4) Traditional Historic Power Boilers.~~

~~(a) The maximum allowable working pressure shall be calculated with a minimum safety factor of 5 for standard, and 5.5 for traditional nonstandard historic power boilers, using the formula for historic power boilers in paragraph (14) of this rule, not to exceed 125 psig.~~

(b) The minimum safety factor shall be 6.5 for traditional historic power boilers having lap-riveted longitudinal joints. The maximum allowable working pressure should not exceed 100 psig. Seal welding of a lap-riveted longitudinal joint is not permitted.

(5) Nontraditional Historic Power Boilers.

(a) All nontraditional historic power boilers constructed after the effective date of this rule shall be constructed in accordance to Rule 0800-3-3-03(1). Nontraditional nonstandard historic power boilers, free-lance or scale models, constructed after the effective date of this rule shall not be allowed to operate in the State.

(b) The maximum allowable working pressure for nontraditional standard historic power boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed.

(c) The maximum allowable working pressure shall be calculated with a minimum safety factor of 5.5 for nontraditional nonstandard historic power boilers, using the formula for historic power boilers in paragraph (14) of this rule, not to exceed 125 psig.

(d) Nontraditional nonstandard historic power boilers having lap-riveted longitudinal joints shall not be allowed to operate in the State.

(6) An annual inspection of all historic power boilers shall be conducted by a Deputy Inspector. The issuance of the annual Tennessee certificate of inspection shall be based on the results of the annual inspection.

(7) Operational Log.

(a) The owner of a historic power boiler operating in the State shall possess a bound operational log. After successful completion of the initial inspection by a Deputy Inspector, the owner shall be provided with a registered operational log book by the Chief Inspector. The operational log shall contain, but is not limited to, the following:

1. The operation date of the historic power boiler;

2. The length of time the historic power boiler was operated;

3. Location where operated (city and state);

4. Jurisdictional inspection dates with the signature and commission number of inspector;

5. Description of repairs and alterations, including the dates, with signature and commission number of inspector;

6. Testing performed and by whom (e.g., pressure test, ultrasonic test, radiographic test, etc.);

7. Change of ownership, including the date the historic power boiler changed hands and to whom; and

8. The front page of the operational log shall include a page number index of all inspections, inspector instructions, and repairs or incidents involved with the historic power boiler.

(b) Operational logs shall be available to the inspector at all times the historic power boiler is to be operated in the State. Operational logs that are lost or misplaced shall be reported to the Chief Inspector immediately. The owner or user of the historic power boiler shall be responsible for the cost of the operational log replacement. Failure to possess or report a lost or misplaced operational log, may prevent the historic power boiler from operating in the State or revoking of the Tennessee certificate of inspection.

(c) Whenever the pages of an operational log have been completely filled, the owner shall request a supplemental operational log from the Chief Inspector at no cost to the owner. The owner is responsible for retaining all operational logs, initial and supplemental, for the life of the historic boiler. In the event that the historic power boiler changes hands, the new owner shall receive all original operational logs, initial and supplemental, from the previous owner. The previous owner may make a copy of the operational logs for his records.

(8) A pressure test with water temperature between 60° to 120° F, and not to exceed 90% of the set pressure of the lowest setting pressure relief device on the boiler, held for a period of at least thirty (30) minutes may be conducted at the discretion of the Deputy Inspector.

(9) All historic power boilers shall be equipped with an ASME-stamped National Board-rated safety valve of adequate capacity, together with a water level indicator, calibrated pressure gauge and two suitable means of introducing water into the boiler.

(10) The historic power boilers, traditional and nontraditional, shall be equipped with a fusible plug. All fusible plugs shall be constructed to meet the requirements of the ASME Code.

(a) Fusible plugs shall be located at the lowest permissible water level as determined by the boiler manufacturer or the Chief Inspector when this information is not available.

(b) Fireside fusible plugs shall protrude at a minimum of one inch into the water.

(c) Waterside fusible plugs shall not protrude into the fire area more than one inch.

(d) Fusible plugs shall not be refilled.

(e) All fusible plugs shall be removed for inspection once every two years.

(f) All fusible plugs shall be replaced after 300 hours of service with a new fusible plug constructed to meet the requirements of the ASME Code.

(g) The date when the fusible plug is removed for inspection or replaced shall be documented in the owner's operational log.

(11) All historic power boilers shall be equipped with operational tri-cocks, a gauge glass and pressure gauge. A siphon, or water seal, shall be installed between the pressure gauge and boiler. All pressure gauges shall be proven accurate at the time of the annual inspection by testing or documentation of calibration.

(12) Repairs and Alterations.

(a) Any welded code repair or any alteration shall be performed by organizations holding a valid National Board "R" stamp. If the repair or alteration is performed in this State, the "R" stamp-holder shall have a current State of Tennessee Boiler Repair and Erection Contractor's license.

(b) Mechanical code repairs to historic power boilers such as, but not limited to, tube, rivet and stay replacement may be completed by the owner, or his designee, who is knowledgeable about the repair to be performed with prior approval of the Chief Inspector.

(c) All repairs and alterations, welded and mechanical, shall be inspected by an inspector and documented on the applicable National Board "NB-R" form. The "NB-R" form shall be submitted and kept on file in the Chief Inspector's office.

1. For those repairs and alterations performed in the State, a Deputy Inspector shall perform the inspection.

2. For repairs and alterations performed outside of the State, the inspection shall be performed by a National Board commissioned boiler inspector.

3. All repairs and alterations shall be documented in the owner's operational log and signed by the inspector who performed the inspection.

(13) All standard historic power boilers shall have legible stamping clearly visible to the inspector.

(14) Maximum Allowable Working Pressure for Nonstandard Historic Power Boilers.

(a) The maximum allowable working pressure of a historic power boiler shall be determined in accordance with the following formula:

$$\frac{TStE}{RFS} = \text{maximum allowable working pressure (psig)}$$

Where:

TS = ultimate tensile strength of shell plate, pounds per square inch (psi)

t = minimum thickness of shell plate, in weakest course (inches)

E = efficiency of longitudinal joint (For tube ligaments and pitch, determine E by the rules provided in Section I of the ASME Code. For riveted construction, refer to the National Board Inspection Code, 1973 edition. For seamless construction, consider E to be 100%)

R = inside radius of weakest course of shell (inches)

FS = factor of safety [See subparagraph (a) of paragraph (4) and subparagraph (c) of paragraph (5) of this rule]

(b) Tensile Strength - When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psi for steel and 45,000 psi for wrought iron.

(c) Crushing Strength of Mild Steel - The resistance to crushing of mild steel shall be taken as 95,000 psi.

(d) Strength of Rivets in Shear - When computing the ultimate strength of rivets in shear, the following values in psi of the cross-sectional area of the rivet shank shall be used:

	PSI
Iron rivets in single shear	38,000
Iron rivets in double shear	76,000

~~Steel rivets in single shear 44,000~~
~~Steel rivets in double shear 88,000~~

~~When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one rivet in the body of the joint.~~

~~Table 1~~
~~Sizes Of Rivets Based On Plate Thickness~~

~~Thickness of plate (inches)~~	~~1/4~~	~~9/32~~	~~5/16~~	~~11/32~~	~~3/8~~	~~13/32~~
~~Diameter of rivet after driving (inches)~~	~~11/16~~	~~11/16~~	~~¾~~	~~¾~~	~~13/16~~	~~13/16~~
~~Thickness of plate (inches)~~	~~7/16~~	~~15/32~~	~~½~~	~~9/16~~	~~5/8~~	
~~Diameter of rivet after driving (inches)~~	~~15/16~~	~~15/16~~	~~15/16~~	~~1-1/16~~	~~1-1/16~~	

~~(e) The working pressure may be decreased by the inspector, with authorization of the Chief Inspector, if the condition and safety of the boiler warrant.~~

~~Authority: T.C.A. §§68-122-101, 68-122-102 and 68-122-104. Administrative History: Original rule filed January 31, 1995; effective May 31, 1995. Amendment filed June 27, 2000; effective October 28, 2000. Amendment filed November 21, 2005; effective March 30, 2006. Repeal and new rule filed February 6, 2006; effective June 28, 2006.~~

0800-03-03-.09 Requirements for Fired Jacketed Steam Kettles.

(1) Fired Jacketed Steam Kettles. Fired jacketed steam kettles may be constructed in accordance with ASME Code, Section VIII, provided the following requirements are met:

(a) Welded joints in contact with products of combustion shall be of Type No. 1 of Table UW-12, ASME Code, Section VIII.

(b) When parts subjected to pressure are made of carbon steel material, the minimum thickness shall be one fourth (1/4) inch. The minimum thickness of stainless steel or nonferrous pressure parts shall be as specified in the applicable part of ASME Code, Section VIII, Subsection C.

(c) When in contact with products of combustion, carbon steel material shall be pressure vessel quality and austenitic stainless steel parts shall be either extra-low carbon or stabilized grades.

(d) Structural grade carbon steel shall not be used for any pressure part.

(e) The operating pressure of the jacket shall not exceed 50 psig.

(f) Vessels constructed under this rule shall be inspected by an authorized inspector. Such vessels marked with the UM Symbol are not acceptable.

(g) No steam or water shall be withdrawn from the jacket for use externally to the vessel.

(h) The capacity of the safety valve in pounds of steam per hour shall be at least equal to the BTU rating of the burner divided by one thousand (1000).

(i) The jacket shall be equipped with the following minimum appurtenances and controls.:

1. A pressure gauge;

2. A water gauge glass;

3. A separate connection, fitted with a check valve and stop valve, for adding water to the jacket;

4. An automatic gas valve controlled by pressure or temperature to maintain the steam pressure in the jacket below the safety valve setting;

5. A low water cutoff that will cut off the fuel to the burner if the water in the jacket drops below the lowest permissible water level as established by the manufacturer; and

6. A safety pilot control that will cut off the fuel to both the main burner and the pilot burner in case of pilot flame failure.

Authority: T.C.A. §68-122-102.

~~0800-3-3-.09 Fees.~~

~~(1) For shop inspections of boilers and pressure vessels and for manufacturers and contractors of boilers and pressure vessels quality control system reviews:~~

~~(a) For one-half (½) day minimum $250.00~~

~~(b) For one (1) full day maximum $500.00~~

~~(2) For special boiler and pressure vessel inspections and second-hand inspections:~~

~~(a) For one-half (½) day minimum $250.00~~

~~(b) For one (1) full day maximum $500.00~~

~~(3) Boilers Inspection Fees (Fired Vessels):~~

~~(a) Boilers of 5 H.P. or less, or 50 sq. ft. or less of heating surface $40.00~~

~~(b) Boilers over 5 H.P. or over 50 sq. ft. of heating surface $40.00~~

~~(c) External inspections $25.00~~

~~(4) Boiler Inspection Fees (unfired vessels):~~

~~(a) Internal and/or external inspection of each unfired pressure vessel subject to inspection having a cross-sectional area of fifty (50) square feet or less is $25.00~~

~~(b) For each additional one hundred (100) square feet or fraction thereof, of area in excess of fifty (50) square feet is $6.00~~

~~Not more than ninety seven ($97.00) shall be paid per day for the actual inspection time of each inspector on any one (1) vessel.~~

~~(5) Examination fee (non-refundable) $100.00~~

~~(6) Certificate of Competency fee (non-refundable) $50.00~~

~~(7) Identification card fee (non-refundable) Annual renewal $25.00~~

~~(8) Inspection certificates fees:~~

~~(a) For power boilers $35.00~~

~~(b) For low pressure heating boilers and unfired pressure vessels $50.00~~

~~(9) License fee:~~

~~(a) Original license (first year) $75.00~~

~~(b) Annual renewal license $50.00~~

~~(10) For special inspection fee, based on the number of working days notice of inspection:~~

~~(a) 1 – 10 Working Days; For one-half (1/2) day minimum $250.00~~
~~For one (1) day maximum $500.00~~

~~(b) 11 – 20 Workings Days; For one-half (1/2) day minimum $100.00~~
~~For one (1) day maximum $200.00~~

~~(c) 21 – 30 Working Days; For one-half (1/2) day minimum $60.00~~
~~For one (1) day maximum $120.00~~

~~(d) More than 30 Working Days; For one-half (1/2) day minimum $40.00~~
~~For one (1) day maximum $80.00~~

~~Authority: T.C.A. §§ 4-5-202(A)(3), 68-122-101 Through 68-122-104, 68-122-106, 68-122-111, 68-122-113, 68-122-116, 68-122-204, And 68-122-205. Administrative History: Original Rule Filed March 27, 1991; Effective June 29, 1991. (Formerly 0080-3-3-.08) Amendment Filed June 27, 2000; Effective October 28, 2000. Amendment Filed March 30, 2001; Effective July 30, 2001. Repeal and New Rule Filed November 21, 2005; Effective March 30, 2006. Amendment Filed November 20, 2006; Effective March 30, 2007. Repeal and New Rule Filed January 31, 2008; Effective May 30, 2008.~~

0800-03-03-.10 Existing Power Boilers.

(1) Age Limits.

(a) There shall be an age limit of thirty (30) years for any nonstandard existing power boiler, except for the following:

1. Any such boiler not having a lap-riveted longitudinal joint may be continued in operation for so long as no distress or leakage develops during a pressure test with water temperature between 60° to 120° F, of no more than ninety percent (90%) of the set pressure of the lowest setting pressure relief device on the boiler, held for a period of at least thirty (30) minutes.

2. Any such boiler having lap-riveted longitudinal joints and operating at a pressure in excess of 50 psig shall have an age limit of twenty (20) years. When removed from an existing setting, this type of boiler shall not be reinstated for a pressure in excess of 15 psig.

3. "Historic power boilers" as defined in T.C.A. § 68-122-104(c)(1) and Rule 0800-03- 03-.01(18).

(b) The age limit for a standard existing power boiler shall be dependent upon the results of a thorough internal and external inspection and, where required by the inspector, a pressure test with water temperature between 60° to 120° F, of no more than ninety percent (90%) of the set pressure of the lowest setting pressure relief device on the boiler, held for a period of at least thirty (30) minutes.

(2) Maximum Allowable Working Pressure for Standard Boilers. The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed.

(3) Maximum Allowable Working Pressure for Nonstandard Boilers.

(a) The maximum allowable working pressure of a nonstandard boiler shall be determined in accordance with ASME Code, Section I, PG-27.

$$P = \frac{2SE(t - C)}{D - 2y(t - C)} \quad \text{or} \quad \frac{SE(t - C)}{R + (1 - y)(t - C)}$$

(b) Tensile Strength. When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psi for steel and 45,000 psi for wrought iron.

(c) Crushing Strength of Mild Steel. The resistance to crushing of mild steel shall be taken as 95,000 psi.

(d) Strength of Rivets in Shear. When computing the ultimate strength of rivets in shear, the following values in pounds per square inch of the cross-sectional area of the rivet shank shall be used:

	PSI
Iron rivets in single shear	38,000
Iron rivets in double shear	76,000
Steel rivets in single shear	44,000
Steel rivets in double shear	88,000

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one (1) rivet in the body of the joint.

Table 1
Sizes of Rivets Based on Plate Thickness

Thickness of plate-in.	¼	9/32	5/16	11/32	3/8	13/32
Diameter of rivet after driving-in.	11/16	11/16	_	_	13/16	13/16
Thickness of plate-in.	7/16	15/32	½	9/16	5/8	
Diameter of rivet after driving-in.	15/16	15/16	15/16	1-1/16	1-1/6	

(4) Cast Iron Headers and Mud Drums. The maximum allowable working pressure on a water tube boiler, the tubes of which are secured to cast iron or malleable iron headers, or which have cast iron mud drums, shall be 160 psig.

(5) Pressure on Cast Iron Boilers. The maximum allowable working pressure for any cast iron boiler, except hot water boilers, shall be 15 psig.

(6) Safety Valves. See ASME Section I, PG-67

(a) The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, is prohibited.

(b) Each boiler shall have at least one (1) ASME/NB stamped safety valve; and if it has more than five hundred (500) square feet of water-heating surface, or an electric power input of more than 500 kwh, it shall have two (2) or more safety valves.

(c) The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as possible to the boiler, without unnecessary intervening pipe or fittings.

(d) No valve of any description shall be placed between the safety valve and the boiler, or on the escape pipe, if used. When an escape pipe is used, it shall be at least the full size of the safety valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or in the escape pipe. When an elbow is placed on a safety valve escape pipe, it shall be located close to the safety valve outlet; or the escape pipe shall be anchored and supported securely. All safety valves discharged shall be so located or piped as to be carried clear from walkways or platforms.

(e) The safety valve capacity of each boiler shall be such that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise to more than six percent (6%) above the highest pressure to which any valve is set, and in no case to more than six percent (6%) above the maximum allowable working pressure.

(f) One (1) or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of three percent (3%) ~~percent~~ above the maximum allowable working pressure, but the range of setting of all the safety valves on a boiler shall not exceed ten percent (10%) of the highest pressure to which any valve is set.

(g) When two (2) or more boilers operating at different pressures and safety valves settings are interconnected, the lower pressure boilers or interconnected piping shall

be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

(h) Where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure greater than ninety four percent (94%) of the lowest pressure obtained in the supply main feeding the boiler.

(i) The relieving capacity of the safety valves on any boiler shall be checked by one (1) of the three (3) following methods; and, if such capacity is found to be insufficient, additional valves shall be provided:

1. By making an accumulation test, which consists of shutting off all other steam discharge outlets from the boiler and forcing the fires to the maximum, the safety valve capacity shall be sufficient to prevent a rise of pressure in excess of six percent (6%) of the maximum allowable working pressure. This method should not be used on a boiler with a superheater or reheater;

2. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam generating capacity) upon the basis of the heating value of this fuel, these computations shall be made as outlined in the Appendix of the ASME Code, Section I; or

3. By measuring the maximum amount of feedwater that can be evaporated.

(7) Boiler Feeding.

(a) Each boiler shall have a feed supply which will permit it to be fed at any time while under pressure.

(b) A boiler having more than five hundred (500) square feet of water-heating surface shall have at least two (2) suitable means of feeding, one (1) of which shall be a feed pump. A source of feed at a pressure six percent (6%) greater than the set pressure of the safety valve with the highest setting may be considered one (1) of the means. Boilers fired by gaseous, liquid, or solid fuel in suspension may be equipped with a single means of feeding water, provided means are furnished for the shutoff of heat input prior to the water level reaching the lowest safe level.

(c) The feedwater shall be introduced into the boiler in such a manner that it will not be discharged close to riveted joints of shell or furnace sheets, or directly against surfaces exposed to products of combustion, or to direct radiation from the fire.

(d) The feed piping to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve near the boiler. When two (2) or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and the source of supply. Whenever a globe valve is used on the feed piping, the inlet shall be under the disk of the valve.

(e) When deaerating heaters are not employed, it is recommended that the temperature of the feedwater be not less than 120° F to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, it is recommended that the minimum feedwater temperature be not less than 215° F so that dissolved gases may be thoroughly released.

(8) Water Level Indicators.

(a) No outlet connections (except for damper regulator, feedwater regulator, low water fuel cutout, drains steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water there from) shall be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least three fourths (3/4) inch pipe size, with the discharge to be piped to a safe location.

(b) Per ASME Code, Section I, gauge cocks are no longer required.

(c) For all installations where the water gauge glass or glasses are more than thirty (30) feet above the boiler operating floor, remote water level indicating or recording gauges shall be installed at eye level.

(9) Steam Gauges.

(a) Each steam boiler shall have a steam gauge with dial range not less than one and one half (1½) times the maximum allowable working pressure, connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon (or equivalent device) of sufficient capacity to keep the gauge tube filled with water. Such siphon (or equivalent device) shall be so arranged that the gauge cannot be shutoff from the boiler, except by a cock with tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(b) When a steam gauge connection longer than eight (8) feet becomes necessary, a shut-off valve may be used near the boiler, provided the valve is of the outside-screw-and yoke type and is locked open. The line shall be of ample size, with provision for free blowing.

(c) Each boiler shall be provided with a one half (1/2) inch nipple and globe valve connected to the steam space, for the exclusive purpose of attaching a test gauge when the boiler is in service so that the accuracy of the boiler steam gauge may be ascertained.

(10) Stop Valves.

(a) Each steam outlet from a boiler (except safety valve and water column connections) shall be fitted with a stop valve located as close as practicable to the boiler.

(b) When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location, and shall not be discharged on the top of the boiler or its setting.

(c) When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two (2) stop valves having ample free blow drain between them. The discharge of the drain shall be visible to the operator while manipulating the valves, and shall be piped clear of the boiler setting. The stop valves should consist of one (1) non-return valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type.

(11) Blowoff Connection.

(a) The construction of the setting around each blowoff pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blowoff piping.

(b) When exposed to furnace heat, all blowoff piping shall be protected by fire brick or other heat-resistant material, so as constructed the piping may be inspected readily.

(c) Each boiler shall have a blowoff pipe, fitted with a valve or cock in direct connection with the lowest water space. Cocks shall be of the gland or guard type, and suitable for the pressure allowed. The use of globe valves is prohibited. When the maximum allowable working pressure exceeds 100 psig, each blowoff pipe shall be provided with two (2) valves or a valve and cock.

(d) When the maximum allowable working pressure exceeds 100 psig, blowoff piping shall be at least extra-heavy steel from the boiler to the valve or valves, and shall be run full-size without use of reducers or bushings. The piping shall not be galvanized.

(e) All fittings between the boiler and blowoff valve shall be of steel. In case of renewal of blowoff pipe or fittings, they shall be installed in accordance with the rules for new installations. See Recommended Rules for National Board Boiler Blowoff Equipment.

(12) Repairs and Renewals of Boiler Fittings and Appliances. Whenever fittings or appliances are repaired or replaced, the work shall comply with the rules governing new installations.

(13) Conditions Not Covered by These Requirements. All cases not specifically covered by these requirements shall be treated as new installations, or may be referred to the Chief Inspector or Chief Inspector's Designee for instructions.

Authority: T.C.A. §§68-122-102 and 68-122-104.

0800-03-03-.11 Existing Heating Boilers.

(1) Standard Boilers. The maximum allowable working pressure of standard boilers shall in no case exceed the pressure indicated by the manufacturer's identification stamped or cast on the boiler~~,~~ or on a plate secured on it.

(2) Nonstandard Riveted Boilers. The maximum allowable working pressure on the shell of a nonstandard riveted heating boiler shall be determined in accordance with Rule 0800-03-03-.10(3) except that in no case shall the maximum allowable working pressure of a steam heating boiler exceed 15 psig~~.~~, or a hot water boiler exceed 160 psig or 250° F.

(3) Nonstandard Welded Boiler. The maximum allowable working pressure of a nonstandard steel or wrought iron heating boiler of welded construction shall not exceed 15 psig for steam. For other than steam service, the maximum allowable working pressure shall be calculated in accordance with ASME Code, Section IV but in no case shall it exceed 30 psig.

(4) Nonstandard Cast Iron Boilers.

(a) A maximum allowable working pressure of a nonstandard boiler composed principally of cast iron shall not exceed 15 psig for steam service or 30 psig for hot water service.

(b) The maximum allowable working pressure of a nonstandard boiler having cast iron shell or heads and steel or wrought iron tubes shall not exceed 15 psig for steam service or 30 psig for hot water service.

(5) Safety Valves.

(a) Each steam boiler shall have one (1) or more ASME/NB stamped safety valves of the spring pop-type adjusted and sealed to discharge at a pressure not to exceed 15 psig.

Seals shall be attached in a manner to prevent the valves from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. A body drain connection below seat level shall be provided by the manufacturer and this drain shall not be plugged during or after field installation. For valves exceeding two and one half (2½) inches pipe size, the drain holes or holes shall be tapped not less than three eighths (3/8) inch pipe size. For valves less than two and one half (2½) inches, the drain hole shall not be less than one fourth (1/4) inch in diameter.

(b) No safety valve for a steam heating boiler shall be smaller than one half (1/2) inch unless the boiler and radiating surface consist of a self-contained unit. No safety valve shall be larger than four and one half (4½) inches. The inlet opening shall have an inside diameter equal to, or greater than, the seat diameter.

(c) The minimum relieving capacity of the valve or valves shall be governed by the capacity marking on the boiler.

(d) The minimum valve capacity in pounds per hour shall be the greater of that determined by dividing the maximum BTU output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by one thousand (1000) or shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. In many cases, a greater relieving capacity of valves will have to be provided than the minimum specified by these rules. In every case, the requirements of subparagraph (e) of this rule shall be met.

Table 2
Minimum Pounds of Steam Per Hour
Per Square Foot of Heating Surface

	Firetube Boilers	Watertube Boilers
Boiler Heating Surface:		
Hand fired	5	6
Stoker fired	7	8
Oil, gas or pulverized fuel fired	8	10
Waterwall Heating Surface:		
Hand fired	8	8
Stoker fired	10	12
Oil, gas or pulverized fuel fired	14	16

1. When a boiler is fired only by a gas giving a heat value not in excess of 200 BTU per cubic foot, the minimum safety valve or safety relief valve relieving capacity may be based on the value given for hand-fired boilers above.

2. The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be three and one half (3½) pounds per hour per kilowatt input.

3. For heating surface determination, see ASME Code, Section IV, Paragraph HG-403.

(e) The safety valve capacity for each steam boiler shall be such that, with the fuel-burning equipment installed and operating at maximum capacity, the pressure cannot rise more than 5 psig above the maximum allowable working pressure.

(f) When operating conditions are changed, or when additional boiler heating surface is installed, the valve capacity shall be increased (if necessary) to meet the new conditions and comply with this paragraph. When additional valves are required, they may be installed on the outlet piping, provided there is no intervening valve.

(g) If there is any doubt as to the capacity of the safety valve, an accumulation test shall be run. See ASME Code, Section VI, Recommended Rules for Care and Operation of Heating Boilers.

(h) No valve of any description shall be placed between the safety valve and the boiler, and on the discharge pipe between the safety valve and the atmosphere. The discharge pipe shall be at least full-size, and shall be fitted with an open drain to prevent water lodging in the upper part of the safety valve and in the discharge pipe. When an elbow is placed on the safety valve discharge pipe, it shall be located close to the safety valve outlet; and the discharge pipe shall be securely anchored and supported. All safety valve discharges shall be so located and piped as not to endanger persons in the area.

(6) Safety Relief Valve Requirements for Hot Water Boilers.

(a) Each hot water heating boiler shall have at least one (1) ASME/NB stamped safety relief valve set to relieve at or below the maximum allowable working pressure of the boiler. Each hot water supply boiler shall have at least one (1) ASME/NB stamped safety relief valve of the automatic reseating type set to relieve at or below maximum allowable working pressure of the boiler safety relief valves, ASME/NB stamped as to capacity, shall have pop action when tested by steam. When more than one (1) safety relief valve is used on either hot water heating or hot water supply boilers, the additional valve or valves shall be ASME/NB rated, and may be set within a range not to exceed 6 psig above the maximum allowable working pressure of the boiler up to and including 60 psig, and five percent (5%) for those having a maximum allowable working pressure exceeding 60 psig. Safety relief valves shall be spring loaded. Safety relief valves shall be so arranged that they cannot be reset at a higher pressure than the maximum permitted by this subparagraph.

(b) No materials liable to fail due to deterioration or vulcanization when subject to saturated steam temperature corresponding to capacity test pressure shall be used for any part.

(c) No safety relief valve shall be smaller than three fourths (3/4) inch nor larger than four and one half (4½) inches standard pipe size, except that boilers having a heat input not greater than 15,000 BTU per hour may be equipped with a safety relief valve of one half (1/2) inch standard pipe. The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than one fourth (1/4) inch in diameter or its equivalent area.

(d) The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in BTU at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by one thousand (1,000) or shall be determined on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. In many cases, a greater relieving capacity of valves will have to be

provided than the minimum specified by these rules. In every case, the requirements of subparagraph (f) of this rule shall be met.

(e) When operating conditions are changed, or when additional boiler heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and shall be in accordance with Table 2 and subparagraph (f) of this rule. The additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.

(f) The safety relief valve capacity for each boiler shall be such that, with the fuel burning equipment installed and operating at maximum capacity, the pressure cannot rise more than 5 psig above the maximum allowable working pressure for steam heating boilers, and ten percent (10%) above maximum allowable working pressures for hot water boilers.

(g) If there is any doubt as to the capacity of the safety relief valve, an accumulation test shall be run. See ASME Code, Section VI. Recommended Rules for Care and Operation of Heating Boilers.

(h) No valve of any description shall be placed between the safety relief valve and the boiler, and on the discharge pipe between the safety relief valve and the atmosphere. The discharge pipe shall be at least full-size, and shall be fitted with an open drain to prevent water lodging in the upper part of the safety relief valve or in the discharge pipe. When an elbow is placed on the safety relief valve discharge pipe, it shall be located close to the safety relief valve outlet; and the discharge pipe shall be properly supported. All safety relief valve discharges shall be so located and piped as not to endanger persons in the area.

(7) Steam Gauges.

(a) Each steam boiler shall have a steam gauge connected to its steam space, its water column, or its steam connection, by means of a siphon or equivalent device exterior to the boiler. The siphon (or equivalent device) shall be a sufficient capacity to keep the gauge tube filled with water and shall be so arranged that the gauge cannot be shut off from the boiler except by a cock with tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(b) The scale on the dial of a steam gauge shall be graduated to not less than 30 psig-- nor more than 60 psig. The gauge shall be provided with effective stops for the indicating pointer at the zero (0) point and at the maximum pressure point. The travel of the pointer from zero (0) to 30 psig pressure shall be at least three (3) inches.

(8) Pressure or Altitude Gauge and Thermometers.

(a) Each hot water heating or hot water supply boiler shall have a pressure or altitude gauge connected to it or to its flow connection in such a manner that it cannot be shut off from the boiler except by a cock with tee or lever handle, placed on the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(b) The scale on the dial of the pressure or altitude gauge shall be graduated approximately to not less than one and one half (1½) nor more than three and one half (3½) times the pressure at which the safety relief valve is set. See NBIC Part 1, Section 3.8.2.1

(c) Piping or tubing for pressure or altitude gauge connections shall be of nonferrous metal when smaller than one (1) inch pipe size

(d) Each hot water boiler shall have a thermometer so located and connected that it will be easily readable when observing the water pressure or altitude gauge. The thermometer shall be so located that it will at all times indicate the temperature in degrees Fahrenheit of the water in the boiler at or near the outlet.

(9) Water Gauge Glasses.

(a) Each steam boiler shall have one (1) or more water gauge glasses attached to the water column or boiler by means of valved fittings. The lower fitting shall be provided with a drain valve of the straightaway type, with opening not less than one fourth (¼) inch diameter to facilitate cleaning. Gauge glass replacement shall be possible while the boiler is under pressure.

(b) Transparent material, other than glass, may be used for the water gauge, provided that the material has proven suitable for the pressure temperature and corrosive conditions encountered in service.

(10) Stop Valves and Check Valves.

(a) If a boiler may be closed off from the heating system by closing a steam stop valve, there shall be a check valve in the condensate return line between the boiler and the system.

(b) If any part of a heating system may be closed off from the remainder of the system by closing a steam stop valve, there shall be a check valve in the condensate return pipe from the part of the system.

(11) Feedwater Connections.

(a) Feedwater, make-up water, or water treatment shall be introduced into a boiler through the return piping system or through an independent feedwater connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater, make-up water, or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, surface blowoff, water column water gauge glass, pressure gauge or temperature gauge.

(b) The feedwater pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.

(12) Return Pump. Each boiler equipped with a condensate return pump shall be provided with a water level control arranged to automatically maintain the water level in the boiler within the range of the gauge glass.

(13) Repairs and Renewals of Fittings and Appliances. Whenever fittings or appliances are repaired or replaced, the work shall comply with the rules governing new installations.

Authority: T.C.A. §68-122-102.

0800-03-03-.12 Existing Pressure Vessels.

(1) Maximum Allowable Working Pressure for Standard Pressure Vessels. The maximum allowable working pressure for standard vessels shall be determined in accordance with the applicable provisions of the ASME Code or the API-ASME Code. The maximum allowable working pressure shall not be increased to a greater pressure than shown on the manufacturer's nameplate stamping and data report unless prior approval is obtained from the Chief Inspector or Chief Inspector's Designee.

(2) Maximum Allowable Working Pressure for Nonstandard Pressure Vessels.

(a) The maximum allowable working pressure of a nonstandard pressure vessel shall be determined in accordance with ASME Code, Section VIII, Division 1, PG-27.

$$t = \frac{PR}{SE - 0.6P} \quad \text{or} \quad P = \frac{SEt}{R + 0.6t}$$

(b) The minimum factor of safety shall in no case be less than five (5) for existing installations. The working pressure shall be decreased when deemed necessary by the inspector to insure the operation of the vessel and its particular service.

(c) The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the appropriate formulas from ASME Code, Section VIII, Division 1, and the tensile strength and factors of safety given in this rule.

(d) The maximum allowable working pressure for nonstandard pressure-vessels subject to external pressure shall be determined in accordance with ASME Code, Section VIII, Division 1.

(3) Inspection of Inaccessible Parts. If the inspector determines during an inspection that it may be necessary to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove such material to permit a proper inspection and the remaining thickness.

(4) Overpressure Protection. Each pressure vessel shall be provided with safety relief valves and controlling devices as necessary to protect against overpressure. These devices shall be so constructed, located and installed that they cannot be rendered inoperative. The relieving capacity of such pressure relief devices shall be adequate to prevent a rise in pressure in the vessel of no more than ten percent (10%) above the highest pressure to which any pressure relieving device is set. The opening pressure of the lowest set pressure relieving device shall be no greater than the maximum allowable working pressure of the vessel. Where an additional hazard is involved due to fire or other unexpected sources of external heat, the pressure relief devices shall meet the requirements of ASME Code, Section VIII, Division 1, Paragraph UG-125 or Division 2, Paragraph 9.2, whichever is applicable.

(5) Repairs and Renewals of Fittings and Appliances. Whenever repairs are made to fittings and appliances or it becomes necessary to replace them, the work must comply with the requirements for new installations.

Authority: T.C.A. §§68-122-102 and 68-122-104.

0800-03-03-.13 Historic Boilers.

(1) These rules apply to "historic power boilers" as defined in Rule 0800-03-03-.01(18).

(2) Historic power boilers shall receive prior authorization from the Chief Inspector or Chief Inspector's Designee before entry and operation of the boiler in the state of Tennessee. Prior to entering the State with the boiler, the owner or user shall submit the proper Board approved application for operation of a historic power boiler.

(a) For historic power boilers located in the State, the owner or user shall be required to submit the initial application as long as he possesses a current Tennessee certificate of inspection. If the Tennessee certificate of inspection expires, the owner or user shall reapply to the Chief Inspector or Chief Inspector's Designee for permission to operate.

(b) For historic power boilers located outside of the State, with a valid Tennessee certificate of inspection, the owner or user is allowed to freely operate their boiler at events within the State. As long as the boiler has a valid Tennessee certificate of inspection, there is no need to reapply for permission to operate. If the Tennessee certificate of inspection remains expired for more than sixty (60) days without an inspection, or if the owner chooses to no longer operate the boiler or retain a Tennessee certificate of inspection, the boiler shall be placed in dormant status. If at any time the boiler is placed in dormant status, the owner or user shall reapply with the Chief Inspector or Chief Inspector's Designee for permission to operate.

(3) Design and Testing.

(a) For all traditional historic power boilers, both standard and nonstandard, and nontraditional nonstandard historic power boilers, the owner or user shall supply the Chief Inspector or Chief Inspector's Designee with reports of the maximum allowable working pressure calculations and ultrasonic testing at the time of application to operate. The calculations and ultrasonic testing shall be completed by a knowledgeable individual familiar with the practice. All report results are subject to the acceptance of the Chief Inspector or Chief Inspector's Designee at time of application.

(b) A copy of the Manufacturer's Data Report shall accompany all applications to operate nontraditional standard historic power boilers in the State.

(c) The Chief Inspector or Chief Inspector's Designee or Deputy Inspector may at anytime during the application and inspection process request additional information, such as, but not limited to, design, material, inspection or testing.

(4) Traditional Historic Power Boilers.

(a) The maximum allowable working pressure shall be calculated with a minimum safety factor of five (5) for standard, and five point five (5.5) for traditional nonstandard historic power boilers, using the formula for historic power boilers in paragraph (14) of this rule, not to exceed 125 psig.

(b) The minimum safety factor shall be six point five (6.5) for traditional historic power boilers having lap-riveted longitudinal joints. The maximum allowable working pressure should not exceed 100 psig. Seal welding of a lap-riveted longitudinal joint is not permitted.

(5) Nontraditional Historic Power Boilers.

(a) All nontraditional historic power boilers constructed after the effective date of this rule shall be constructed in accordance with Rule 0800-03-03-.03. Nontraditional nonstandard historic power boilers, free-lance or scale models, constructed after the effective date of this rule shall not be allowed to operate in the State.

(b) The maximum allowable working pressure for nontraditional standard historic power boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed.

(c) The maximum allowable working pressure shall be calculated with a minimum safety factor of five point five (5.5) for nontraditional nonstandard historic power boilers, using the formula for historic power boilers in paragraph (14) of this rule, not to exceed 125 psig.

(d) Nontraditional nonstandard historic power boilers having lap-riveted longitudinal joints shall not be allowed to operate in the State.

(6) An annual inspection of all historic power boilers shall be conducted by a Deputy Inspector. The issuance of the annual Tennessee certificate of inspection shall be based on the results of the annual inspection.

(7) Operational Log.

(a) The owner of a historic power boiler operating in the State shall possess a bound operational log. After successful completion of the initial inspection by a Deputy Inspector, the owner shall be provided with a registered operational log book by the Chief Inspector or Chief Inspector's Designee. The operational log shall contain, but is not limited to, the following:

1. The operation date of the historic power boiler;

2. The length of time the historic power boiler was operated;

3. Location where operated (city and state);

4. Jurisdictional inspection dates with the signature and commission number of inspector;

5. Description of repairs and alterations, including the dates, with signature and commission number of inspector;

6. Testing performed and by whom (e.g., pressure test, ultrasonic test, radiographic test, etc.);

7. Change of ownership, including the date the historic power boiler changed ownership and to whom; and

8. The front page of the operational log shall include a page number index of all inspections, inspector instructions, and repairs or incidents involved with the historic power boiler.

(b) Operational logs shall be available to the inspector at all times the historic power boiler is to be operated in the State. Operational logs that are lost or misplaced shall be reported to the Chief Inspector or Chief Inspector's Designee immediately. The owner or user of the historic power boiler shall be responsible for the cost of the operational log replacement. Failure to possess or report a lost or misplaced operational log, may prevent the historic power boiler from operating in the State or revoking of the Tennessee certificate of inspection.

(c) Whenever the pages of an operational log have been completely filled, the owner shall request a supplemental operational log from the Chief Inspector or Chief Inspector's Designee no cost to the owner. The owner is responsible for retaining all operational logs, initial and supplemental, for the life of the historic boiler. In the event that ownership of the historic power boiler changes, the new owner shall receive all original operational logs, initial and supplemental, from the previous owner. The previous owner may make a copy of the operational logs for his records.

(8) A pressure test with water temperature between 60° to 120° F, and not to exceed ninety percent (90%) of the set pressure of the lowest setting pressure relief device on the boiler, held for a period of at least thirty (30) minutes may be conducted at the discretion of the Deputy Inspector.

(9) All historic power boilers shall be equipped with an ASME stamped NB rated safety valve of adequate capacity, together with a water level indicator, calibrated pressure gauge and two (2) suitable means of introducing water into the boiler.

(10) The historic power boilers, traditional and nontraditional, shall be equipped with a fusible plug. All fusible plugs shall be constructed to meet the requirements of the ASME Code.

(a) Fusible plugs shall be located at the lowest permissible water level as determined by the boiler manufacturer or the Chief Inspector or Chief Inspector's Designee when this information is not available.

(b) Fireside fusible plugs shall protrude at a minimum of one (1) inch into the water.

(c) Waterside fusible plugs shall not protrude into the fire area more than one (1) inch.

(d) Fusible plugs shall not be refilled.

(e) All fusible plugs shall be removed for inspection once every two (2) years.

(f) All fusible plugs shall be replaced after three hundred (300) hours of service with a new fusible plug constructed to meet the requirements of the ASME Code.

(g) The date when the fusible plug is removed for inspection or replaced shall be documented in the owner's operational log.

(11) All historic power boilers shall be equipped with operational tri-cocks, a gauge glass and pressure gauge. A siphon, or water seal, shall be installed between the pressure gauge and boiler. All pressure gauges shall be proven accurate at the time of the annual inspection by testing or documentation of calibration.

(12) Repairs and Alterations.

(a) Any welded code repair or any alteration shall be performed by organizations holding a valid NB "R" stamp. If the repair or alteration is performed in this State, the "R" stamp-holder shall have a current State of Tennessee Boiler Erectors and Repairers Contractor's license.

(b) Mechanical code repairs to historic power boilers such as, but not limited to, tube, rivet and stay replacement may be completed by the owner, or his designee, who is knowledgeable about the repair to be performed with prior approval of the Chief Inspector or Chief Inspector's Designee.

(c) All repairs and alterations, welded and mechanical, shall be inspected by an inspector and documented on the applicable ~~National Board~~ "NB-R" form. The "NB-R" form shall be submitted and kept on file in the Chief Inspector's or Chief Inspector's Designee's office.

1. For those repairs and alterations performed in the State, a Deputy Inspector shall perform the inspection.

2. For repairs and alterations performed outside of the State, the inspection shall be performed by a NB commissioned boiler inspector.

3. All repairs and alterations shall be documented in the owner's operational log and signed by the inspector who performed the inspection.

(13) All standard historic power boilers shall have legible stamping clearly visible to the inspector.

(14) Maximum Allowable Working Pressure for Nonstandard Historic Power Boilers

(a) The maximum allowable working pressure of a historic power boiler shall be determined in accordance with the following formula:

$$\frac{TStE}{RFS} = \text{maximum allowable working pressure (psig)}$$

Where:

TS = ultimate tensile strength of shell plate, pounds per square inch (psi)

t = minimum thickness of shell plate, in weakest course (inches)

E = efficiency of longitudinal joint [For tube ligaments and pitch, determine E in accordance ASME Code, Section I. For riveted construction, refer to the National Board Inspection Code, 1973 edition. For seamless construction, consider E to be one hundred percent (100%).]

R = inside radius of weakest course of shell (inches)

FS = factor of safety [See subparagraph (a) of paragraph (4) and subparagraph (c) of paragraph (5) of this rule]

(b) Tensile Strength. When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psi for steel and 45,000 psi for wrought iron.

(c) Crushing Strength of Mild Steel. The resistance to crushing of mild steel shall be taken as 95,000 psi.

(d) Strength of Rivets in Shear. When computing the ultimate strength of rivets in shear, the following values in psi of the cross-sectional area of the rivet shank shall be used:

	PSI
Iron rivets in single shear	38,000
Iron rivets in double shear	76,000
Steel rivets in single shear	44,000
Steel rivets in double shear	88,000

(When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one (1) rivet in the body of the joint.)

Table 1
Sizes of Rivets Based on Plate Thickness

Thickness of plate (inches)	1/4	9/32	5/16	11/32	3/8	13/32
Diameter of rivet after driving (inches)	11/16	11/16	3/4	3/4	13/16	13/16
Thickness of plate (inches)	7/16	15/32	1/2	9/16	5/8	
Diameter of rivet after driving (inches)	15/16	15/16	15/16	1-1/16	1-1/16	

(e) The working pressure may be decreased by the inspector, with authorization of the Chief Inspector or Chief Inspector's Designee, if the condition and safety of the boiler warrant.

Authority: T.C.A. §§68-122-102, 68-122-104, and 68-122-202.

0800-03-03-.14 Fees.

(1) For shop inspections of boilers and pressure vessels which include manufacturers and contractors of boilers and pressure vessels, quality control system reviews which include ASME and NBIC triennial reviews, and when variances are granted by the Board:

(a) For one half (½) day minimum $250.00

(b) For one (1) full day maximum $500.00

(2) For special boiler and pressure vessel inspections and second-hand inspections:

(a) For one half (½) day minimum $250.00

(b) For one (1) full day maximum $500.00

(3) Boiler inspection fees (fired vessels).

(a) Boilers of 5 H.P. or less, or 50 sq. ft. or less of heating surface $40.00

(b) Boilers over 5 H.P. or over 50 sq. ft. of heating surface $40.00

(c) External inspections $25.00

(4) Boiler inspection fees (unfired vessels).

(a) Internal and/or external inspection of each unfired pressure vessel subject to inspection having a cross-sectional area of fifty (50) square feet or less $25.00

(b) Each additional one hundred (100) square feet or fraction thereof, of area in excess of fifty (50) square feet $6.00

1. Not more than ninety-seven dollars ($97.00) shall be paid per day for the actual inspection time of each inspector on any one (1) vessel.

(5) Examination fee (non-refundable) $100.00

(6) Certificate of competency fee (non-refundable) $50.00

(7) Identification card fee (non-refundable) annual renewal $25.00

(8) Inspection certificates fees.

(a) Power boilers $35.00

(b) Low pressure heating boilers and unfired pressure vessels $50.00

(9) License fee.

(a) Original license (first year) $75.00

(b) Annual renewal license $50.00

(10) For special inspection fee, based on the number of working days' notice of inspection:

(a) 1 – 10 Working Days - For one-half (1/2) day minimum $250.00

For one (1) full day maximum $500.00

(b) 11 – 20 Workings Days - For one-half (1/2) day minimum $100.00

For one (1) full day maximum $200.00

(c) 21 – 30 Working Days - For one half (1/2) day minimum $60.00

For one (1) full day maximum $120.00

(d) More than 30 Working Days - For one half (1/2) day minimum $40.00

For one (1) full day maximum $80.00

Authority: T.C.A. §§4-5-218, 10-7-501 et seq. 68-122-102, 68-122-111 and 68-122-113.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Chairman, Brian R. Morelock	X				
Eugene Robinson	X				
David W. Baughman	X				
Dr. Glen Johnson	X				
Dr. Domenic Canonico				X	
Vacant					

I certify that this is an accurate and complete copy of proposed rules, lawfully promulgated and adopted by the Board of Boiler Rules on 12/16/2015, and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of ninety (90) days of the filing of the proposed rule with the Secretary of State.

KIMBERLY DANTZLER
STATE OF TENNESSEE NOTARY PUBLIC
MONTGOMERY COUNTY

Date: 5/19/16

Signature: Sam Chapman

Name of Officer: Sam Chapman

Title of Officer: Chief Boiler Inspector

Subscribed and sworn to before me on: 5.19.16

Notary Public Signature: Kimberly Dantzler

My commission expires on: July 17, 2019

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

Herbert H. Slatery III

Herbert H. Slatery III
Attorney General and Reporter

6/8/2016
Date

RECEIVED
2016 JUN 16 AM 11:22
SECRETARY OF STATE
PUBLICATIONS

Department of State Use Only

Filed with the Department of State on: 6/16/16

Effective on: 9/14/16

Tre Hargett

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Revenue
SUBJECT:	Taxpayer Remedies for Disputed Taxes, Tax Enforcement Procedures Act, Business Tax Rules and Regulations, State Sales and Use Tax Rules, and Franchise and Excise Tax Rules and Regulations
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 67-1-102(a), 67-1-1439, and 67-6-402
EFFECTIVE DATES:	September 26, 2016 through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	According to the Department, the portions of the rulemaking hearing rule concerning taxpayer remedies for disputed taxes will be amended as follows: 1. Rule 1320-01-02-.01 will be repealed because it was superseded by 2014 legislation; and 2. Rule 1320-01-02-.05 Request for Informal Conference will be amended to reflect the new "proposed assessment" approach adopted under Public Chapter 854 (2014) and to align with current procedures of the Administrative Hearing Office. According to the Department, the portion of the rulemaking hearing rule concerning the Tax Enforcement Procedures Act will be amended to delete obsolete language due to 2014 legislation, to delete obsolete references to positions within the Department, and to remove language granting a delegee the ability to re-delegate the authority to make tax assessments. According to the Department, the portion of the rulemaking hearing rule concerning business tax rules and regulations will be updated or repealed to reflect 2009 statutory changes that allowed bad

debt deductions, moved the administration and collection of the business tax from the cities and counties to the Department, and made changes related to contractors. These rules will also be updated due to 2013 statutory changes which require updates not currently listed in the rules. Additional changes to this portion of the rules include:

1. Rule 1320-04-05-.28 concerning Locations and Outlets - Operations and Other Localities will be amended to provide new guidance to property management companies and individuals leasing property for less than 180 days; and
2. Rule 1320-04-05-.47 Sales for Resale will be amended to bring it in line with Pfizer v. Johnson, No. M2004-00041-COA-R3-CV, 2006 WL 163190 (Tenn. Ct. App. Jan. 23, 2006), the holding of which the Department follows.

According to the Department, the certain sales and use tax rules will be repealed or amended to reflect 1986, 1999, 2003, 2005, and 2008 legislation, rendering certain language obsolete. Language already codified will be deleted in certain rules. Other rules require updating to provide guidance consistent with policies and procedures. Additional changes to the portion of the rules concerning sales and use tax include:

1. Rule 1320-05-01-.63 Registration Certificate will be amended to simplify reporting for individuals or property management companies with multiple rental properties within the same jurisdiction; and
2. New Rule 1320-05-01-.128 provides guidance for 2015 legislation expanding the industrial machinery exemption to include research and development.

According to the Department, the franchise and excise tax rules have not been updated since legislation in 1999 that restructured how entities are taxed. Accordingly, many of these rules are being repealed or updated to reflect current law. In addition, the rules will be amended by deleting language that predates implementation of electronic filing requirements. Other changes to this portion of the rules include:

1. Rule 1320-06-01-.11 will be repealed because it was in part superseded by 2013 legislation; the

remaining portion of the rule is unnecessary and potentially conflicts with law on the dissolution of corporations. In addition, certain rules are being updated for taxpayer ease;

2. Rule 1320-06-01-.18 Minimum Measure of Franchise Tax will be amended by deleting a section that has been codified since promulgation of the original rule and amended by adding language currently contained in Rule 1320-06-01-.35, to improve the ability of taxpayers to locate relevant information. Additionally certain rules will be updated to reflect the 1992 statutory adoption of the "functional test" for classifying earnings;

3. Rule 1320-06-01-.34 will be replaced in its entirety to address changes under the Revenue Modernization Act of 2015 whereby the state primarily has shifted to market-based sourcing standards. However, cost of performance standards may remain applicable to a qualified member of a qualified group;

4. Rule 1320-06-01-.40 Disregarded Entities will be added to clarify the Department's current treatment of disregarded entities, as reflected in published guidance;

5. Rule 1320-06-01-.41 Series Limited Liability Companies will be added to clarify the Department's current treatment of series limited liability companies, as reflected in published guidance; and

6. Rule 1320-06-01-.42 Sales Factor - Sales Other than Sales of Tangible Personal Property in this State is proposed as necessary to address the market-based sourcing standards adopted under the Revenue Modernization Act, Public Chapter 644 (2015).

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.

Prior to the public hearing, the Department received several written comments.

Two individuals commented regarding Rule 1320-01-02-.05 concerning the informal conference process. One individual suggested requiring the Audit division to provide a statement of legal argument and supporting documentation on the same timeframe as that requested of taxpayers; an automatic continuation of the conference if the Hearing Officer rules in favor of the Audit Division without that division providing legal reasoning; language making it clear that a taxpayer may offer and discuss a compromise solution with the Hearing Officer during the conference process; and, requiring the Department to publish conference decision reports or summaries on a more frequent basis than it currently does. The Department responded that it disagrees that these suggestions are within the scope of Rule 1320-01-02-.05, or within the scope of the Department's administrative rules in general. The Department, however, agreed that the suggestions and comments are useful for the effort of the Department's Hearing Office to be a continuing valuable service and venue for taxpayers and invited the individual to meet to discuss the suggestions.

The second individual commenting on Rule 1320-01-02-.05 Request for Informal Conference addressed adding language to subsection (2)(b) referencing Tenn. Code Ann. § 67-1-107 in the same manner as subsection (2)(a) to ensure that a taxpayer can make a request for informal conference through an alternative delivery service as authorized under I.R.C. § 7502. The Department responded that it has revised the rule to clarify that a written request made via United States mail or private delivery service designated by the Internal Revenue Service under I.R.C. § 7502 is timely if transmitted within thirty (30) days after the date of the notice of proposed assessment and that its timely filing is determined in accordance with Tenn. Code Ann. § 67-1-107. Likewise a written request made by facsimile, electronic mail, or a non-designated delivery service made and received on or before thirty (30) days after the notice of proposed assessment is deemed timely.

The Department received a third comment expressing concern that Rule 1320-05-01-.106 for Industrial Machinery contains a reference to Rule 1320-05-01-.68(4) but that the proposed Rule 1320-05-01.128 for Research and Development does not contain such a reference. The Department responded that although Rules 1320-05-01-.68(4) and 1320-05-01-106(4) contain language referencing a certificate of resale, the Department currently uses a direct pay permit rather than a certificate of resale. The purpose of Rule 1320-05-01-.106(4) for Industrial Machinery is to clarify that if a taxpayer has a direct pay permit, it must also have an industrial machinery exemption to purchase items exempt from the Tennessee sales and use tax, and in such case, the taxpayer can present to a vendor the direct pay permit in lieu of the industrial machinery exemption certification. Nothing limits a taxpayer qualifying for the exemption for research and development explained in Rule 1320-05-01-.128 from using a direct pay permit in the same manner, and the research and development exemption certificate will contain a statement confirming this information.

Lastly, the Department received a statement acknowledging satisfaction with Rule 1320-06-01-.42 concerning market-based sourcing, stating that the rule follows the statutory frameworks and provides appropriate guidance to taxpayers.

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) **Types of small businesses directly affected:**
These rules affect small businesses in the same manner as all other businesses.

(2) **Projected reporting, recordkeeping, and other administrative costs:**
There are no added reporting, recordkeeping, and other administrative costs associated with of these rules.

(3) **Probable effect on small businesses:**
These rules do not have a negative effect on small businesses.

(4) **Less burdensome, intrusive, or costly alternative methods:**
There is no less burdensome, intrusive, or costly alternative method available outside of these rules.

(5) **Comparison with federal and state counterparts:**
These rules appear to comport with other similar state and federal rules.

(6) **Effect of possible exemption of small businesses:**
Exempting small businesses from any of these rules would not be in the best interest of small businesses, as these rules provide necessary guidance for tax compliance.

Impact on Local Governments

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

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

Additional Information Required by Joint Government Operations Committee

Chapter 1320-01-02
Taxpayer Remedies for Disputed Taxes

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

Rule 1320-01-02-.01 will be repealed because it was superseded by 2014 legislation. Rule 1320-01-02-.05 Request for Informal Conference will be amended to reflect the new "proposed assessment" approach adopted under Public Chapter 854 (2014) and to align with current procedures of the Administrative Hearing Office.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §67-1-102 gives the Commissioner of the Department of Revenue the power to prescribe rules that are not inconsistent with the law.

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

The repeal of Rule 1320-01-02-.01 and the amendment of Rule 1320-01-02-.05 do not directly affect anyone because the rules are being repealed or amended to delete obsolete language and to comport with current administration. The repeal or amendment will not increase taxes. It is not anticipated that any groups will oppose the repeal or amendment. The rules affect all taxpayers who pay taxes administered by the Department of Revenue.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department of Revenue is not aware of any.

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

There is no fiscal impact resulting from the repeal of these rules.

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

Kristin Husat, Assistant Commissioner and General Counsel

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

Kristin Husat, Assistant Commissioner and General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Revenue, Andrew Jackson Building, 500 Deaderick Street, 11th Floor, Nashville, TN 37242; (615) 741-2348; Kristin.Husat@tn.gov

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

The Department of Revenue is not aware of any request for additional relevant information.

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

Rule 1320-02-01-.43 Assessment by Commissioner will be amended to delete obsolete language due to 2014 legislation, to delete obsolete references to positions within the Department, and to remove language granting a delegee the ability to redelegate the authority to make tax assessments.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §§67-1-102 and 67-1-1439 give the Commissioner of the Department of Revenue the power to prescribe rules that are not inconsistent with the law.

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

Rule as amended does not affect anyone because the amendment deletes obsolete language. The amendment will not increase taxes. It is not anticipated that any groups will oppose the amendment

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department of Revenue is not aware of any.

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

There is no fiscal impact resulting from the amendment of this rule.

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

Kristin Husat, Assistant Commissioner and General Counsel

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

Kristin Husat, Assistant Commissioner and General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Revenue, Andrew Jackson Building, 500 Deaderick Street, 11th Floor, Nashville, TN 37242; (615) 741-2348; Kristin.Husat@tn.gov

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

The Department of Revenue is not aware of any request for additional relevant information.

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

The business tax rules will be updated or repealed to reflect 2009 statutory changes that allowed bad debt deductions, moved the administration and collection of the business tax from the cities and counties to the Department of Revenue, and made changes related to contractors. These rules will also be updated due to 2013 statutory changes which require updates not currently listed in the rules. Rule 1320-04-05-.28 Locations and Outlets – Operations and Other Localities will be amended to provide new guidance to property management companies and individuals leasing property for less than 180 days. Moreover, Rule 1320-04-05-.47 Sales for Resale will be amended to bring it in line with Pfizer v. Johnson, No. M2004-00041-COA-R3-CV, 2006 WL 163190 (Tenn. Ct. App. Jan. 23, 2006), the holding of which the Department follows.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §67-1-102 gives the Commissioner of the Department of Revenue the power to prescribe rules that are not inconsistent with the law.

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

The updates and repeals of these rules affect all business tax taxpayers. These changes will not increase taxes. It is not anticipated that any groups will oppose the changes.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department of Revenue is not aware of any.

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

There is no fiscal impact resulting from the changes of these rules.

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

Kristin Husat, Assistant Commissioner and General Counsel

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

Kristin Husat, Assistant Commissioner and General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Revenue, Andrew Jackson Building, 500 Deaderick Street, 11th Floor, Nashville, TN 37242; (615) 741-2348; Kristin.Husat@tn.gov

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

The Department of Revenue is not aware of any request for additional relevant information.

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

Certain sales and use tax rules will be repealed or amended to reflect 1986, 1999, 2003, 2005, and 2008 legislation, rendering certain language obsolete. Language already codified will be deleted in certain rules. Other rules require updating to provide guidance consistent with policies and procedures. Rule 1320-05-01-.63 Registration Certificate will be amended to simplify reporting for individuals or property management companies with multiple rental properties within the same jurisdiction. New Rule 1320-05-01-.128 provides guidance for 2015 legislation expanding the industrial machinery exemption to include research and development.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §§67-1-102 and 67-6-402 give the Commissioner of the Department of Revenue the power to prescribe rules that are not inconsistent with the law.

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

Repeals or amendments of these rules do not affect anyone because the repealed or amended language is obsolete. The changes will not increase taxes. It is not anticipated that any groups will oppose these changes. The new rule 1320-05-01-.128 for research and development provides necessary guidance in accordance with requests from taxpayers for the Department to clarify recently passed legislation.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department of Revenue is not aware of any.

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

There is no fiscal impact resulting from the repeal, amendment, or implementation of these rules.

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

Kristin Husat, Assistant Commissioner and General Counsel

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

Kristin Husat, Assistant Commissioner and General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Revenue, Andrew Jackson Building, 500 Deaderick Street, 11th Floor, Nashville, TN 37242; (615) 741-2348; Kristin.Husat@tn.gov

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

The Department of Revenue is not aware of any request for additional relevant information.

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

The franchise and excise tax rules have not been updated since legislation in 1999 that restructured how entities are taxed. Accordingly, many of these rules are being repealed or updated to reflect current law. In addition, the rules will be amended by deleting language that predates implementation of electronic filing requirements. Rule 1320-06-01-.11 will be repealed because it was in part superseded by 2013 legislation; the remaining portion of the rule is unnecessary and potentially conflicts with law on the dissolution of corporations. In addition, certain rules are being updated for taxpayer ease. Rule 1320-06-01-.18 Minimum Measure of Franchise Tax will be amended by deleting a section that has been codified since promulgation of the original rule and amended by adding language currently contained in Rule 1320-06-01-.35, to improve the ability of taxpayers to locate relevant information. Additionally certain rules will be updated to reflect the 1992 statutory adoption of the "functional test" for classifying earnings.

Notably, Rule 1320-06-01-.34 will be replaced in its entirety to address changes under the Revenue Modernization Act of 2015 whereby the state primarily has shifted to market-based sourcing standards. However, under Tenn. Code Ann. § 67-4-2012(j), cost of performance standards may remain applicable to a qualified member of a qualified group.

Three new rules will be added. Rule 1320-06-01-.40 Disregarded Entities will be added to clarify the Department's current treatment of disregarded entities, as reflected in published guidance. Rule 1320-06-01-.41 Series Limited Liability Companies will be added to clarify the Department's current treatment of series limited liability companies, as reflected in published guidance. Rule 1320-06-01-.42 Sales Factor – Sales Other than Sales of Tangible Personal Property in this State is proposed as necessary to address the market-based sourcing standards adopted under the Revenue Modernization Act, Public Chapter 644 (2015).

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. §67-1-102 gives the Commissioner of the Department of Revenue the power to prescribe rules that are not inconsistent with the law.

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

In general, the amendment, update, and implementation of these rules affect all franchise and excise tax taxpayers. The rules as amended will not increase taxes. It is not anticipated that any groups will oppose the changes.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Department of Revenue is not aware of any.

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

There is no fiscal impact resulting from the repeal, amendment, or implementation of these rules.

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

Kristin Husat, Assistant Commissioner and General Counsel

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

Kristin Husat, Assistant Commissioner and General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Tennessee Department of Revenue, Andrew Jackson Building, 500 Deaderick Street, 11th Floor, Nashville, TN 37242; (615) 741-2348; Kristin.Husat@tn.gov

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

The Department of Revenue is not aware of any request for additional relevant information.

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-22-16
Rule ID(s): 6204-6208
File Date: 6/28/16
Effective Date: 9/26/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Revenue
Division:	
Contact Person:	Lauren Fields, Associate General Counsel and Assistant Director– Legal
Address:	Andrew Jackson Building, 500 Deaderick Street, 11th Floor Nashville, TN
Zip:	37242
Phone:	(615) 741-2348
Email:	Lauren.Fields@tn.gov

Revision Type (check all that apply):
X 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**
1320-01-02	Taxpayer Remedies for Disputed Taxes
Rule Number	**Rule Title**
1320-01-02-.01	Repealed
1320-01-02-.05	Request for Informal Conference

Chapter Number	**Chapter Title**
1320-02-01	Tax Enforcement Procedures Act
Rule Number	**Rule Title**
1320-02-01-.43	Assessment by Commissioner

Chapter Number	**Chapter Title**
1320-04-05	Business Tax Rules and Regulations
Rule Number	**Rule Title**
1320-04-05-.08	Computation of Tax
1320-04-05-.09	Construction Contractors and Exterminators
1320-04-05-.11	Repealed

1320-04-05-.12	Deductions from Gross Sales
1320-04-05-.13	Definitions – General
1320-04-05-.14	Distribution from Warehouse or Other Central Location
1320-04-05-.15	Dominant Business Activity Defined for Classification Purposes
1320-04-05-.27	Local Adoption of Business Tax
1320-04-05-.28	Locations and Outlets – Operations in Other Localities
1320-04-05-.30	Tax Due Date – Delinquency Tax Periods
1320-04-05-.36	Persons Exempt from Business Tax
1320-04-05-.37	Repealed
1320-04-05-.41	Real Estate Sales and Rentals
1320-04-05-.42	Preservation of Records
1320-04-05-.47	Sales for Resale
1320-04-05-.53	Taxpayers' Returns and Records
1320-04-05-.57	Transfer of License
1320-04-05-.60	Repealed
1320-04-05-.61	Antique Malls, Flea Markets, Craft Shows, Antique Shows, Gun Shows, and Auto Shows

Chapter Number	**Chapter Title**
1320-05-01	State Sales and Use Tax Rules
Rule Number	**Rule Title**
1320-05-01-.12	Repealed
1320-05-01-.26	Hospitals and Sanitariums
1320-05-01-.27	Installation Sales
1320-05-01-.36	Boarding Institutions
1320-05-01-.48	Photographs, Photostats, Blue Prints, Etc.
1320-05-01-.63	Registration Certificate
1320-05-01-.64	Repealed
1320-05-01-.67	Printing Industry
1320-05-01-.74	Taxpayer Reports
1320-05-01-.90	Billing of Sales and Use Tax
1320-05-01-.105	Repealed
1320-05-01-.106	Industrial Machinery
1320-05-01-.107	Electricity
1320-05-01-.115	Sales Tax on Amusement or Recreation Activity
1320-05-01-.116	Membership Sports and Recreation Clubs
1320-05-01-.121	Free, Complimentary, or Reduced Dues, Fees, or Admission Charges
1320-05-01-.122	Entering or Engaging in Amusement or Recreational Activity
1320-05-01-.127	Repealed
1320-05-01-.128	Research and Development

Chapter Number	**Chapter Title**
1320-06-01	Franchise and Excise Tax Rules and Regulations
Rule Number	**Rule Title**
1320-06-01-.02	Due Date
1320-06-01-.04	Repealed
1320-06-01-.05	Repealed
1320-06-01-.06	Repealed
1320-06-01-.08	Repealed
1320-06-01-.09	Repealed
1320-06-01-.10	Repealed
1320-06-01-.11	Repealed
1320-06-01-.13	Repealed
1320-06-01-.14	Repealed
1320-06-01-.15	Indebtedness – Adequacy of Capital
1320-06-01-.16	Repealed
1320-06-01-.18	Minimum Measure of Franchise Tax

1320-06-01-.19	Repealed
1320-06-01-.20	Actual Charitable Contributions
1320-06-01-.21	Loss Carryovers
1320-06-01-.22	Repealed
1320-06-01-.23	Business and Nonbusiness Earnings
1320-06-01-.24	Repealed
1320-06-01-.25	Repealed
1320-06-01-.27	Property Factor
1320-06-01-.28	Property Factor – Valuation
1320-06-01-.29	Property Factor – Averaging Property Values
1320-06-01-.30	Payroll Factor
1320-06-01-.31	Payroll Factor – Compensation Paid in this State
1320-06-01-.32	Sales Factor
1320-06-01-.33	Sales Factor – Sales of Tangible Personal Property
1320-06-01-.34	Sales Factor – Qualified Member of a Qualified Group
1320-06-01-.35	Variances
1320-06-01-.37	Repealed
1320-06-01-.38	Constructing or Improving Real Property – Special Apportionment Rules
1320-06-01-.39	Repealed
1320-06-01-.40	Disregarded Entities
1320-06-01-.41	Series Limited Liability Companies
1320-06-01-.42	Sales Factor – Sales Other than Sales of Tangible Personal Property in this State

(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 1320-01-02
Taxpayer Remedies for Disputed Taxes

Amendment

1320-01-02-.05 Request for Informal Conference.

(1) (a) A request for an informal conference must be ~~made~~submitted in writing to the ~~Tennessee Department~~Commissioner of Revenue~~,~~ or the Commissioner's designee in the Department's Administrative Hearing Office~~, Andrew Jackson State~~.

(b) The conference request must be signed by the taxpayer or the taxpayer's authorized representative. If the request is signed by an authorized representative, a Power of Attorney should be provided to the Administrative Hearing Office ~~Building, 500 Deaderick Street, Nashville, Tennessee 37242~~within five (5) business days.

(c) Statements of legal arguments and supporting documentation should be provided, where practicable, to the Administrative Hearing Office at least two weeks prior to the date of the informal conference. Upon written request by the taxpayer, the Commissioner or the Commissioner's designee may grant, in the Commissioner's or designee's discretion, a continuation of the conference in writing for a period of time reasonably necessary for the taxpayer to provide additional information or documentation relevant to the proposed assessment. A continuation may be granted either before or after the conference is held. If the taxpayer fails to provide such additional information or documentation during the time specified for the continuance, the conference decision shall be issued based on the information and documentation available at that time. Additionally, if the taxpayer fails to provide such additional information or documentation during the time specified for the continuance, the Commissioner or the Commissioner's designee may decline to consider a request for reconsideration that is based on any such additional information or documentation provided after the conference decision is issued.

(2) The written request will be deemed timely:

(a) If made via United States mail or a private delivery service that is designated by the Internal Revenue Service under I.R.C. §7502 and transmitted within thirty (30) days after the date of the notice of proposed assessment. A request for an informal conference is a tax document and, when transmitted through the United States Postal mail or a designated private delivery service, its timely filing date shall be determined in accordance with the provisions of T.C.A. § 67-1-107.

(b) If made via facsimile, electronic mail, or a non-designated delivery service ~~other than United States mail~~ and received by the Department on or before thirty (30) days after the date of the notice of proposed assessment.

(3) The day that a notice of proposed assessment is dated shall not be included in calculating the thirty (30) days.

(4) In the event that the thirtieth (30th) day ~~following~~ after the date of a notice of proposed assessment falls on a Saturday, a Sunday, a legal holiday, or a day when state offices in Nashville are closed, the thirty (30) day period shall run at the end of the next day which is not a Saturday, a Sunday, a legal holiday, or a day when state offices in Nashville are closed.

(5) The person designated to respond to the issues contested at the informal conference~~,~~ shall sign and date the letter by which the taxpayer or his representative is advised of the decision(s) made on the issues(s) contested at the conference. The signature date shall be considered the date the informal conference decision is issued.

Authority: T.C.A. §§67-~~/~~1-102~~(4)~~, 67-1-107, 67-1-1438, 67-1-1801, 1-3-102 and 15-1-101. Administrative History: Original rule filed June 28, 2000; effective September 11, 2000.

Repeal

1320-01-02-.01 ~~Date of the Notice of Assessment.~~ Repealed.

~~When a taxpayer files suit against the Commissioner of Revenue challenging all or any portion of the tax assessment, the date of the mailing of notice of assessment shall be considered the date of the notice plus five (5) additional days thereafter.~~

Chapter 1320-02-01
Tax Enforcement Procedures Act

Amendment

1320-02-01-.43 Assessment by Commissioner.

~~(1)~~ The ~~director~~directors of each of the tax administration divisions within the Department of Revenue who are charged with the responsibility for collecting specific taxes imposed under the revenue laws of the state and made collectible by the Commissioner of Revenue are authorized and required to make all inquiries necessary to the determination and assessment of all taxes referred to hereinabove and to make the determinations ~~and the assessments of such taxes. As the department is presently constituted the authority and responsibility herein authorized shall be extended to and exercised by the following: the Director, Motor Vehicle, Tax Division; the Director, Franchise, Excise, and Income Tax Division; the Director, Petroleum Tax Division; the Director, Miscellaneous Tax Division; the Director, Sales and Use Tax Division. The authority to assess may be redelegated~~of such taxes and the proposed assessments of such taxes that may become final only pursuant to T.C.A. §67-1-1438.

Authority: T.C.A. §§67-1-~~1439 and~~102, 67-1-1438, and 67-1-1439. Administrative History: Original rule filed June 7, 1974. Amendment filed June 22, 1989; effective September 27, 1989.

Chapter 1320-04-05
Business Tax Rules and Regulations

Amendment

1320-04-05-.08 Computation of Tax.

(1) "Sales Price" means the total amount for which tangible personal property is sold or the amount charged for any of the things or services taxable under the Business Tax Law, including any services required to process the property or taxable services for sale, and without any deductions therefrom on account of the cost of the property or taxable services sold, the cost of materials used, losses, or any other expenses whatsoever, except cash discounts allowed on sales. It does not include finance charges, carrying charges, time price differential, or interest from credit extended on sales of tangible personal property under installment sales contracts, conditional sale contracts, or other contracts providing for deferred payments of the purchase price, if the amount of such finance charges, carrying charges, time price differential, or interest is in addition to the usual or established cash selling price, and provided that it is:

(a) Segregated on the taxpayer's invoice or bill of sale, or
(b) Billed separately to customers.

(2) The ~~Business Tax~~business tax is computed upon the sales price of items subject to the tax and is based upon the actual consideration passing, or agreed to be passed, between the purchaser and the vendor, less any deductions allowed by law~~, but without any deduction for actual or possible bad debts.~~. Wholesalers and retailers making charge sales must report ~~the Business Tax~~business tax due on such sales for the period in which the sale is made~~, regardless of when or whether any collection is made for such charges~~.

Authority: T.C.A. §§67-~~5822~~1-102, 67-4-701, 67-4-702, 67-4-703, and 67-~~1014~~-711. Administrative History: Original rule certified June 7, 1974.

1320-04-05-.09 Construction Contractors and Exterminators.

(1) Contractors, as defined at T.C.A. §67-4-708, ~~c~~Classification 4, shall be liable for ~~the~~ business tax regardless of whether the contract is on a lump sum or cost-plus basis.

(2) A contractor shall pay tax under Classification 4 of the Business Tax Act upon all receipts without any deductions except as specifically provided. Tax is due upon all progress payment charges billed pursuant to the contract and received by the contractor~~,~~ and any charges for renting or leasing equipment to others for use in constructing, or making improvements or additions, or repairing buildings or other structures on real property when the equipment is operated by the lessor. Additionally, tax is due at the end of the contract period on the difference between the progress payment charges as billed and the payments received by the contractor. Amounts actually paid during the business tax period to subcontractors or other persons for the services enumerated in T.C.A. §67-4-711(a)(5) may be deducted provided the contractor adequately identifies such persons by supplying the ~~local collecting officers with the~~ names and addresses of the subcontractors or other persons and ~~of~~ the amounts subcontracted. For contracts issued on or ~~charged~~after October 1, 2009, the contractor may deduct only amounts paid to a subcontractor holding a business license or who is licensed by the state board for licensing contractors for work described in T.C.A. §67-4-708(4)(A) and must also supply the subcontractor's business license or license number issued by the board for licensing contractors. The contractor must maintain in its books and records a copy of the subcontractor's business license or contractor's license.

(3) ~~(a)~~ A contractor shall ~~be liable for~~obtain a license from the ~~minimum tax~~ appropriate local officer and shall be liable for the initial business ~~tax on receipts as provided for in this rule~~license fee in each county and/or municipality in which he receives more than $50,000 ~~or more in~~from contracts during any taxable period. The contractor must also file a business tax return and pay the business tax on such receipts for each such location. A contractor ~~is~~shall also obtain a license and shall be liable for the ~~minimum tax~~initial business license fee in the county and/or municipality in which his business is located and will pay business tax on his gross receipts derived in ~~all locations~~the state, less any amounts reported ~~to~~for counties and/or municipalities in which his contracts ~~total or~~ exceed $50,000, during any taxable period. If a contractor does not have a domicile or place of business in the state, he will not owe the tax imposed by T.C.A. §67-4-705 in a particular jurisdiction if his total receipts from contracts performed in that jurisdiction are less than $50,000 during any taxable period. "Receipts" used herein mean taxable receipts.

~~(b) The contractor shall be liable for the minimum tax on September 30 in those jurisdictions where his principal place of business is located. In other counties and/or municipalities, the minimum tax is due on the date when charges billed exceed $50,000 and gross receipts tax reports shall be filed in such jurisdiction as of the next following September 30.~~

(4) Sales of tangible personal property and services to a contractor who in the course of performing his contract installs the property as a component part of an addition or improvement to or repair of real property are sales to a user and a consumer, and such sales are ~~taxable at the appropriate~~considered retail ~~rate~~sales unless the sales are exempt by specific provisions of the Business Tax Act and rules and regulations construing the Act.

(5) If a contract is performed within the jurisdiction of more than one (1) governmental entity, any business tax on receipts due shall be ~~paid~~attributed to each such governmental entity proportionately based upon the amount of work actually performed within each governmental entity.

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-708, 67-4-709, 67-4-711, 67-4-714, and 67-4-71~~17~~. Administrative History: Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978. Amendment filed June 3, 1980; effective September 29, 1980. Amendment filed March 18, 1983; effective June 15, 1983. Amendment filed June 14, 1988; effective September 28, 1988.

1320-04-05-.12 Deductions from Gross Sales.

(1) Amounts representing the following transactions may be deducted from gross sales, prior to computing tax liability, provided such amounts have been included in the gross sales reported on ~~the Business Tax Returns~~business tax returns:

(a) Cash discounts allowed and taken by customers on sales. (See Rule 1320-04-05-.04)

(b) Returned merchandise or allowances or credits given to customers for specific sales. (See Rule 1320-04-05-.45.)

(c) Trade-ins. (See Rule 1320-04-05-.54.)

(d) Repossession to the extent allowed. (See Rule 1320-04-05-.44.)

(e) Contractor payments to subcontractors. (See Rule 1320-04-05-.09(2).)))

(f) Sales in bona fide interstate commerce. (See Rule 1320-04-05-.33(2)).)

(g) Receipts for services rendered by nonprofit institutions and financial institutions and for accounting, insurance, and other services, all as provided for by law. (See Rule 1320-04-05-.16 and 1320-04-05-.32.)

(h) Accommodation and casual and isolated sales. (See Rules 1320-04-05-.01 and 1320-04-05-.05.)

(i) Bad debts arising from receipts on which the business tax is imposed and paid as provided for by law.

(i)(j)Any other deductions authorized by the Business Tax Act or by rules and regulations pertaining thereto.

(2) Except as indicated in paragraph (1) of this rule, and as may otherwise be allowed by law, no other amounts attributable to any other transactions, may be deducted from gross sales.

(1) Any person claiming deductions from his gross sales must maintain sufficient invoices and other documents to substantiate his claims; otherwise, the deduction will not be allowed.

Authority: T.C.A. §§67-1-102, 67-4-703, and 67-4-703711. Administrative History: Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14. 1978,

1320-04-05-.13 Definitions-General.

As used in these Rules and Regulations, the following terms, wherever used, shall have the following meanings:

(1) "Act" shall mean the Business Tax Act, being part 7, Chapter 4, Title 67, T.C.A., as amended.

(2) "Commissioner" shall mean the Commissioner of Revenue of the State of Tennessee, or any of his duly authorized assistants.

(3) "Department" shall mean the Department of Revenue of the State of Tennessee.

(4) "Local Collecting Officers" shall mean County Court Clerks and the duly designated municipal officers responsible for collecting the retail business tax imposed by licensing of local governmentsbusinesses.

(5) "Lease or Rental" means the leasing or renting of tangible personal property and the possession or use thereofof the property by the lessee or renter for a consideration, without transfer of the title of such property, and such shall be considered as a taxable transaction within the meaning of the Business Tax Act.

(6) "Return" shall mean the report of a person liable for the Business Taxbusiness tax showing gross sales, deductions, credits, tax computations, and such other information as may be required on the forms prescribed by the Commissioner of the departments of Insurance and Banking and Revenue and by local collection officers.

(7) "State" shall mean the State of Tennessee.

(8) "Tax" shall mean the ~~Business Tax~~business tax imposed by the Business Tax Act.

(9) "Manufacturer" shall mean those persons engaged in the businesses described in Division D~~.~~ of the Standard Industrial Classification ~~Index~~Manual of ~~1967~~1987, as amended.

Authority: T.C.A. §§67-1-102, 67-4-702, and 67-4-703. Administrative History: Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-04-05-.14 Distribution from Warehouse or Other Central Location.

(1) Sales of tangible personal property and services by a licensed wholesaler or retailer from a central warehouse or other distribution point other than his principal place of business shall be subject to the appropriate wholesale or retail tax, and persons making such sales shall be liable for the ~~minimum~~business tax for that location.

~~(1)~~(2) Where a person merely stores property in a warehouse or other place for eventual delivery to one or more places of business operated by him from which sales are made, he shall not be deemed to be making sales at that location as contemplated by this Rule and Regulation.

Authority: T.C.A. §§67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974.

1320-04-05-.15 Dominant Business Activity Defined for Classification Purposes.

For purposes of ~~the Business Tax~~business tax, both wholesale and retail businesses are classified according to their dominant business activity. The item comprising the largest proportion of taxable gross sales of the business when compared with other items sold determines its classification. ~~A business may be taxed at both retail and wholesale rates but only~~Only one classification (of Classifications 1, 2, 3, or 4) shall apply. ~~Once the classification is determined, the gross sales of the business or the proportionate part of the receipts applicable to both wholesale and retail sales, if liability exists under both types of business, are taxed at the rate specified by such classification.~~ The fact that sales may be made at both wholesale and retail shall have no effect in determining the dominant business activity.

Authority: T.C.A. §§67-1-102, ~~and~~67-4-703~~.~~, and 67-4-708. Administrative History: Original rule certified June 7, 1974.

1320-04-05-.27 Local Adoption of Business Tax.

(1) Affirmative action must be taken by ~~county or~~ municipal governments in order to implement the business tax in their respective jurisdictions. The business tax may ~~only~~ be levied only by passage of a resolution or ordinance by the appropriate governing body.

(2) Upon adoption or amendment of the business tax by any ~~county or~~ municipal government, a certified copy of the resolution or ordinance adopting or amending the business tax must be furnished to the ~~department of revenue~~Department.

(3) Municipal ~~county or municipal~~ governments that adopt the business tax after December 31, 2013, must levy the tax at the rates provided in T.C.A. §67-4-709. If the business tax was adopted by a municipal government prior to January 1, 2014, then it may ~~impose~~continue to levy the tax at the same ~~or lesser tax rates than those imposed by the Business Tax Act for any or all classifications in the Business Tax Act.~~

~~(a) If lesser rates are imposed by county or municipal governments, the rates adopted must be made applicable to all persons alike~~rate that was in ~~the same classification or category within a classification.~~effect as

~~(b) The minimum tax~~ of ~~fifteen dollars ($15) set out at T.C.A. §67-4-709 may not be reduced or deleted by county or municipal governments.~~

~~(c) Local~~January 1, 2014. Municipal governments may not reduce the tax rates ~~to zero (0) for any classification or category within a classification.~~

~~(d) Local governments shall not adopt tax rates which do not apply to all sales or receipts of any person subject to the business tax within each classification or category within a classification~~

~~Local governments shall not adopt~~, but they may repeal the ~~minimum~~business tax ~~without adopting the same or lesser tax rates as set out in T.C.A. §67-4-709(a)(I),(2),(3) and (4).~~by ordinance.

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-704~~5~~, and 67-4-709. Administrative History: Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-04-05-.28 Locations and Outlets – Operations in Other Localities~~-Peddlers~~

~~The Business Tax is applicable to each place, location or outlet in the state from which business is carried on. This means that a~~

(1) A business which engages in business activity in several places, in different locations and through different outlets, must obtain a license from and pay the initial license fee to the appropriate local officer and must pay at least the minimum business tax ~~on~~to the Department for each place, location or outlet; and it must report ~~l~~gross sales and tax due for each separate location. The fact that a business has several outlets in a single county or ~~municipality~~city is immaterial. Such business may upon request submit a consolidated report to cover all such outlets in one county or city~~,~~; however, a breakdown of sales by each outlet must accompany such consolidated report. ~~(See 1320-4-5-.52(2)).~~

(2) Subject to the exceptions enumerated hereinafter, persons subject to ~~the Business Tax~~business tax operating from an established place of business in one county or city who extend their operations into other counties and/or ~~municipal~~ities without establishing an office, headquarters or other place of business therein shall not be subject to the ~~Business Tax in~~filing and registration requirements for such other counties and/or ~~municipal~~ities. Tax on total receipts from all taxable sales shall be ~~due~~attributed to the county and ~~municipality~~city, if any, in which the established place of business is located.

(3) Excepted from the rule as stated in subparagraph (2) are:

(a) ~~Persons with no established place of business in this state~~Contractors subject to Rule 1320-04-05-.09.

(b) A property management company or an individual providing rentals lasting less than 180 days must have a county and/or city business tax license and registration for each county and/or city in ~~this state,~~ which it has rental properties, if the property management company's or individual's taxable gross receipts are ten thousand dollars ($10,000) or more in a particular county and/or city where it does business. If a property management company or individual manages multiple locations within one county and/or city, the property management company or individual shall be required to register only one location per county and/or city and report all gross receipts in that county and/or city to the registered location. The property management company or individual will be subject to business tax at the local rate for the jurisdiction in which each rental property is located, and the taxes from such shall be attributed to the county or city in which the rental property is located.

~~(b) Contractors with taxable receipts of $50,000 and out-of-state contractors.~~

~~(4) Persons who make sales and delivery of merchandise of services concurrently and on the spot to their customers are deemed to be "peddlers."~~

~~(a) All peddlers, both full-time and part-time, must pay the Business Tax measured by the applicable rate of tax as provided in the Business Tax Act. Full-time peddlers must pay the minimum tax and possess the license as provided for in the Act; part-time peddlers are not required, however, to pay the minimum tax or possess the license as provided for in the Act.~~

~~(b) A full-time peddler is one who is regularly engaged in business somewhere as a peddler as herein defined. Persons regularly engaged in a seasonal business somewhere are full-time peddlers during the seasonal period.~~

~~A part-time peddler is one who does not devote his full-time regularly as a peddler. A person does not become a part-time peddler merely because he remains in a county or municipality for a few days and then moves on to a different locality.~~

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-706, 67-4-723, and 67-4-724. Administrative History: Original rule certified June 7, 1974.

1320-04-05-.30 Tax Due Date-Delinquency-Tax Periods.

(1) The ~~minimum~~business tax provided for in T.C.A. §67-4-709 ~~of the T.C.A.,~~ is an annual tax for ~~a license~~the privilege to engage in any of the business activities made subject to business tax.

~~(1)~~(2) Pursuant to the ~~Business Tax. The minimum tax paid by a person may be applied to any tax that he may owe, if any, when the return provided for~~authority in T.C.A. §67-4-715~~, T.C.A.,~~ (g), the business tax return is ~~submitted to the appropriate officer~~due on the 15th day of the fourth month following the end of the taxpayer's fiscal year. For example, if a taxpayer's fiscal year ends on December 31, then its return will be due on April 15.

~~(2) The minimum tax for new businesses shall be due 20 days after the date of commencement of business or the opening of each additional outlet. All taxes shall be due as follows:~~

~~(a) Classification 1 - December 31~~
~~(b) Classification 2 - March 31~~
~~(c) Classification 3 - June 30~~
~~(d) Classification 4 - September 30~~
~~(e) Classification 5 - December 31~~

~~(3) All persons liable for taxes imposed under the Business Tax Act shall be delinquent in the payment of their tax on the following dates:~~

~~(a) Classification 1 - March 1~~
~~(b) Classification 2 - June 1~~
~~(c) Classification 3 - September 1~~
~~(d) Classification 4 - December 1~~
~~(e) Classification 5 - March 1~~

~~(4) Persons subject to the tax imposed by the Business Tax Act shall compute and pay their tax liability based on the following tax periods:~~

~~(a) Classification 1 - January 1 through December 31~~
~~(b) Classification 2 - April 1 through March 31~~
~~(c) Classification 3 - July 1 through June 30~~
~~(d) Classification 4 - October 1 through September 30~~
~~(e) Classification 5 - January 1 through December 31~~

~~(5) When any person shall either fail to pay the minimum tax or fail to make any return and pay the full amount of tax required by the Business Tax Act, there shall be imposed, in addition to other penalties provided, a specific penalty to be added to the tax in the amount of five percent (5%) of the net amount of tax due for each 30 days or fraction thereof during which the failure continues.~~

~~(a) The above-mentioned specific penalty shall not exceed twenty-five percent (25%) of the net amount of tax due in the aggregate.~~

~~(b) The above-mentioned specific penalty shall not be less than five dollars ($5) on a delinquent return regardless of the amount of tax due.~~

~~1. The minimum penalty of five dollars ($5) shall not, however, apply to the delinquent payment of the minimum tax.~~

~~2. The penalty applicable to the delinquent minimum tax shall be computed as in paragraph (5) above.~~

~~(c) Any local tax collection officer waiving payment of penalty pursuant to T.C.A. §67-4-720(d) must have written documentation attached to any return for which penalty is waived to support such action.~~

~~(6) A fee of $3.50 may be charged by the County Court Clerks for collecting and recording amounts from the Business Tax; provided, however, that only one fee may be charged persons paying the annual minimum tax and filing annual tax returns if both are paid on the same date. However, a separate fee of $3.50 may be charged for each license issued a taxpayer who may file a consolidated return.~~

Authority: T.C.A. §§67-1-102, 67-4-703, 67-4-709, and 67-4-~~717~~715~~, 67-4-719 and 67-4-720.~~. Administrative History: Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-4-5-.36 Persons Exempt from Business Tax.

(1) Persons making occasional and isolated sales or transactions who do not hold themselves out as engaged in business.

(2) Persons having a total value of sales of less than $~~500.00~~10,000 per year.

(3) Certain blind persons. ~~(See §67-4-712, T.C.A.)~~

(4) Certain disabled veterans. ~~(See §67-4-712, T.C.A.)~~

(5) Newspaper route carriers and newspaper peddlers.

(6) Farmers making sales of farm products direct from the farm and produced by themselves, including catfish farmers. (See Rule 1320-4-5-.16)

~~(6)~~(7) Persons employed by another who work for wages or salary and who are under the direction and control of the employer in the performance of their duties.

(8) Charitable or religious institutions making sales of donated items and articles produced from donated items.

(9) Certain persons conducting shows, displays, or exhibits sponsored by a nonprofit organization of gun collectors.

(10) Certain persons whose only business activity during the tax period is conducted at the Tennessee state fair or a county fair.

(11) Movie theaters qualifying for the exemption under T.C.A. §67-6-309.

Authority: T.C.A. §§67-1-102~~ *and*~~, 67-4-702, 67-4-703, and 67-4-712. Administrative History: Original rule certified June 7, 1974. Amendment filed April 28, 1987; effective July 29, 1987.

1320-04-05-.41 Real Estate Sales and Rentals.

(2) Persons who receive monies or other consideration for the sale or rental of real property belonging to them, not including rentals lasting less than 180 days, are not liable for ~~the Business Tax~~business tax on such sales or rentals.

(3) Persons receiving or entitled to receive commissions, fees, service charges, or other income, credits or property value in money for services rendered concerning the sale or rental of real or personal property belonging to others are liable for ~~the Business Tax~~business tax on such receipts.

(4) The employing unit, whether designated as a real estate firm, broker, agency, partnership, or corporation which owns or conducts a real estate business, but not the employees thereof, is liable for ~~both the minimum and gross receipts tax.~~business tax. The tax shall be paid on the total receipts (as enumerated in paragraph (~~b~~2) above) which are due and payable. It is immaterial, ~~as regards~~with regard to tax liability, whether the total receipts are divided between the employing unit and the employee, salesman, or other representative of the employing unit or whether the division is made by the employing unit or by the owner, purchaser or other party in interest. In any event the tax is payable on the total amount of receipts due and payable for services rendered.

(5) The ~~minimum and gross receipts taxes are~~business tax is due and payable to the Department for each county and ~~municipality~~city, if any, where the employing unit maintains an office or place of business~~. The~~, regardless of the location of the property involved in the sale or rental or the place where a contract for the sale or rental of the property is entered~~ into shall not be considered in determining what county and municipality may impose the Business Tax~~.

(6) Where receipts, as enumerated herein, are divided, or split, between bona fide real estate agents or brokers, as distinguished from a division between an agent or broker and one of his employees, that portion of the receipts retained or received by each business shall become a part of its gross receipts subject to ~~the Business Tax~~business tax.

Authority: T.C.A. §§67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974.

1320-04-05-.42 Preservation of Records.

(2) Every person liable for ~~the Business Tax~~business tax shall keep and preserve sufficient and complete records for a period of at least three years to determine the amount of ~~Business Tax~~business tax for which he may be liable. It is advisable, however, that such records be kept and preserved for a period of six years. Such records shall include and show the following:

(a) ~~(a)~~ A daily record of all cash and credit sales, including sales under any type of financing or installment plan in use;

(b) ~~(b)~~ A record of the amount of all merchandise purchased, including all bills of lading, invoices, and copies of purchase orders;

(c) ~~(c)~~ A record of all exclusions, deductions and exemptions allowed by law and/or claimed in filing ~~Business Tax Returns~~business tax returns; and,

(d) A true and complete inventory of the value of the stock on hand taken at least once yearly. All of the records required to be kept and preserved shall be open for examination at any time by the commissioner or local collecting officers, or their duly authorized representatives.

(3) If ~~an~~ a proposed assessment has been made and an appeal therefrom has been made to the Commissioner~~, to a local collecting officer,~~ or to a court, all books and records, as above specified, relating to the period covered by such proposed assessment~~,~~ must be preserved until the final disposition of the appeal.

Authority: T.C.A. §§ 67-1-102, 67-4-703, and 67-4-~~703~~722. Administrative History: Original rule certified June 7, 1974.

1320-04-05-.47 Sales for Resale.

(1) Sales for resale include those whereby a supplier of materials, supplies, equipment and services makes such tangible personal property or services available for further processing as a component part of a product to legitimate dealers engaged in and actually reselling or leasing such property or services to a user or consumer. Sales to a manufacturer or processor for future processing, manufacture or conversion into articles of tangible personal property for resale where such industrial materials become a component part of the finished product are likewise considered sales for resale.

(2) Sales of tangible personal property and services to a ~~licensed~~ retailer who may make further distributions from a central warehouse or other distribution point to others for resale shall be deemed to be wholesale sales~~, and the licensed retailer shall be liable for wholesale tax on any such distributions if receipts from such exceed 20% of his total sales.~~.
~~Sales made by a wholesaler to another wholesaler shall be deemed wholesale sales and taxable at the appropriate tax rate. Wholesale sales shall not include the transfer of tangible personal property from a wholesaler to another wholesaler where the amount paid by the transferee to the transferor does not exceed the transferor's cost including freight in and storage cost and transportation costs incurred in the transfer from the transferor to the transferee.~~

(3) Sales for resale made by a wholesaler to another wholesaler shall not be subject to business tax.

~~(3)~~(4) The price charged by the vendor for tangible personal property or services or the quality of such property or services is immaterial in determining whether or not a sale is one for resale. The controlling factor is what the vendee does with his purchase.

~~(4)~~(5) Sales to a contractor who in the course of performing his contract installs property or uses services in a structure, as a component part thereof, are retail sales to a user or consumer~~, and are taxable at the appropriate retail rate~~.

Authority: T.C.A. §§67-1-102, 67-4-702, and 67-4-703~~67-5822 and 67-101~~. Administrative History: Original rule certified June 7, 1974.

1320-04-05-.53 Taxpayers' Returns and Records.

(1) All persons liable for ~~the Business Tax~~business tax shall make complete reports of all sales and other business receipts and list any deductions which they are entitled to make for each separate place, location, or outlet in the State, and submit them on their ~~Business Tax~~business tax returns ~~to the appropriate collection officer,~~ as provided for in the Business Tax Act and the Rules and Regulations relating thereto. Sales and receipts which are excludable, as provided for in the Act and these Rules and Regulations, shall not be included in the gross sales reported; but allowable deductions shall be included in the gross sales reported and listed as a deduction on the ~~Business Tax Return~~business tax return and so treated in computing and paying ~~the Business Tax~~business tax due.

(2) Persons with two or more business locations in a city and/or county may, upon request~~, obtain forms~~ to and ~~file with~~approval by the ~~appropriate collection officer~~Commissioner, file consolidated tax returns, provided only, however, that such businesses are taxable under the same classification and at the same tax rate. ~~Consolidated returns must contain a schedule, by individual locations, giving~~Such person must maintain in its books and records information necessary to determine tax liability at each location.

~~(1) All Business Tax returns, audits of all taxpayers, information provided the Department by municipalities and/or counties and information provided the counties and/or municipalities by the Department of Revenue for the administration, enforcement, and/or collection of the Business Tax are confidential and the contents shall not be revealed to any person except as follows:~~

~~(a) To the taxpayer personally, or~~
~~(b) To an attorney or other agent duly authorized by the taxpayer in such a manner as the Commissioner may require, or~~
~~(c) To employees of the Department and duly authorized officials of counties and municipalities for the purpose of checking, comparing and correcting returns, or~~
~~(d) To any collection, regulatory, or inspection agency of this State, the United States, or another State; provided, that before such information may be divulged to the United States or another State, such government unit shall agree to furnish this State with such information as it may deem necessary to enforce the Tennessee tax laws, or~~
~~(e) In accordance with proper judicial order, or as otherwise required by law.~~

Authority: T.C.A. §§67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974. Amendment filed May 18, 1978; effective August 14, 1978.

1320-04-05-.57 Transfer of License.

(1) The~~Except as otherwise provided in paragraph (2), the~~ license, required pursuant to T.C.A. §67-4-723, may neither be transferred from one person to another person nor from one business location to another business location, except as provided for under T.C.A. §67-4-721.

(2) A ~~business~~license may be transferred from one location in a municipality to another location within the same municipality one time during any tax year if the licensee notifies the local collecting officer at least five (5) days prior to the last day of business at the old location and pays to such local collecting officer ~~three dollars and fifty cents ($3.50) for a recording fee~~the fee as set forth in T.C.A. §8-21-701.

Authority: T.C.A. §§67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-04-05-.61 Antique Malls, Flea Markets, Craft Shows, Antique Shows, Gun Shows, and Auto Shows.

(1) Promotions conducted by non-profit organizations shall refer to cases where the promoter is a ~~non-profit~~non-profit association, corporation, or organization, and shall not depend on whether or not the individual booth owner or renter is a non-profit entity. However, individual booth owners or renters who are ~~nonprofit~~non-profit entities shall be exempt from the tax.

(2) A booth shall be any area or space for which a promoter charges a separate fee.

~~(3) Fifteen (15) percent of all fees submitted to the local tax officials by a promoter shall be paid by the local tax officials to the Commissioner of Revenue.~~

Authority: T.C.A. ~~§§~~§§67-~~5822.~~1-102, 67-4-703, and 67-4-710. Administrative History: Original rule filed October 11, 1983; effective January 16, 1984~~.~~

1320-04-05-.11 ~~Credits Allowable (Minimum Tax and Personal Property Taxes).~~Repealed.

~~(1) The minimum tax actually paid may be taken as a credit against business tax due during the same period.~~

~~(2) In order for personal property taxes to be taken as a credit on a business tax return, the personal property taxes for which credit is sought must have been paid during the tax period covered by the return on which credit is claimed. Credits for personal property taxes cannot be used to pay the minimum business tax for the next taxable period. The minimum tax is due and payable on the dates set out at T.C.A. §67-4-714 (c) regardless of the amount of any credits.~~

Authority: T.C.A. §§67-1-102,67-4-703, and 67-4-7~~0~~13. Administrative History: Original rule certified June 7, 1974. Amendment filed August 28, 1974; effective September 27, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

1320-04-05-.37 ~~Persons Making Wholesale and Retail Sales.~~ Repealed

~~(1) A person whose business is primarily that of making wholesale sales but who makes more than 20% of his sales at retail is liable for both the wholesale and retail Business Tax at the appropriate rates on each category of such sales. If the person makes 20% or less of his sales at retail, he is liable for the Business Tax at the appropriate wholesale rate on all of his sales, both wholesale and retail. (Either category shall be based on net taxable sales after allowable deductions).~~

~~(2) A person whose business is primarily that of making retail sales but who makes more than 20% of his sales at wholesale is liable for the Business Tax at the appropriate retail rate on the retail sales, and at the appropriate wholesale rate on the wholesale sales. If the person makes 20% or less of his sales at wholesale, he is liable for the Business Tax at the appropriate retail rate on all of his sales, both retail and wholesale.~~

Authority: T.C.A. §§67-1-102 and 67-4-703. Administrative History: Original rule certified June 7, 1974.

1320-04-05-.60 ~~Yearly, Monthly, or Quarterly Payments to Department of Revenue by Local Collectors.~~ Repealed.

~~(1) (a) It is provided in T.C.A., §8-21-701(57), that each local collector of each county and or municipality from and after June 1, 1972 shall be required to pay the Commissioner 15% of the total amount collected under the provisions of the Business Tax Act, Part 7, Chapter 4, Title 67, T.C.A. This provision shall apply to all collections, except fees charged by the clerks for collecting and recording amounts from the business tax as provided in §8-21-301(57).~~

~~(b) The statute also provides that such payments shall be made to the Commissioner on May 31, 1973 for collections from June 1, 1972 through May 31, 1973 and each May 31 thereafter for the previous period of June 1 through May 31. Such payments must be made within 20 days after the due date or they shall be considered delinquent and subject to penalty and interest.~~

~~(c) For the convenience of the local collecting officers, the Department of Revenue may accept payments on a monthly or quarterly basis during a taxable period with a final adjustment being made covering the full taxable period by the due date of May 31 each year. Any local collectors desiring to make payments to the Commissioner in any manner other than on an annual basis shall first seek written authority to do so from the Commissioner and if such is granted, the frequency of payments may not be changed during a tax year without written request from the local collector and authorization from the Commissioner.~~

~~(2) Section 8-2115, subsection (A)(40), provides that for receiving and paying over all taxes, fines, forfeitures, fees and amercements county court clerks shall be entitled to 5% of the amount collected and paid over. This commission may not be deducted from the amount due the Department of Revenue as set out in (a) above (15% of business tax collections). The 5% commission may be deducted from total business tax collections before payments of such are made to the proper county official, but any amount that would otherwise relate to the 15% fees due the state would be borne by the county and not charged to the Department of Revenue. The net effect is that the County Court Clerk is entitled to 5% of the adjusted gross collections, and the state is entitled to 15% of the adjusted gross collections.~~

~~(3) Local collecting officers shall accept all remittances made in payment of tax liability. Any partial payments of tax liability shall be collected and reported to the Commissioner of Revenue on the report covering the reporting period in which such sums are received by the local collecting officer. In addition, fifteen percent (15%) of any such partial payments shall be paid to the Commissioner by the local collecting officer on the due date for the period in which such sums were collected. Any such sums not collected, reported, or paid over to the Commissioner shall be considered to be late payments subject to the provisions of T.C.A., §§67-5824(c) and 67-5826. The local collecting officers shall bill any person liable for the tax for any portion of the tax liability which is deficient, plus additional penalty and interest on the deficient amount.~~

Authority: T.C.A. §§67-5822 and 67-101. Administrative History: Original rule certified June 7, 1974. Amendment filed August 28, 1974; effective September 27, 1974. Amendment filed March 18, 1983; effective June 15, 1983.

Chapter 1320-05-01
Sales and Use Tax Rules

Amendment

1320-05-01-.26 Hospitals and Sanitariums.

(1) Hospitals and sanitariums are primarily engaged in the business of rendering services~~,~~ and are the consumers or users of all tangible personal ~~properly~~ property or taxable services purchased for use or consumption in connection with the operation of the institution. The sellers of tangible personal property, other than prescription drugs or ~~medicines~~mobility enhancing equipment prescribed for patients or prosthetic devices, or taxable services to these institutions must collect from them the appropriate tax, but this provision does not apply to a hospital or sanitarium which is otherwise exempt from paying the sales ~~or~~and use tax by virtue of its being a charitable or other like institution.

(2) If a hospital or sanitarium operates any division that sells tangible personal property or taxable services, such as a lunch room, repair shop, or similar department, then the hospital or sanitarium is liable for the tax upon the gross receipts or gross proceeds derived from such sales.

Authority: T.C.A. §§67-1-102 and 67-6-402. Administrative History: Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983.

1320-05-01-.27 Installation Sales.

(1) Charges for installing tangible personal property~~, whether made as a part of and in connection with the sale of the tangible personal property, or whether made for installing tangible personal property which has been sold in a separate bona fide transaction when the property~~ that remains tangible personal property ~~when installed~~ after installation are subject to ~~the~~ sales and use tax. The tax is due from the dealer~~,~~ regardless of whether the dealer~~,~~ or someone acting ~~for him,~~on the dealer's behalf installs the property.

(2) Installation services that are provided in connection with the sale of tangible personal property are a part of the sales price of the tangible personal property sold. If a dealer provides installation services in connection with the sale of tangible personal property, such installation services are subject to sales and use tax if the tangible personal property being installed is subject to sales and use tax. Installation services that are sold in transactions unrelated to the sale of the tangible personal property are subject to sales and use tax regardless of the taxability of the tangible personal property installed unless the installation services are otherwise exempt from tax.

(3) Tangible personal property which is sold and attached to real property, but which will ordinarily be removed by the owner or tenant, such as window air conditioning units, curtain and drapery rods, gasoline pumps, etc., shall be deemed to be personal property and the installation charges therefor shall be subject to ~~the Sales or~~sales and use tax.

(4) Charges made for installing tangible personal property which becomes a part of real property, are not subject to ~~the Sales or~~sales and use tax. The person so installing the property shall be liable for any sales ~~or~~and use tax that may be due, if any, on the property bought and/or used in making the installation.

Authority: T.C.A. §§67-1-102, 67-6-102, 67-6-205, and 67-6-402. Administrative History: Original rule certified June 7, 1974.

1320-05-01-.36 ~~School Lunches~~Boarding Institutions.

~~(1) The sale of food to the State, counties, municipalities of the State, Parent Teacher Associations, or other similar school organizations for the purpose of furnishing school lunches is exempt from the Sales or Use Tax.~~

~~(2) "School lunches" shall mean lunches furnished or sold to students in public or private schools, grades K-12.~~

Institutions of learning operating as boarding institutions, except K-12, shall be deemed the ultimate consumer of foods purchased for meal purposes and shall be liable for the payment of sales ~~or~~and use tax for such supplies, unless such institutions have qualified for exemption from sales ~~or~~and use tax on the ground that they are church supported or non-profit colleges, or universities~~ or schools~~.

Authority: T.C.A. §§67-1-102, 67-6-329, and 67-6-402. Administrative History: Original rule certified June 7, 1974. Amendment filed February 7, 1980; effective April 22, 1980.

1320-05-01-.48 Photographs, Photostats, Blue Prints, Etc.

(1) Sales of photographs, portraits, prints from camera film, camera film, photostats, blue prints, frames, and other like items are subject to ~~the~~ sales and use tax when sold for use or consumption. Any sale of paper or other material which becomes a component of the photograph, or other prints, is a sale for resale, and not subject to ~~the Sales or Use Tax. Chemicals and other products which do not become an actual part of the finished product being sold, are sold for use and consumption by the person making the photograph or print, and are subject to the Sales and Use Tax.~~sales and use tax.

(2) Charges made for developing films and coloring or tinting pictures or photographs furnished by customers are service charges not subject to ~~the Sales or~~sales and use tax when a separate charge for such services is billed to the customer~~. Chemicals, paints, colors, etc., used in rendering such services are used and consumed by the person doing the work who must pay the Sales or Use Tax due on such supplies~~.

Authority: T.C.A. §§67-1-102, 67-6-~~402~~329, and ~~Tenn. Pub. Acts 25~~67-6-402. Administrative History: Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987.

1320-05-01-.63 Registration Certificate.

(1) Sales Tax.

(a) When a dealer changes his business location within the same county, the certificate holder shall notify the Department of the new business address and surrender his Registration Certificate. A new certificate will be issued showing the correct business address.

(b) When a dealer changes his business location to a different county, or to a different type of business, the certificate must ~~he~~be submitted for cancellation, and an application for a new certificate filed.

(2) Use Tax.

(a) Out-of-state dealers which have a sufficient jurisdictional contact or nexus with this State, and accept orders from residents of this State, shall register with the Department for use tax purposes, and report and pay the appropriate use tax to the Department. Other out-of-state dealers should register with the Department for the purpose of reporting and collecting use tax as a convenience and service to their customers.

(b) Persons importing taxable tangible personal property into the State, and who do not pay the Tennessee use tax to an out-of-state dealer registered with this Department, shall register with the Department for use ~~Tax~~ purposes, and report and pay the appropriate use tax to the Department. Except as otherwise provided in these rules and regulations, such persons must pay

the use ~~Tax~~ to out-of-state dealers who are properly registered with this Department, rather than declare such purchases and pay the tax themselves.

(3) Dealers within the State having both sales and use tax to report shall register for sales tax purposes, and report the sales and use tax on forms provided for such purposes.

(4) Dealers having average monthly gross sales of $400.00 or less and taxable services of $100.00 or less may in the discretion of the Commissioner of Revenue be required to pay tax to their suppliers on purchases in lieu of registering for sales and use tax purposes since the Department's cost of administering the account would exceed the taxes reported.

(5) An individual property owner who sells, rents, or charges for the occupation of a room, lodging, or accommodation for a period of less than ninety (90) continuous days and a property management company that is required to collect sales and use tax on behalf of an individual property owner as required by T.C.A. §67-6-501 shall file with the Commissioner an application for a certificate of registration for each property that it owns or manages. If an individual property owner owns or a property management company manages multiple locations within one local jurisdiction, the individual property owner or the property management company shall be required to register only one location per local jurisdiction and report all sales in that local jurisdiction to the registered location.

Authority: T.C.A. §§67-1-102, 67-6-402, 67-6-205, and 67-6-501. Administrative History: Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed June 28, 2000; effective September 11, 2000.

1320-05-01-.67 Printing Industry.

(1) Sales of advertising circulars, books, forms, tickets, and other like printed items of tangible personal property are subject to the sales and use tax unless the printed matter is sold for resale purposes.

(2) The printing and binding of paper, books, forms, letters, and the like is a fabrication thereof, and is subject to the sales ~~or~~and use tax unless the fabrication is a part of a manufacturing process for resale. It is immaterial whether the customer furnishes any or all the paper or other materials used in the fabrication work. Any rebinding or other repair of a book or other tangible personal property is subject to the sales ~~or~~and use tax.

~~(3) Any equipment, materials and supplies which are not sold to a customer, or which do not become a component part of the printed matter being fabricated for sale, or which cannot qualify as an industrial supply exempt from tax, are subject to the Sales or Use Tax. In those cases where a printer makes a specific charge in a contract, or indicates a specific charge on an invoice for an engraving, die, plate, or any other similar kind of tangible personal property sold to a customer, and uses the property in the printing process, he shall be liable for the tax represented by such sale or use irrespective of whether the customer ever actually obtains possession of the engraving, die, plate, etc., or whether the printed matter itself is subject to the Sales or Use Tax.~~

Authority: T.C.A. §§67-~~101, 67-~~1-102, 67-6-102~~(23)~~, and 67-~~3045~~6-402. Administrative History: Original rule certified June 7, 1974. Public necessity rule filed February 29, 2008; effective through August 12, 2008. Amendment filed March 31, 2008; effective July 29, 2008. Amendment filed March 31, 2008; effective July 29, 2008.

1320-05-01-.74 Taxpayer's Reports.

(1) All dealers selling any tangible personal property or furnishing any of the services subject to the ~~Sales~~ sales ~~Tax~~ tax from a location in the State and all vendors and users, whether within or without the State having an "active" account as designated in their Certificate of Registration shall file a complete report of all sales, purchases, deductions, etc., with the Commissioner of Revenue for each month (except as indicated in paragraph (2)). These reports shall be filed regardless of whether the dealer or user is a "manufacturer," "wholesaler," or "retailer," or whether there have been any sales or purchases, of any kind, or whether there is any sales ~~or~~and use tax due to be paid.

(2) Reporting on other than a monthly basis may be permitted as follows:

(a) Dealers whose sales and use tax liability for twelve consecutive months has averaged $200 or less per month may be permitted in the discretion of the Commissioner to file returns and make remittances thereon on a quarterly~~, semiannual~~ or annual basis. Quarterly returns and remittances thereon shall cover the three calendar months ending on the last day of March, June, September and December. ~~Semiannual returns and remittances thereon shall cover the 6 calendar months ending on the last day of June and December.~~ Annual returns and remittances thereon shall cover the 12 calendar months ending on the last day of December.

(b) If a dealer's tax liability for any subsequent twelve month period should exceed $2400, or if the Commissioner should determine that a loss of revenue might result from permitting such dealer to continue filing returns and making remittances on other than a monthly basis, the Commissioner may require such dealer to file on a monthly basis. Failure to timely file a return or make remittance of the tax due thereon shall be grounds for returning a dealer to a monthly basis of filing returns and making remittances.

(c) A new dealer whose business~~,~~ in the determination of the Commissioner is highly likely to qualify under (a) may be permitted to file returns and make remittances on other than a monthly basis without the required reporting experience.

(d) Dealers filing returns and making remittances on other than a monthly basis~~ shall be allowed vendor's compensation on the same basis as it is allowed to dealers on a monthly basis. Such dealers~~ shall be liable for penalties and interest on the same basis as dealers on a monthly basis are liable. ~~Quarterly, semiannual,~~Monthly, quarterly and annual returns shall be filed and remittances made thereon on or before the ~~15th~~20th day of the month following the close of the period covered by such returns and remittances and shall be delinquent if made after such time.

Authority: T.C.A. §§67-1-101, 67-1-102, 67-~~3045~~6-402, 67-6-~~402~~504, and 67-6-505. Administrative History: Original rule filed June 7, 1974. Amendment filed April 28, 1977; effective October 1, 1977. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed June 2, 1989; effective July 17, 1989.

1320-05-01-.90 Billing of Sales and Use Tax.

Vendors~~ within the State~~ must indicate in some definite manner whether their customers are paying any Sales Tax. This indication must be stated on the ticket, invoice, or other record given to the customer, or it may be shown by posting a sign in the place of business of the dealer indicating that the prices shown include any applicable Sales Tax. This statement cannot be included on a ticket, invoice, or other record given, and tax may not be charged, to vendees who are exempt from paying the Sales Tax.

~~Out-of-state vendors making taxable sales to customers in this State, and properly registered with the Department for the purpose of collecting Use Tax, shall bill the Use Tax as a separate item on the billing invoice to the Tennessee customer, indicating their Tennessee Registration Numbers, substantially as follows:~~

~~Tangible Personal Property and/or Taxable Services $~~
~~Tennessee State and Local Use Tax _____~~
~~Total $~~
~~Tennessee Registration Number~~

Authority: T.C.A. §§67-~~101~~1-102 and 67-~~3045~~6-402. Administrative History: Original rule certified June 7, 1974.

1320-05-01-.106 Industrial Machinery.

(1) Persons who wish to make purchases or leases of industrial machinery shall apply to the Commissioner of Revenue for authority to make such purchases exempt from tax. This application shall give such information as the Commissioner may require. If the Commissioner finds from such information that the applicant is entitled to make purchases or leases of industrial machinery, authority shall be permanent in nature and shall continue until such time as the business ceases operation or until such time as the business changes in character such that it is no longer operating within the scope of its original application. Any misrepresentation made on the application by the taxpayer will subject the taxpayer to any applicable tax, penalty and interest.

(2) Authority must be obtained prior to the purchase in order for the machinery to qualify as industrial machinery for tax purposes. However, if authority is not obtained prior to the purchase the Commissioner may allow retroactive application of the authority upon a showing sufficient to the Commissioner that the failure to obtain authority resulted from:

(a) A major restructuring of the business or the business having gone through a change in ownership; or

(b) A death of a key person in the tax area of the organization; or

(c) The entity having been misled by state officials which indicated that authority to purchase industrial machinery was not required; or

~~The entity having previously received authority to purchase industrial machinery but failed to renew their exemption certificate; or~~

(d) Any other grounds that the Commissioner finds satisfactory to allow retroactive application of this exemption.

(3) Persons who have obtained authority from the Commissioner to make purchases of industrial machinery shall provide their vendors with a copy of their authority or a copy of a fully completed Streamlined Sales Tax Certificate of Exemption which must include the manufacturer's exemption authorization number included on the certificate issued by the Commissioner, and such purchases shall then be exempt from tax.

(4) Persons to whom the Commissioner has extended special written permission to make purchases for their own use under a certificate of resale pursuant to 1320-5-~~l~~1-.68(4) must obtain authority from the Commissioner as provided in this rule prior to making purchases of industrial machinery, but may provide their vendors with a copy of the special permission extended under 1320-5-~~l~~1-.68(4) in lieu of the authority to purchase industrial machinery.

(5) Persons seeking to purchase industrial machinery must comply with the provisions of this rule in order to obtain the exemption provided at T.C.A. §67-6-206(a). Failure to do so shall subject such purchases to tax.

Authority: T.C.A. §§67-1-102, 67-6-102, 67-6-206, and 67-6-402. Administrative History: Original rule certified June 7, 1974. Amendment filed March 3, 1983; effective June 15, 1983. Amendment filed February 17, 1988; effective May 29, 1988. Amendment filed June 28, 2000; effective September 11, 2000.

1320-05-01-.107 Electricity.

(1) Sales of electricity, including any charges such as demand, minimum bill, temporary service, and scrap, and items of tangible personal property for accommodation, are subject to ~~the Sales or~~sales and use tax.

(2) Charges for amortization, investment, ~~connection for temporary service,~~ collection fees, ~~reconnections fees,~~ damaged facilities, late payment, and security deposits are not subject to ~~the Sales or~~sales and use tax provided they ~~are~~are indicated as such on the statement given to the customer, and the charges are segregated and maintained as such on the books and records of the dealer. If these changes are not indicated as such on a statement given to the customer, and are not maintained as such on the books and records of the dealer, they are subject to ~~the Sales or~~sales and use tax.

(3) Statements for sales of electricity must indicate in some manner whether the customer is paying any sales ~~or~~and use tax.

Authority: T.C.A. §§67-1-102, 67-6-209, and 67-6-402. Administrative History: Original rule certified June 7, 1974. Amendment filed December 15, 1986; effective January 29, 1987. Amendment filed June 28, 2000; effective September 11, 2000.

1320-05-01-.115 Sales Tax on Amusement or Recreational Activity.

The sales and use tax shall also apply to actual or accrued gross receipts from:

(1) Dues and fees to membership sports and recreation clubs;

(2) Admissions to places of amusement, sports, entertainment, exhibition, display or other recreational events or activities;

(3) Charges for engaging in any kind of recreational activity when no admission is charged spectators; and

(4) Charges made for the privilege of using tangible personal property for amusement, sports, entertainment or recreational activity where the privilege does not otherwise constitute a taxable rental~~; and~~.

~~(5) Charges or fees for cable television service in excess of the lowest or minimum charge for service made by the supplier.~~

Authority: T.C.A. §§67-1-102, 67-6-212, 67-6-330, and 67-6-402. Administrative History: Original rule filed May 18 1984; effective June 17, 1984. Amendment filed June 1, 1988; effective September 28, 1988.

1320-05-01-.116 Membership Sports and Recreation Clubs.

(1) Membership sports and recreation clubs shall include but not be limited to those organizations listed in Major Group No. 79, Industry 7991 of the Standard Industrial Classification Manual of 1987, as amended. Industry 7991 includes, but is not limited to, establishments primarily engaged in operating reducing and health clubs, spas, and similar facilities featuring exercise and other active physical fitness conditioning. Membership sports and recreation clubs shall also include, but not be limited to, those organizations listed in Major Group No. 79, Industry 7997 of the Standard Industrial Classification Manual of 1987, as amended. Industry 7997 includes, but is not limited to, sports and recreation clubs which are restricted to use by members and their guests, such as country, golf, tennis, yacht and amateur sports and recreation clubs.

~~A recreation club or community service organization must retain a signed contract with its member for a period of one (1) year or more and each family member must be specified in the contract before an exemption of the first $150 in dues will be allowed for each family member.~~

~~(3)~~ (2) Membership dues or fees shall include initiation fees, required stock purchases, and any other fees required for membership~~.~~, but do not include member assessments for capital improvements.

Authority: T.C.A. §§67-1-102, 67-6-212, 67-6-330 and 67-6-402. Administrative History: Original rule filed May 18, 1984; effective June 17, 1984. Amendment filed June 1, 1988; effective September 28, 1988. Amendment filed June 28, 2000; effective September 11, 2000.

1320-05-01-.121 Free, Complimentary, or Reduced Dues, Fees, or Admission Charges.

Free or complimentary dues, fees, or admission charges are taxable when made in connection with a valuable contribution. Tax shall ~~only~~ apply only to that portion of the contribution which represents the fair market value of the membership or admission. Where memberships or admissions are purchased at a reduced charge, tax shall ~~only~~ apply only to the reduced charge; provided that tax shall also apply to any additional contribution up to the actual fair market value of the membership or admission. The sales and use tax is not imposed on free amusements provided to employees of amusement providers as fringe benefits (e.g., free tans to employees of a tanning bed operator or free membership to employees of a health spa).

Authority: T.C.A. §§67-1-102, 67-6-212, and 67-6-402. Administrative History: Original rule filed May 18, 1984; effective June 17, 1984.

1320-05-01-.122 Entering or Engaging in Amusement or Recreational Activity.

Fees or charges for the privilege of entering or engaging in tennis, racquetball, handball, skiing, dancing or any other amusement or recreational activity~~, including contests or tournaments,~~ are taxable in addition to membership fees or admissions. Fees or charges for instruction in such activities are not taxable. If recreational activity not essential to or a part of the instruction is also provided, the entire charge shall be subject to tax unless charges for instruction are separately billed.

Authority: T.C.A. §§67-1-102, 67-6-212, 67-6-330, and 67-6-402. Administrative History: Original rule filed May 18, 1984; effective June 17, 1984.

New

1320-05-01-.128 Research and Development.

(1) The sales and use tax does not apply to machinery, apparatus, and equipment with all associated parts, appurtenances, and accessories for such machinery and equipment that is necessary to and primarily for research and development. The sales and use tax does not apply to repair parts and labor and installation of research and development machinery and equipment.

(2) (a) "Research and development" must have one of the following as its ultimate goal:

1. basic research in a scientific field of endeavor;

2. advancing knowledge or technology in a scientific or technical field of endeavor;

3. the development of a new product, whether or not the new product is offered for sale;

4. the improvement of an existing product, whether or not the improved product is offered for sale;

5. the development of new uses of an existing product, whether or not a new use is offered as a rationale to purchase the product; or

6. the design and development of prototypes, whether or not a resulting product is offered for sale.

(b) "Research and development" does not include:

1. ordinary testing or inspection of materials or products used for quality control, other than that occurring during the activities listed in subsection (2)(a) of this rule;

2. market research;

3. efficiency surveys;

4. consumer surveys;

5. advertising and promotions;

6. management studies; or

7. research in connection with literary, historical, social science, psychological, or other similar nontechnical activities.

(3) Persons who wish to make tax exempt purchases of research and development machinery shall apply to the Commissioner of Revenue for authority to make such purchases exempt from tax. The application shall give such information as the Commissioner may require.

(4) The research and development sales and use tax exemption authorization must be obtained prior to making such purchases exempt from the tax. However, if authority is not obtained prior to the purchase, the Commissioner may allow retroactive application of the authority upon a showing sufficient to the Commissioner that the failure to obtain authority resulted from:

(a) A major restructuring of the business or the business having gone through a change in ownership; or

(b) A death of a key person in the tax area of the organization; or

(c) The entity having been misled by state officials which indicated that authority to purchase research and development machinery was not required; or

(d) Any other grounds that the Commissioner finds satisfactory to allow retroactive application of this exemption.

(5) Persons who have obtained the research and development tax exemption authorization for research and development shall provide their vendors with a copy of the authorization or a fully completed Streamlined Sales Tax certificate of exemption, which must include the include the research and development exemption authorization number included on the certificate issued by the Commissioner.

(6) Persons are not required to be engaged in any business of fabricating or processing tangible personal property for resale to qualify for the tax exemption authorization for research and development machinery.

Authority: T.C.A. §§67-1-102, 67-6-102, and 67-6-402.

Repeal

1320-05-01-.12 ~~Cash Discounts.~~ Repealed.
~~The selling price of an article of tangible personal property or taxable service does not include the amount of bona fide cash discounts actually taken by the buyer; the amount of such discounts may be deducted from gross proceeds of sales, provided such discount has been included in the gross sales.~~

Authority: T.C.A. §§67-1-102 and 67-6-402. Administrative History: Original rule certified June 7, 1974.

1320-05-01-.105 ~~Vending Machine Sales.~~ Repealed. ~~All dealers making sales of tangible personal property through vending machines, and electing to pay the Gross Receipts Tax thereon in lieu of all other taxes, shall register with the Department for Sales Tax purposes, and make a report of their sales and purchases each month, listing the gross sales and any purchase for their own use when no Sales or use Tax has been paid to the vendor. The amount of sales made through the vending machines upon which the Gross Receipts Tax is being paid may then be claimed by the dealers on the Sales Tax return, and no Sales Tax will be required to be paid thereon.~~

Authority: T.C.A. §§67-1-102 and 67-6-402. Administrative History: Original rule certified June 7, 1974.

1320-05-01-.127 ~~Charges for Cable Television Service.~~ Repealed

~~(1) The basic rate charged by a supplier for cable television service is not subject to the sales or use tax. The basic rate is the periodic charge for basic cable television service. "Basic cable television service" means the following:~~
~~(a) A basic package of broadcast channels, local origination channels, advertiser supported channels, and access information channels or home shopping channels; and~~
~~(b) A single additional lower-priced package of broadcast channels and access information channels which is a subset of the package described in (a) above.~~
~~Basic cable television service does not include any premium or pay-per-view channels for which per channel or per viewing charge is assessed.~~
~~(2) Charges for cable television service in excess of the basic rate charged by the supplier are subject to the sales and use tax. Charges for pay-per-view, FM connection, program guide, remote control, premium channels, duplicate premium channels, and installation are in excess of the basic rate and are subject to the sales and use tax.~~

Authority: T.C.A. §§67-1-102 *and* 67-6-212. Administrative History: Original rule filed July 6, 1992; effective October 28, 1992.

Chapter 1320-06-01
Franchise and Excise Tax Rules and Regulations

Amendment

1320-06-01-.02 ~~Taxpayer (Entities Liable for Tax)-Due Date-Computer Prepared Tax Forms.~~ Due Date.

~~(1)~~ The ~~combined~~ franchise- and excise tax return ~~of all corporations, cooperatives, joint-stock associations and business trusts, including regulated investment companies and real estate investment trusts, organized for profit under the laws of this state or any other state or country and doing business in Tennessee, including state~~

~~chartered banks and national banks doing business in Tennessee, is required to~~ shall be filed with the Commissioner of Revenue on or before the ~~first~~fifteenth (15th) day of the fourth month following the close of the ~~corporate fiscal~~taxpayer's taxable year. ~~Corporate returns which~~The return shall coincide with the accounting period covered by the federal return and the appropriate tax must be paid to the department at the time of filing the return. Returns that are based on a 52-53 week year will be due on or before the ~~first~~fifteenth (15th) day of the fourth month following the end of the month closest to the 52-53 week year end. ~~The fact that such entities are inactive or have become inactive does not relieve them of the necessity of filing the return and paying at least the minimum $10.00 franchise tax. This requirement applies to domestic and foreign corporations incorporated nor Tennessee but which is doing business in Tennessee shall file the franchise-excise tax returns as required herein.~~

~~(2) A franchise-excise tax return must be filed to coincide with each accounting period for which a federal return has been filed.~~

~~(3) To be accepted in lieu of the current forms provided by the Tennessee Department of Revenue for franchise-excise tax purposes, a franchise-excise tax return prepared by computer shall be a reasonable facsimile of current forms and shall contain all information required by the current forms.~~

Authority: T.C.A. §§67-1-102~~(a)~~, 67-4-~~806, 67-44-817~~2007, 67-4-~~907~~2015, and 67-4-~~915~~2119. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.15 Indebtedness~~-~~ – Adequacy of Capital.

The amount of indebtedness to be included pursuant to T.C.A. §67-4-~~905(c)~~2107 shall not exceed the greater of the following amounts: (1) Excess of indebtedness over quick assets (cash, receivables, marketable investments), (2) Excess of book value (cost less accumulated depreciation) of capital assets (including inventories) per ending balance sheet of the return over net worth (including surplus reserves). If quick assets exceed the indebtedness to an affiliated corporation and the net worth exceeds the capital assets, the capital is adequate and no part of such indebtedness need be included. ~~If capital is inadequate, a schedule of determination must accompany the franchise-excise tax return.~~

Authority: T.C.A. §§67-1-102 ~~(a)~~ and 67-4-~~905(c)~~.2107. Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.18 Minimum Measure of Franchise Tax.

~~(1) As provided by T.C.A. §67-4-906 the measure of the franchise tax shall in no case be less than the year end book value (cost less depreciation) of real and tangible personal property owned in this state plus the rental value of such property used but not owned in this state determined by multiplying the net annual rental of real property by eight (8), the net annual rental of machinery and equipment used in manufacturing and processing by three (3), the net annual rental of furniture, office machinery and equipment by two (2), and the net annual rental of delivery or mobile equipment by one (1).~~

~~(2~~(1) Rentals included in the minimum measure of the franchise tax may be offset by subrentals only to the amount of rentals paid. To qualify as subrental, the sublessee must have the same rights as the lessee with respect to use of the property.

(2) If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.

(3) Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the franchise tax. Property in transit between the buyer and seller and shown on the books and records of the taxpayer in accordance with its regular accounting practices shall be included in the minimum measure of the franchise tax if it is destined to a Tennessee location.

(4) The value of any property while under construction must be included in the minimum measure of the franchise tax if there is actual utilization of such property by the ~~corporation~~taxpayer either in whole or in

part. Actual utilization of the construction in progress will depend upon whether or not the construction in progress is utilized in the particular business conducted by the corporation.

Example ~~(1):~~: A manufacturer is in the process of building or expanding its facilities. The construction in progress would not actually be utilized in conducting the business of manufacturing until put in service by the corporation.

Example ~~(2):~~: A corporation is in the business of building and selling homes and the construction in progress will ultimately be for sale or rental. All of the construction in progress is utilized in conducting the business of home building.

Example ~~(3):~~: A corporation is in the business of operating motels and has a facility under construction. The construction in progress would not actually be utilized in conducting the business of operating motels until put in service by the corporation.

Authority: T.C.A. §§67-1-102~~(a)~~ and 67-4-~~906~~2108. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.20 Actual Charitable Contributions.

In determining net earnings for the purpose of computing the excise tax, T.C.A. §67-4-~~805~~2006 requires the charitable contributions deduction claimed under Section 170 of the Internal Revenue Code to be added to federal taxable income; whereas, §67-4-~~805~~2006 permits a deduction for actual charitable contributions made by the ~~corporation~~taxpayer during the fiscal year. The term "actual charitable contributions" means all bona fide contributions expensed and paid in a given year without regard to any percentage as required under federal law. The same criteria used for federal purposes in determining whether or not a contribution is a bona fide contribution is used by this state; however only the book basis of property donated to charity is allowed as a deduction in determining net earnings for the purpose of computing the excise tax.

Authority: T.C.A. §§67-1-102~~(a)~~ and 67-4-~~805~~2006. Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.21 ~~Lose~~ Loss Carryovers.

(1) ~~(a)~~ Net operating losses ~~incurred during fiscal years ending prior to March 31, 1982,~~ may be carried forward ~~three (3~~fifteen (15) years as net operating loss carryovers.

~~(b) Net operating losses incurred during fiscal years ending on or after March 31, 1982, may be carried forward seven (7) years as net operating loss carryovers.~~

(2) The term "net operating loss" is defined by T.C.A. §67-4-~~805~~2006 of the excise tax law as the excess of allowable deductions over total income allocable to this state for the year of the loss. The loss is the same as that reported for federal income tax purposes before any operating loss adjustment and special deductions provided for in the Internal Revenue Code, and the loss is subject to the adjustments (additions and subtractions) provided for in §67-4-~~805~~2006. The amount of the loss that may be carried forward will be subject to the following adjustments:

(a) There shall be added to the net loss as determined for excise tax purposes~~,~~ all non-business earnings, all interest, dividends excluded from net earnings pursuant to §67-4-~~805~~2006 and any other income excluded from net earnings pursuant to §67-4-~~805~~2006.

(b) With respect to ~~corporations~~taxpayers doing business both within and without Tennessee, adjustment shall be made to reflect the apportionment of the loss on the basis of business done within and without the State of Tennessee during the loss year. After making the adjustment as provided in subparagraph (a) hereof, the loss deductible for Tennessee excise tax purposes shall be that portion of the total loss apportioned to this state by the applicable statutory apportionment formula.

(c) The net loss so determined must be offset against the net earnings from business done within the state for the succeeding year, and if not completely offset by the net earnings from business done within the state for such year, the remainder of such net loss may be offset against the net earnings from business done within the state during the following year. In no case may any portion of such loss be carried forward and used to offset net earnings for any period beyond the applicable net loss carryover period as provided in paragraph (1) above, and in applying the loss carryovers where losses for more than one year are involved, the most remote year will be applied first.

~~(d) Each corporation is considered a separate entity; therefore, in the case of mergers, consolidations, etc., no loss carryovers incurred by the predecessor corporation will be allowed as a deduction from net earnings on the tax return of the successor corporation.~~

~~(3) In the case of a change in accounting period resulting in a situation where the three-year carryover period ends during a fiscal period, the remaining loss carryover will be prorated over the number of months in the accounting period before the loss carryover period expires. Example: Franchise-excise tax returns filed by a corporation show the following:~~

~~Calendar year 1979-Loss available for carryover $30,000.00~~
~~Six Months Ended 6/30/80-Net Earnings for Excise Tax purposes $3,000.00~~
~~Year Ended 6/30/81-Net Earnings for Excise Tax purposes $12,000.00~~
~~Year Ended 6/30/82-Net Earnings for Excise Tax purposes $9,000.00~~
~~Year Ended 6/30/83-Net Earnings for Excise Tax purposes $8,000.00.~~

~~The $30,000.00 loss carryover would be applied as follows:~~

~~$3,000.00 to 6/30/80~~
~~$12,000.00 to 6/30/81~~
~~$9,000.00 to 6/30/82~~
~~$3,000.00 (6/12 of remaining $6,000.00) to 6/30/83.~~

Authority: T.C.A. §§67-1-102 and 67-4-~~805~~2006. Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984. Amendment filed March 9, 1990; effective April 23, 1990.

1320-06-01-.23 Business and Nonbusiness Earnings.

(1) (a) Business earnings are defined by T.C.A. §§67-4-~~804(1)~~2004 as earnings arising from transactions and activities in the regular course of the taxpayer's trade or business ~~and include~~or earnings from tangible and intangible property, if the acquisition, use, management, ~~and~~or disposition of the property ~~constitute~~constitutes an integral ~~parts~~part of the taxpayer's regular trade or business operations. In essence, all earnings which arise from the conduct of the trade or business operations of a taxpayer are business earnings. For purposes of administration of T.C.A. §67-4-~~801~~2001 et seq., the income of the taxpayer is business earnings unless clearly classifiable as nonbusiness earnings.

(b) Nonbusiness earnings means all income other than business earnings.

(c) The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., is not determinative of whether income is business or nonbusiness earnings. Income of any type or class and from any source is business earnings if it arises from transactions and activity occurring in the regular course of trade or business. Accordingly, the critical element in determining whether income is "business earnings" or "nonbusiness earnings" is the identification of the transactions and activity which are elements of a particular trade or business. In general, all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole

constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of, a trade or business.

(d) A taxpayer may have more than one regular trade or business in determining whether income is business earnings.

(2) Business and Nonbusiness Earnings: – Application of Definitions. The following are rules and examples for determining whether particular income is business or nonbusiness earnings. (The examples used throughout these regulations are illustrative only and do not purport to set forth all pertinent facts.)

(a) Rents from Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property with respect to which the rental income was received is used in the taxpayer's trade or business or ~~incidental thereto and therefore is includable in the property factor under Rule 1320-6-1-.27~~if the rental income from the use or management of the property constitutes an integral part of the taxpayer's regular trade or business operations.

Example 1: The taxpayer operates a multi-state car rental business. The income from car rentals is business earnings.

Example 2: The taxpayer is engaged in the heavy construction business in which it uses equipment such as cranes, tractors, and earthmoving vehicles. The taxpayer makes short-term leases of the equipment when particular pieces of equipment are not needed on any particular project. The rental income is business earnings.

~~Example 3: The taxpayer operates a multi-state chain of grocery stores. It purchases as an investment an office building in another state with surplus funds and leases the entire building to others. The net rental income is not business income of the grocery store trade or business. Therefore, the net rental income is non-business earnings.~~

~~Example 4: The taxpayer operates a multi-state chain of men's clothing stores. The taxpayer invests in a twenty-story office building and uses the street floor as one of its retail stores and the second floor for its general corporate headquarters. The remaining eighteen (18) floors are based to others. The rental of the eighteen (18) floors is not incidental to but rather is separate from the operation of the taxpayer's trade or business. The net rental income is not business income of the clothing store trade or business. Therefore, the net rental income is non-business earnings.~~

~~Example 5~~Example 3: The taxpayer constructed a plant for use in its multi-state manufacturing business, and twenty (20) years later the plant was closed and put up for sale. The plant was rented for a temporary period from the time it was closed by the taxpayer until it was sold eighteen (18) months later. The rental income is business income and the gain on the sale of the plant is business earnings.

~~Example 6: The taxpayer operates a multi-state chain of grocery stores. It owned an office building which it occupied as its corporate headquarters. Because of inadequate space, taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an investment company under a five-year lease. Upon expiration of the lease, taxpayer sold the building at a gain (or loss). The net rental income received over the leased period is non-business and the gain (or loss) on the sale of the building is non-business earnings.~~
Example 4: The taxpayer is a heavy machinery manufacturer. The taxpayer enters into a complicated multi-million dollar deal to acquire the manufacturing assets of another, similar business. As a result of the acquisition, the taxpayer becomes the owner of a small, roadside market in Tennessee. The market is being leased by a third party lessee for $1,000 per month. The taxpayer acquired the assets of the other company solely to expand its manufacturing operations. It had never operated the market and has no intent to engage in the business of leasing commercial real estate. The Taxpayer does not own any other similar property that it leases to others. The taxpayer intends to sell the market as soon as the current lease expires. The rental income from the market is de minimis in relation to that derived from the taxpayer's manufacturing operations. Under these circumstances, the rental income is nonbusiness earnings. The acquiring taxpayer would also exclude the market in the property factor for

purposes of the apportionment formula, and would not claim the expenses relative to the market as business expenses.

(b) Gains or Losses from Sales of Assets. As a general rule, gain or loss from the sale, exchange or other ~disposition of real or tangible or intangible personal property constitutes business earnings if the property while owned by the taxpayer was used in the taxpayer's trade or business operations, ~~unless such property is sold in a complete liquidation of the business and the business ceases all~~or if the income from the disposition of the property constitutes an integral part of the taxpayer's regular trade or business operations.

Example 1: In conducting its multi-state manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from those sales constitute business earnings.

Example 2: The taxpayer constructed a plant for use in its multi-state manufacturing business and twenty (20) years later sold the property at a gain while it was in operation by the taxpayer. The gain is business earnings.

Example 3: Same as two (2), except that the plant was closed and put up for sale but was not in fact sold until a buyer was found eighteen (18) months later. The gain is business earnings.

Example 4: Same as two (2), except that the plant was rented while being held for sale. The rental income is business income and the gain on the sale of the plant is business earnings.

~~Example 5: Same as two (2), except that the plant was sold in complete liquidation of its assets when the business ceased all operations. The gun is non-business earnings.~~

~~Example 6: The taxpayer operated a multi-state chain of grocery stores. It owned an office building which it occupies as its corporate headquarters. Because of inadequate space, taxpayer acquired a new and larger building elsewhere for its corporate headquarters. The old building was rented to an unrelated investment company under a five (5) year lease. Upon expiration of the lease, taxpayer sold the building at a gain (or loss). The gain (or loss) on the sale is nonbusiness income and the rental income received over the lease period is non-business earnings.~~

(c) Interest. Interest income is business earnings where the intangible with respect to which the interest was received arises out of or was created in the regular course of the taxpayer's trade or business operations or where income from the ~~purpose for acquiring and holding~~use or management of the intangible ~~is related to or incidental to such~~constitutes an integral part of the taxpayer's regular trade or business operations.

Example 1: The taxpayer operates a multi-state chain of department stores, selling for cash and on credit. Service charges, interest, or time-price differentials and the like are received with respect to installment sales and revolving charge accounts. These amounts are business earnings.

Example 2: The taxpayer conducts a multi-state manufacturing business. During the year the taxpayer receives a federal income tax refund and collects a judgment against a debtor of the business. Both the tax refund and the judgment bore interest. The interest income is business earnings.

Example 3: The taxpayer is engaged in a multi-state manufacturing and wholesaling business. In connection with that business, the taxpayer maintains special accounts to cover such items as workmen's compensation claims, rain and storm damage, machinery replacement, etc. The moneys in those accounts are invested at interest. Similarly, the taxpayer temporarily invests funds intended for payment of federal, state and local tax obligations. The interest income is business earnings.

Example 4: The taxpayer is engaged in a multi-state money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's

checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business earnings.

~~Example 5: The taxpayer is engaged in a multi-state manufacturing and selling business. The taxpayer has working capital and extra cash totaling $200,000 which it regularly invests in short-term interest bearing securities. The interest income is business earnings.~~

~~Example 6: In January the taxpayer sold all the stock of a subsidiary for $20,000,000. The funds are placed in an interest bearing account pending a decision by management as to how the funds are to be utilized. The interest income is non-business earnings.~~

(d) Dividends. Dividends are business earnings where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the ~~purpose for acquiring and holding the stock is related to or incidental to such~~dividend income from the use or management of the stock constitutes an integral part of the taxpayer's regular trade or business operations.

Example 1: The taxpayer operates a multi-state chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business earnings.

Example 2: The taxpayer is engaged in a multi-state manufacturing and wholesaling business. In connection with that business the taxpayer maintains special accounts to cover such items as workmen's compensation claims, etc. A portion of the moneys in those accounts is invested in interest bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and any dividends are business earnings.

Example 3: The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayers acquired the stock in order to obtain a source of supply of materials used in its manufacturing business. The dividends are business earnings.

Example 4: The taxpayer is engaged in a multi-state heavy construction business. Much of its construction work is performed for agencies of the federal government and various state governments. Under state and federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. In order to maintain an adequate bonding capacity, the taxpayer holds various stocks and interest bearing securities. Both the interest income and any dividends received are business earning.

Example 5: The taxpayer received dividends from the stock of its subsidiary or affiliate which acts as the marketing agency for products manufactured by the taxpayer. The dividends are business earnings.

~~Example 6: The taxpayer is engaged in a multi-state glass manufacturing business. It also holds a portfolio of stock and interest bearing securities, the acquisition and holding of which are unrelated to the manufacturing business. The dividends and interest income received are nonbusiness earnings.~~

(e) Patent and Copyright Royalties. Patent and copyright royalties are business income where the ~~patient~~ patent or copyright with respect to which the royalties were received arises out of or was created in the regular course of the taxpayer's trade or business ~~-~~operations or where the ~~purposes for acquiring and holding~~royalty income from the use or management of the patent or copyright ~~is related to or incidental to such~~constitutes an integral part of the taxpayer's regular trade or business operations.

Example 1: The taxpayer is engaged in the multi-state business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on certain of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties received by the taxpayer are business earnings.

Example 2: The taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are thereafter used by the taxpayer in its business. Any royalties received on these copyrights are business earnings.

~~Example 3: Same as example two (2), except that acquired company also held the patent on a type of phonograph needle. The taxpayer does not manufacture or sell phonographs or phonograph equipment. Any royalties received on the patent would be non-business earnings.~~

(3) Proration of Deductions. As a general rule, the allowable deductions for expenses of a taxpayer are related to both business and non-business earnings. Such items as administrative costs, taxes, insurance, repairs, maintenance, and depreciation are to be considered. In the absence of evidence to the contrary, it is assumed that the expenses related to non-business rental earnings will be an amount equal to 50% of such earnings and that expenses related to other non-business earnings will be an amount equal to 5% of such earnings.

~~(4) The provisions of Rule 1320-6-1-.23 will be applied to all fiscal years ending on or after July 15, 1991.~~

Authority: T.C.A. §§67-1-102~~(a)~~, 67-4-~~804~~2004, and 67-4-~~809~~2010. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984. Amendment by Public Chapter 575; effective July 1, 1986. Amendment filed February 14, 1991; effective March 31, 1991.

1320-06-01-.27 Property Factor.

(1) In General. The property factor of the apportionment formula for the trade or business of the taxpayer shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of such trade or business. The term "real and tangible personal property" ~~include~~includes land, buildings, machinery, stocks of goods, equipment, and other real and tangible personal property but does not include coin or currency. Property used in connection with the production of nonbusiness earnings shall be excluded from the property factor. Property used both in the ~~regular course~~production of ~~taxpayer's trade or~~ business earnings and in the production of nonbusiness earnings shall be included in the property factor only to the extent the property is used in the ~~regular course~~production of ~~taxpayer's trade or~~ business earnings. The method of determining that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor. See Rule 1320-~~6-1~~06-01-.29.

(2) Property Factor~~:~~ – Property Used for the Production of Business Earnings. Property shall be included in the property factor if it is actually used or is available for use or capable of being used during the tax period ~~in~~for the ~~regular course~~production of ~~the trade or~~ business ~~of the taxpayer~~earnings. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includable in the factor. Property or equipment under construction during the tax period (except inventoriable goods in process)~~,~~ shall be excluded from the factor until such property is actually used ~~in the regular course of the trade or~~to produce business ~~of the taxpayer.~~earnings. If the property is partially used ~~in the regular course of the trade or~~to produce business ~~of the taxpayer~~earnings while under construction, the value of the property to the extent used shall be included in the property factor. Property used ~~in the regular course of the trade or~~to produce business ~~of the taxpayer~~earnings shall remain in the property factor until its permanent withdrawal is established by an identifiable event such as its conversion to the production of nonbusiness earnings~~, its sale, or the lapse of an extended period of time (normally, five years) during which the property is held for~~ or its sale.

Example ~~(a)~~:1: Taxpayer closed its manufacturing plant in State X and held such property for sale. The property remained vacant until its sale one year later. The value of the manufacturing plant is included in the property factor until the plant is sold.

Example ~~(b)~~:2: Same as above except that the property was rented until the plant was sold. The plant is included in the property factor until the plant is sold.

~~Example (c): Taxpayer closed its manufacturing plant and leased the building under a five-year lease. The plant is included in the property factor until the commencement of the lease.~~

~~Example (d): The taxpayer operates a chain of retail grocery stores. Taxpayer closed Store A, which was then remodeled into three small retail stores such as a dress shop, dry cleaning, and barber shop, which were leased to unrelated parties. The property is removed from the property factor on the date the remodeling of Store A commenced.~~

~~(3) Property Factor: Consistency In Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or of excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.~~

~~(4~~

(3) Property Factor ~~:~~ Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period ~~in the regular course of the trade or~~to produce business ~~of the taxpayer~~earnings. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by a taxpayer in the denominator of its property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks or leased electronic equipment which are located within and without this state during ~~leased electronic equipment which are located within and without this state during~~ the tax period shall be determined for purposes of the numerator of the factor on the basis of total time within the state during the tax period. An automobile assigned to a traveling employee shall be included in the numerator of the factor of the state to which the employee's compensation is assigned under the payroll factor or in the numerator of the state in which the automobile is licensed.

(4) Zero Denominator. In the use of any apportionment formula, where the denominator of a factor is zero, such factor must be eliminated entirely and the average then computed from the remaining factor or factors.

Authority: *T.C.A. §§67-1-102 and 67-4-2012. ~~01(2).~~* Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977.

1320-06-01-.28 Property Factor ~~-~~ – Valuation.

(1) Valuation of Owned Property.

(a) Property owned by the taxpayer shall be valued at its original cost. As a general rule "original cost" is deemed to be the basis of the property for federal tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc. If original cost of property is unascertainable, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer.

Example 1: The taxpayer acquired a factory building in this state at a cost of $500,000 and 18 months later expended $100,000 for major remodeling of the building. Taxpayer files its return for the current taxable year on the calendar-year basis. Depreciation deduction in the amount of $22,000 was claimed on the building for its return for the current taxable year. The value of the building includable in the numerator and denominator of the property factor is $600,000 as the depreciation deduction is not taken into account in determining the value of the building for purposes of the factor.

Example 2: During the current taxable year, X Corporation merges into Y Corporation in a ~~taxfree~~tax-free reorganization under the Internal Revenue Code. At the time of the merger, X Corporation owns a factory which X built five years earlier at a cost of $~~1~~1,000,000. X has been depreciating the factory at the rate of two percent per year, and its basis in X's hands at the time of the merger is $900,000. Since the property is acquired by Y in a transaction in which, under the Internal Revenue Code, its basis in Y's hands is the same as its basis in X's, Y includes the

property in Y's property factor at X's original cost, without adjustment for depreciation, i.e., $1,000,000.

~~Example 3: Corporation Y acquires the assets of Corporation X in a liquidation by which Y is entitled to use its stock cost as the basis of the X assets under §334 (b)(2) of the 1954 Internal Revenue Code (i.e., stock processing 80 percent control is purchased and liquidated within two years). Under these circumstances, Y's cost of the assets is the purchase price of the X stock, prorated over the X assets.~~

(b) Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

(c) Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

(2) Valuation of Rented Property.

(a) Property rented by the taxpayer is valued at eight times the net annual rental rate. The net annual rental rate for any item of rented property is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. ~~(See rule 1320-6-1-.35 (2)) for special rules where the use of such net annual rental rate produced a negative or clearly inaccurate value or where property is used by the taxpayer at no charge or rented at a nominal rental rate.) Subrents are not deducted when the subrents constitute business earnings because the property which produces the subrents is used in the regular course of the trade or business of the taxpayer when it is producing such earnings. Accordingly there is no reduction in its value~~Subrents are not deducted when the subrents constitute business earnings.

Example 1: The taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business earnings they are not deducted from rent paid by the taxpayer for the ~~foodmarket~~food market.

~~Example 2: The taxpayer rents a 20-story office building and uses the lower two stories for its general corporation headquarters. The remaining 18 floors are subleased to others. The rental of the eighteen floors is separate from the operation of the taxpayer's trade or business. Since the subrents are nonbusiness earnings they are to be deducted from the rent paid by the taxpayer.~~

(b) "Annual rental rate" is the amount paid as rental for property for a 12-month period (i.e., the amount of the annual rent). Where property is rented for less than a 12-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of 12 or more months and the current tax period covers a period of less than 12 months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than 12 months, the rent shall not be annualized beyond its term. Rent shall not be annualized because of the uncertain duration when the rental term is on a month to month basis. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.

Example 1: Taxpayer A which ordinarily files its returns based on a calendar year is merged into Taxpayer B on April 30. The net rent paid under a lease with five (5) years remaining is $2,500 a month. The rent for the tax period January 1 to April 30 is $10,000. After the rent is annualized the net rent is $30,000 ($2,500 X 12).

Example 2: Same facts as in Example 1, except that the lease would have terminated on August 31. In this case the annualized net rent is $20,000 ($2,500 X 8).

(c) "Annual rent" is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer or for its benefit for the use of the property and includes:

1. Any amount payable for the use of real or tangible personal property, or any part thereof whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

   Example: A taxpayer~~,~~ pursuant to the terms of a lease, pays a lessor $1,000 per month as a base rental and at the end of the year pays the lessor one percent of its gross sales of $400,000. The annual rent is $16,000 ($12,000 plus one percent of $400,000 or $4,000).

2. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined by consideration of the relative values of the rent and the other items.

   Example (i): A taxpayer, pursuant to the terms of a lease, pays the lessor $12,000 a year rent plus taxes in the amount of $2,000 and interest on a mortgage in the amount of $1,000. The annual rent is $15,000.

   Example (ii): A taxpayer stores part of its inventory in a public warehouse. The total charge for the year was $1,000 of which $700 was for the use of storage space and $300 for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is $700. "Annual rent" does not include incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc.

(d) Leasehold improvements shall, for the purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

Authority: T.C.A. §§67-1-102~~(a)~~ and 67-4-~~811~~2012. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.29 Property Factor~~:~~ – Averaging Property Values.

(1) As a general rule the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and ending of the tax period. However, the Commissioner of Revenue may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

(2) Averaging by monthly values will generally be applied if substantial fluctuations in the values of the property exist during the tax period or where property is acquired after the beginning of the tax period or disposed of before the end of the tax period.

Example: The monthly value of the taxpayer's property was as follows:

January	$2,000
February	2,000
March	3,000
April	3,500
May	4,500
June	10,000
	$25,000
July	15,000
August	17,000
September	23,000
October	25,500
November	13,000
December	2,000

	$95,000
TOTAL	$120,000

The average value of the taxpayer's property includable in the property factor for the income year is determined as follows:

$120,000 ÷ 12 = $10,000

(3) Averaging with respect to rented property is achieved automatically by the method of determining the net annual rental rate of such property as set forth in Rule 1320-~~6-1~~06-01-.28(b).

Authority: T.C.A. §§67-~~101(2).~~1-102 and 67-4-2012. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977.

1320-06-01-.30 Payroll Factor.

(1) In General.

(a) The payroll factor of the apportionment formula shall include the total amount paid by the taxpayer in the regular course of its trade or business for compensation during the tax period.

(b) The total amount "paid" to employees is determined upon the basis of the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation under such method for unemployment compensation purposes. The compensation of any employee on account of activities which are connected with the production of nonbusiness earnings shall be excluded from the factor.

Example 1: The taxpayer used some of its employees in the construction of a storage building which, upon completion, is used in the regular course of taxpayer's trade or business. The wages paid to those employees are treated as a capital expenditure by the taxpayer. The amount of such wages is included in the payroll factor.

Example 2: The taxpayer owns various securities which it holds as an investment separate and apart from its trade or business. The management of the taxpayer's investment portfolio is the only duty of Mr. X, an employee. The salary paid to Mr. X is excluded from the payroll factor.

(c) The term "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered paid directly include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services provided that such amounts constitute income to the recipient under the federal Internal Revenue Code. In the case of employees not subject to the federal Internal Revenue Code, e.g., those employed in foreign countries, the determination of whether such benefits or services would constitute income to the employees shall be made as though such employees were subject to the federal Internal Revenue Code.

(d) The term "employee" means any officer of a corporation, or any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if he is included by the taxpayer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act; except that, since certain individuals are included within the term "employees" in the Federal Insurance Contributions Act who would not be employees under the usual common law rule, it may be established that a person who is included as an employee for purposes of the Federal Insurance Contributions Act is not an employee for purposes of this regulation.

~~(e) In filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.~~

(2) Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period. Accordingly, ~~if~~ compensation paid to employees whose services are performed entirely in a state where the taxpayer is immune from taxation, for example, by Public Law 86-272, ~~are~~is included in the denominator of the payroll factor.

Example: A taxpayer has employees in its state of legal domicile (State A) and is taxable in State B. In addition, the taxpayer has other employees whose services are performed entirely in State C where the taxpayer is immune from taxation by Public Law 86-272. As to these latter employees, the compensation will be assigned to State C where their services are performed (i.e., included in the denominator - but not the numerator - of the payroll factor) even though the taxpayer is not taxable in State C.

(3) Numerator. The numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests in T.C.A. §67-4-~~811(f)~~2012 to be applied in determining whether compensation is paid in this state are derived from the Model Unemployment Compensation Act. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes ~~constitutes~~constitute compensation paid in this state except for compensation excluded under Rule 1320-~~6-1~~06-01-.30. The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

(4) Zero Denominator. In the use of any apportionment formula, where the denominator of a factor is zero, such factor must be eliminated entirely and the average then computed from the remaining factor or factors.

Authority: T.C.A. §§67-1-102~~(a)~~ and 67-4-~~811~~2012. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.31 Payroll Factor~~:~~ – Compensation Paid In This State.

(1) Compensation is paid in this state if any one of the following tests, applied consecutively, are met:

(a) The employee's service is performed entirely within the state.

(b) The employee's service is performed both within and without the state, but the service performed without the state is incidental to the employee's service within the state. The ~~work~~word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction.

(c) If the employee's services are performed both within and without this state, the employee's compensation will be attributed to this state:

1. if the employee's base of operations is in this state; or

2. if there is no base of operations in any state in which some part of the service is performed, but the place from which the service is directed or controlled is in this state; or

3. if the base of the operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

(2) The term "base of operations" is the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or

communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of his trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

Authority: T.C.A. ~~§§~~67-~~101(2)~~,1-102 and 67-4-2012. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977.

1320-06-01-.32 Sales Factor.

(1) In General.

(a) T.C.A. §67-4-~~804(a)(6)~~2004 defines the term "sales" to mean all gross receipts of the taxpayer not allocated under §67-4-~~810~~2011. Thus, for the purposes of the sales factor of the apportionment formula, the term "sales" means all gross receipts derived by the taxpayer from transactions and activity ~~in the regular course of its trade or~~producing business earnings. The following are rules for determining "sales" in various situations:

1. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods ~~-~~or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers ~~in the ordinary course of its trade or business.~~. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (including sales taxes) shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

2. In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" include the entire reimbursed cost~~,~~, plus the fee.

3. In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contract, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions~~,~~, and similar items.

4. In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

5. In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

6. If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales." For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(b) In some cases certain gross receipts should be disregarded in determining the sales factor in order that the apportionment formula will operate fairly to apportion to this state the business earnings of the taxpayer's trade or business. For example, where substantial amounts of gross receipts arise from the sale of fixed assets used in the trade or business, such as the sale of a factory or plant, gross receipts will be excluded from the sales factor. In order to give proper recognition to the apportionment of business earnings (loss) in such instances, the net gain arising from the transaction or activity will be included in the sales factor.

~~(c) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior year, the taxpayer shall disclose in the return for the current year the nature and extent of the modification. (2) Sales~~

~~Factor: Denominator. The denominator of the sales factor shall include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business. (3) Sales Factor: Numerator. The numerator of the sales factor shall include the gross receipts attributable to this state and derived by the taxpayer from transactions and activity in the regular course of its trade or business. All interest income, service charges, carrying charges, or time-price differential charges incidental to such gross receipts shall be included regardless of the place where the accounting records are maintained or the location of the contract or other evidence of indebtedness.~~

(2) Zero Denominator. In the use of any apportionment formula, where the denominator of a factor is zero, such factor must be eliminated entirely and the average then computed from the remaining factor or factors.

Authority: T.C.A. §§67-1-102~~(a)~~, 67-4-~~804~~2004, and 67-4-~~810~~2011. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.33 Sales Factor~~-~~ – Sales of Tangible Personal Property.

(1) Sales Of Tangible Personal Property Are In This State.

(a) Gross receipts from the sales of tangible personal property (except sales to the United States Government; see Rule 1320-~~6-1~~06-01-.33(2)) are in this state if the property is delivered or shipped to a purchaser within this state regardless of the f.o.b. point or other conditions of sale.

(b) Property shall be deemed to be delivered or shipped to a purchaser within this state if the recipient is located in this state, even though the property is ordered from outside this state.

Example: The taxpayer, with inventory in State A, sold $100,000 of its products to a purchaser having branch stores in several states including this state. The order for the purchase was placed by the purchaser's central purchasing department located in State B. $25,000 of the purchase order was shipped directly to purchaser's branch store in this state. The branch store in this state is the "purchaser within this state" with respect to $25,000 of the taxpayer's sales.

(c) Property is delivered or shipped to a purchaser within this state if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

Example: The taxpayer makes a sale to a purchaser who maintains a central warehouse in this state at which all merchandise purchases are received. The purchaser reships the goods to its branch stores in other states for sale. All of taxpayer's products shipped to the purchaser's warehouse in this state ~~is~~are property "delivered or shipped to a purchaser within this state".

(d) The term "purchaser within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the purchaser, delivers to or has the property shipped to the ultimate recipient within this state.

Example: A taxpayer in this state sold merchandise to a ~~purchase~~purchaser in State A. Taxpayer directed the manufacturer or supplier of the merchandise in State B to ship the merchandise to the purchaser's customer in this state pursuant to purchaser's instructions. The sale by the taxpayer is "in this state".

(e) ~~(e)~~ When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, the sales are in this state.

Example: The taxpayer, a produce grower in State A, begins shipment of perishable produce to the purchaser's place of business in State B. While en route the produce is diverted to the purchaser's place of business in this state ~~in which~~where ~~state~~ the taxpayer is subject to tax. The sale by the taxpayer is attributed to this state.

(2) Sales Factor~~:~~ – Sales of Tangible Personal Property~~:~~ to United States Government in this State. Gross receipts from the sales of tangible personal property to the United States Government are in this state if the property is shipped from an office, store, warehouse, factory, or other place of storage in this state. For the purposes of this regulation, only sales for which the United States Government makes direct payment to the seller pursuant to the ~~taxes~~terms of a contract constitute sales to the United States Government. Thus, as a general rule, sales by a subcontractor to the prime contractor, the party to the contract with the United States Government, do not constitute sales to the United States Government. However, sales made to a prime contractor will be considered sales to the United States Government where the prime contractor is authorized to act as agent for the United States Government and for this reason ~~only~~ qualifies to purchase only under Federal Supply Contracts entered into between the taxpayer and the United States Government.

Example ~~(a):~~1: A Taxpayer contracts with General Services Administration to deliver X number of trucks which were paid for by the United States Government. The sale is a sale to the United States Government.

Example ~~(b):~~2: The taxpayer as a subcontractor to a prime contractor with the National Aeronautics and Space Administration contracts to build a component of a rocket for $1,000,000. The sale by the subcontractor to the prime contractor is not a sale to the United States Government.

Authority: T.C.A. §§67-1-102 ~~(a)~~ and 67-4-~~811~~2012. Administrative History: Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.34 Sales Factor~~: Sales Other Than Sales~~ – Qualified Member of ~~of Tangible Personal Property in this State~~a Qualified Group.

(1) In General~~.~~ T.C.A. §67-4-~~811(i) provides~~2012(i) states that for ~~the inclusion in~~any qualified member of a qualified group, the numerator of the sales factor ~~of gross~~equals the receipts from ~~transactions other than~~ all sales of tangible personal property ~~(including transactions with the United States Government); under this section gross receipts are~~ attributed to ~~this state if~~Tennessee under the sourcing rules for tangible personal property plus the arithmetical average of receipts from all sales other than sales of tangible personal property that are in Tennessee as determined under (1) market-based sourcing, and (2) where the earnings producing activity ~~which gave rise to the receipts~~ is performed ~~wholly within this state. Also, gross receipts are attributed to this state if, with respect to a particular item of income, the earnings producing activity is performed within and without this state but the~~(a) in this state or (b) both in and outside of Tennessee and a greater proportion of the earnings-producing activity is performed in ~~this~~Tennessee than any other state, based on ~~costs~~cost of performance.

(2) Earnings Producing Activity; Defined. The term "earnings producing activity" applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gains or profit. Such activity does not include transactions and activities performed on behalf of a taxpayer, such as those conducted on its behalf by an independent contractor. Accordingly, the earnings producing activity includes but is not limited to the following:

(a) The rendering of personal services by employees or the utilization of tangible and intangible property by the taxpayer in performing a service.

(b) The sale, rental, leasing, or licensing or other use of real property.

(c) The rental, leasing, licensing or other use of tangible personal property.

(d) The sale, licensing or other use of intangible personal property. The mere holding of intangible personal property is not, of itself, an earnings producing activity.

(3) Costs of Performance; Defined. The term "costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

~~(4) Application~~

~~(a) In General. Receipts (other than from sales of tangible personal property) in respect to a particular earnings producing activity are in this state if:~~

~~1. the earnings producing activity is performed wholly within this state; or~~

~~2. the earnings producing activity is performed both in and outside this state and a greater proportion of the earnings producing activity is performed in this state than in any other state, based on costs of performance.~~

~~(b) Special Rules. The following are special rules for determining when receipts from the earnings producing activities described below are in this state:~~

~~1. Gross receipts from the sale, lease, rental or licensing of real property are in this state if the real property is located in this state.~~

~~2. Gross receipts from the rental, lease or licensing of tangible personal property are in this state if the property is located in this state. The rental, lease, licensing or other use of tangible personal property in this state is a separate earnings producing activity from the rental, lease, licensing or other use of the same property while located in another state; consequently, if property is within and without this state during the rental, lease or licensing period, gross receipts attributable to this state shall be measured by the ratio which the time the property was physically present or was used in this state bears to the total time or use of the property everywhere during such period.~~

~~Example: Taxpayer is the owner of 10 railroad cars. During the year, the total of the days each railroad car was present in this state was 50 days. The receipts attributable to the use of each of the railroad cars in this state are a separate item of income and shall be determined as follows:~~

$$\frac{(10 \times 50 = 500)}{3650} \times \text{Total Receipts} = \text{Receipts Attributable to this State}$$

~~3. Gross receipts for the performance of personal services are attributable to this state to the extent such services are performed in this state. If services relating to a single item of income are performed partly within and partly without this state, the gross receipts for the performance of such services shall be attributable to this state only if a greater portion of the services were performed in this state, based on costs of performance. Usually where services are performed partly within and partly and partly without this state, the services performed in each state will constitute a separate earnings producing activity; in such case the gross receipts for the performance of services attributable to this state shall be measured by the ratio which the time spent in performing such services in this state bears to the total time spent in performing such services everywhere. Time spent in performing services includes the amount of the time expended in the performance of a contract or other obligation which gives rise to such gross receipts. Personal service not directly connected with the performance of the contract, or other obligation, as for example, time expended in negotiating the contract, is excluded from the computation.~~

~~Example (i): Taxpayer, a road show, gave theatrical performances at various locations in State X and in this state during the tax period. All gross receipts from performances given in this state are attributed to this state.~~

~~Example (ii): The taxpayer, a public opinion survey corporation, conducted a poll by its employees in State X and in this state for the sum of $9,000. The project required 600 man-hours to obtain the basic data and prepare the survey report. Two hundred of the 600 man-hours were expended in this state. The receipts attributable to this state are $3.000.~~

$$\frac{(200 \text{ man-hours} \times \$9{,}000)}{600 \text{ man-hours}}$$

Authority: T.C.A. §§67-1-102 ~~(a)~~ and 67-4-~~811~~2012. Administrative History: Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.35 ~~Special Rules~~Variances.

(1) ~~In General.~~

~~(a)~~ T.C.A. §§67-~~1-9114~~-2112 and 67-4-~~8122~~2014 provide that if the allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Commissioner of Revenue may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

~~1.~~(a) Separate accounting;

~~2.~~(b) The exclusion of any one or more of the factors;

~~3.~~(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

~~4.~~(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's capital and net earnings for purposes of computing franchise and excise taxes. §§67-4-~~911~~2112 and 67-4-~~812~~2014 permit a departure from the allocation and apportionment provisions only in limited and specific cases. §§67-~~14~~-~~911~~2112 and 67-4-~~812~~2014 may be invoked only in specific cases where unusual fact situations (which ordinarily will be unique and nonrecurring) produce incongruous results under the apportionment and allocation provisions contained in the Franchise and Excise Tax Laws.

(~~b~~2)As provided by law, the Commissioner ~~of Revenue~~ is given authority to require combined reports covering members of an affiliated group of corporations. In the event of inter-company activity in the manufacture, production or sales of products, the Commissioner may require a combined report if such is necessary to obtain an equitable and appropriate result.

(~~c~~3)Application for relief must be addressed to the Commissioner ~~of Revenue~~ with the filing of a petition, in writing, setting forth the reasons why application of the statutory allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business activity in this state. It must be shown by clear and cogent evidence that peculiar or unusual circumstances exist which would cause application of the said statutory provisions to work a hardship or injustice. Such application must also include a proposed alternative method of allocation or apportionment to be used by the corporation, and be submitted by the taxpayer on or before the statutory due date of the return. In the event that a variation from the statutory provisions is adopted, then such method shall continue in effect so long as the circumstances justifying the variation remain substantially unchanged. It shall be the duty of the taxpayer to furnish each subsequent year such information with the filing of its return as will establish the fact that the circumstances remain substantially unchanged.

~~(2) Property Factor. The following special rates are established in respect to the property factor of the apportionment formula:~~

~~(a) If the subrents taken into account in determining the net annual rental rate under rule 1320-6-1-.28(2)(b) produce a negative or clearly inaccurate value for any item of property, another method which will properly reflect the value of rented property may be required by the Commissioner of Revenue or requested by the taxpayer. In no case, however, shall such value be less than an amount which bears the same ratio to the annual rental rate paid by the taxpayer for such property as the fair market value of that portion of the property used by the taxpayer bears to the total fair market value of the rented property.~~

~~Example: The taxpayer rents a 10-story building at an annual rental rate of $1,000,000. Taxpayer occupies two stories and sublets eight stories for $1,000,000 a year. The net annual rental rate of the taxpayer must be less than two-tenths of the taxpayer's annual rental rate for the entire year, or $200,000. (b) If property owned by others is used by the taxpayer at no charge or rented by the~~

~~taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of a reasonable market rental rate for such property.~~

~~(3) Apportionment Of Common Carriers' Earnings. In lieu of the statutory three (3) factor formula of property, payroll and sales, taxpayers whose principal business in this state is that of a common carrier of persons or property for hire are required to apportion their earnings under the provisions of T.C.A. §67-4-814. Specific two (2) factor formulas are provided for railroads, motor carriers and pipelines which basically consist of a factor of gross receipts from operations on business beginning and ending in this state without entering or passing through any other state as compared to total gross receipts from such operations within and without this state and a factor of mileage (rail, highway and pipeline) owned and operated and leased and operated in this state as compared with the total of such mileage within and without this state. Taxpayers engaged in transporting passengers and property by both rail and motor are subject to a one (1) factor formula consisting of a combination of the mileage factors provided for railroads and motor carriers in §57-4-614. Reference should be made to §67-4-814 for specific definition of the apportionment factors, and the term "total mileage" as applied to common carriers shall be taken to mean franchise miles as provided by law.~~

~~(4) Apportionment Of Insurance Companies' Earnings. As provided by §67-4-816 Tennessee insurance companies shall pay the excise tax on net earnings proportioned to premiums on policies on persons and property in this state.~~

~~(5) Zero Denominator. In the use of any apportionment formula, where the denominator of a factor is zero, such factor must be eliminated entirely and the average then computed from the remaining factor or factors.~~

Authority: T.C.A. §§67-1-102~~(a)~~, ~~67-4-*905*,~~ 67-4-2012, 67-4-2013, 67-4-2014, and 67-4-~~*811, 67-4-812, 67-4-814, 67-4-815, 67-4-816, and 67-4-910.*~~2111. Administrative History: Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.38 Constructing or Improving Real Property – Special Apportionment Rules.

~~(1) In General - Corporations engaged in the business of constructing or improving real property for others shall report earnings as set out herein.~~ Earnings from construction contracts ~~begun prior to July 15, 1986, shall be reported on a separate accounting basis as provided at paragraph (2). Earnings from construction contracts begun on or after July 15, 1986, shall be reported on an apportionment basis as provided at paragraph (3). Business earnings from construction contracts for Tennessee shall be the sum of the net earnings calculated under paragraphs (2) and (3) of this rule.~~

~~(2) Separate Accounting - The provisions of this paragraph shall apply only to the construction or improvement of real property begun prior to July 15, 1986.~~

~~(a) In the event a corporation has active in the tax year construction contracts begun prior to July 15, 1986 and also construction contracts begun after that date, overhead~~ must be ~~prorated. Overhead expenses for the tax year shall be prorated to contracts begun prior to July 15, 1986 by the ratio of the sum of direct construction costs incurred in the tax year for jobs began prior to July 15, 1986 as to the sum of direct construction costs incurred in the tax year for all contracts. Overhead expense ant direct construction costs for this purpose are as defined in subparagraph (b). The overhead expense thus obtained is then apportioned in as provided in subparagraph (b).~~

~~(b) Corporations engaged in the business of constructing or improving real property for others and required to report earnings on a separate accounting basis as provided by Section 67-4-815 will apportion overhead expenses to Tennessee jobs by a ratio of the sum of certain direct construction costs in Tennessee as to the sum total of such direct construction costs everywhere. Overhead expenses for this purpose are defined as all expenses (general, administrative, etc.) incurred during the fiscal year that cannot be applied directly to the job. Direct construction costs for this purpose shall be limited to the following:~~

~~1. Payroll directly incurred on the job,~~

~~2. Materials directly incurred on the job, and~~

~~3. Subcontracts directly incurred on the job.~~

~~Once the direct construction costs percentage is obtained on each job in progress or completed during the year, the percentages are then applied individually to total overhead expenses incurred during the period, and the sum of the amounts so computed is the overhead to be charged. Corporations reporting earnings on a completed contract basis will compute overhead in the above manner except the amount computed for each separate period a job is in progress will be deferred until the job is complete. Then the sum of the amounts computed for the entire period of the contract will be the total overhead deductible in the determination of taxable earnings. Other income related to construction operations which cannot be directly allocated to any state will be apportioned to Tennessee jobs in the above manner.~~

~~(c) In the event a corporation is not engaged exclusively in the business of constructing or improving real property for others but is engaged in other business activities, such as manufacturing and/or selling, both in Tennessee and elsewhere, the taxable earnings from such other activities conducted in the state will be derived from the use of the apportionment formula provided by Section 67-4-811 (a). There must be a separation of all contracting activities from all other business activities as to income, cost and expenses, and the sum of the net earnings derived from separate accounting and apportionment will be the taxable earnings subject to the excise tax. Where items of property, income or expense cannot be directly allocated either to contracting or to other business activities, such items will be apportioned on the basis of gross sales or gross receipts of the one business activity as to the sum of sales and gross receipts of all business activities.~~

~~(d) Corporations engaged in the business of constructing or improving real property for others both in Tennessee and elsewhere are required to use the formula provided by Section 67-4-910(a) for the purpose of apportioning capital stock, surplus and undivided profits subject to the franchise tax.~~

~~(e) Special forms are not provided for computation of net earnings by means of separate accounting. Taxpayers using separate accounting must attach to their franchise-excise tax returns a separate accounting income statement for Tennessee wherein direct Tennessee jobs and all overhead expenses are allocated to Tennessee jobs by the ratio of direct construction costs in Tennessee to direct construction costs everywhere. Applicable supporting schedules, such as schedules of overhead expenses, direct Tennessee construction costs, and the direct construction cost ratio must accompany the franchise tax return when separate accounting is used. In cases where the completed contract method is used, schedules of direct construction costs on contracts in progress and overhead expenses allocated to Tennessee for that year by the direct construction cost ratio must accompany each return filed while Tennessee jobs are in progress even though such costs and expenses are deferred until the contract is completed. Such deferred costs and expenses shall be summarized on schedules accompanying the return filed for the period in which the contract is completed. If the corporation is engaged in constructing or improving real property for others, and is also engaged in other business activities both in Tennessee and elsewhere, separate income statements for each activity must accompany the franchise-excise tax return and supporting schedules must show how each item of income and expense was allocated to each type of business. The income statement for construction activities must then be broken down into the required Tennessee separate accounting income statement.~~

~~(3) Apportionment - The provisions of this paragraph shall apply only to the construction or improvement of real property begun on or after July 15, 1986.~~

~~(a) In General. Taxpayers having earnings from contracts for the construction or improvement of real property shall determine net earnings from such activity pursuant to this rule. Under T.C.A. §67-4-804, it must be determined which portion of the taxpayer's net earnings constitutes "business earnings" and which portion constitutes "nonbusiness earnings." Nonbusiness earnings are subject to allocation under T.C.A. §67-4-810. Business earnings are~~ apportioned to Tennessee pursuant to the property, payroll, and sales apportionment factors set forth in T.C.A. §67-4-~~811. In addition, the following special rules shall be applicable in determining and apportioning earnings from construction contracts.~~

~~(b) Business Earnings. The amount to be included in the tax year as business earnings from each construction contract shall be the same as that reported for federal tax purposes for the corresponding tax year.~~

~~(c) Apportionment Factors. Earnings from construction contracts begun on or after July 15, 1986 must be apportioned to Tennessee pursuant to the~~2012. Property, payroll ~~and sales apportionment factors set forth in T.C.A. §67-4-811. Property, payroll and sales attributable to construction contracts begun prior to July 15, 1986 shall not be includable in the apportionment formula. Property, payroll~~, and sales apportionment factors for the apportionment of income from construction contracts shall be determined as follows:

(1~~.~~) Property Factor. In general, the numerator and denominator of the property factor shall be determined as set forth in T.C.A. §67-4-~~811~~2012(b), (c) and (d), and Rules 1320-~~6-1~~06-01-.27 through .29, inclusive. However~~.~~, the following special rules are also applicable.

(~~i~~a) Rents paid for the use of equipment are included in the property factor at eight times the net annual rental rate even though such rental expense may be capitalized into the costs of construction.

(~~ii~~b) "Rents paid" shall include rent expense in the income year for which it is deductible under the taxpayer's method of accounting for federal income tax purposes.

(~~iii~~c) Rent expense which is capitalized to a particular construction project shall be attributed to the state in which the construction project is located.

(2~~.~~) Payroll Factor. In general, the numerator and denominator of the payroll factor shall be determined as set forth in T.C.A. §67-4-~~811~~2012 (e) and (f) and rules 1320-~~6-1~~06-01-.30 and .31. However the following special rules are also applicable.

(~~i~~a) Compensation paid to employees which is attributable to a particular construction project is included in the payroll factor even though capitalized into the costs of construction.

(~~ii~~b) The payroll factor is computed by including compensation in the income year for which it is deductible under the taxpayer's method of accounting for federal income tax purposes.

(~~iii~~c) Compensation paid to employees which is capitalized to a particular construction project shall be attributed to the state in which the construction project is located.

(3~~.~~) Sales Factor. In general, the numerator and denominator of the sales factor shall be determined as set forth in T.C.A. §67-4-~~811~~2012(g), (h) and (~~i) and~~), Rules 1320-~~6-1~~06-01-.32 through .34, inclusive~~.~~, and Rule 1320-06-01-.42. However, the following special rules are also applicable:

(~~i~~a) The sales factor is computed by including gross receipts in the income year for which it is includable under the taxpayer's method of accounting for federal income tax purposes.

(~~ii~~b) Gross receipts derived from the performance of a contract are attributable to Tennessee if the construction project is located in Tennessee. If the construction project is located partly within and partly without Tennessee, the gross receipts, payroll and property factors attributable to Tennessee are based upon the ratio which construction costs for the project in Tennessee bear to the total of construction ~~cost~~costs for the entire project or any other method, such as engineering cost estimates, which will provide a reasonable apportionment.

Authority: T.C.A. §§67-1-102~~and~~, 67-~~14~~-~~811~~2012. Administrative History: Original rule filed March 9, 1990; effective April 23, 1990.

New

1320-06-01-.40 Disregarded Entities.

(1) Disregarded Limited Liability Companies. A limited liability company is disregarded for franchise and excise tax purposes only if it is disregarded for federal income tax purposes and its single member is

classified as a corporation for federal income tax purposes. If a limited liability company does not meet both of these requirements, it will be treated separately for franchise and excise tax purposes and must file its own separate franchise and excise tax return.

(2) Other Federally Disregarded Entities. Only a limited liability company meeting the requirements of (1) will be disregarded for franchise and excise tax purposes. All other taxpayers subject to the franchise or excise tax will be treated separately, regardless of whether they are otherwise disregarded for federal income tax purposes.

(3) Tiered Ownership of Limited Liability Companies. To determine whether a limited liability company is disregarded for franchise and excise tax purposes when it is only indirectly owned by a corporation, the analysis must take a "top down" approach and begin with the corporation and all directly-owned entities that directly or indirectly own the limited liability company.

Example 1: Corporation X is the single member of LLC1. LLC1 is the single member of LLC2. Corporation X is classified as a corporation for federal income tax purposes. Both LLC1 and LLC2 are disregarded for federal income tax purposes. LLC1 is disregarded for franchise and excise tax purposes to Corporation X. As a disregarded entity, LLC1 is treated as a division of Corporation X and not as a separate entity. As a result, the ownership interest held by LLC1 in LLC2 is treated as owned directly by Corporation X. LLC2 is disregarded for franchise and excise tax purposes to Corporation X because its single member for tax purposes is Corporation X, a corporation.

Example 2: Corporation X is the single member of LLC1 and LLC2, each of which has a 50% ownership interest in LLC3. Corporation X is classified as a corporation for federal income tax purposes. LLC1, LLC2, and LLC3 are each disregarded for federal income tax purposes. LLC1 and LLC2 are each disregarded for franchise and excise tax purposes to Corporation X. As disregarded entities, LLC1 and LLC2 are each treated as a division of Corporation X and not as separate entities. As a result, the ownership interests held by LLC1 and LLC2 in LLC3 are treated as owned directly by Corporation X. LLC3 is disregarded to Corporation X for franchise and excise tax purposes because Corporation X is treated as its single member.

(4) Not-For-Profit Subsidiaries. Except as provided in T.C.A. §§67-4-2007 and -2105, a not-for-profit entity is generally exempt from franchise and excise taxes. T.C.A. §67-4-2004 defines a "not-for-profit" entity as "any person described in §401, §408, §408A, §409, §501, §526, §527, §528, §529 or §530 of the Internal Revenue Code, codified in 26 U.S.C. §401, §408, §408A, §409, §501, §526, §527, §528, §529 or §530." If a taxpayer is disregarded for federal income tax purposes to an entity meeting the definition of a not-for-profit, the taxpayer also meets the definition of a not-for-profit and is exempt from franchise and excise taxes to the extent provided by T.C.A. §§67-4-2007 and -2105, regardless of whether the taxpayer is treated as a separate or disregarded entity for franchise and excise tax purposes.

Authority: T.C.A. §§67-1-102, 67-4-2004, 67-4-2007, 67-4-2105, 67-4-2106, and 48-249-1003.

1320-06-01-.41 Series Limited Liability Companies.

(1) The Tennessee Revised Limited Liability Company Act, T.C.A. §§48-249-101 et. seq., generally permits the establishment of one or more designated "series" within a limited liability company, commonly referred to as the "Master LLC." The Master LLC and each series is treated as a separate entity and must determine its tax classification as though it were a separate limited liability company. The Master LLC and each series will generally be classified as a corporation, partnership, or other type of business entity, consistent with the way it is classified for federal income tax purposes. A Master LLC or a series that is wholly owned by a corporation and that is disregarded for federal income tax purposes will be disregarded for franchise and excise tax purposes. All other federally disregarded Master LLCs or series are treated as separate entities for franchise and excise tax purposes.

(2) A Master LLC and each series doing business in and having substantial nexus with Tennessee must separately register with the department and set up separate tax accounts. A series must provide on its application for franchise, excise tax registration information about the Master LLC under whose organization documents the series was authorized.

(3) Unless a series is classified as a disregarded entity for franchise and excise tax purposes, each series must file a separate tax return. The Master LLC must also file a separate return unless disregarded. The Master LLC and each series will be treated as separate entities for purposes of assessments, refunds and taxpayer remedies, unless disregarded.

(4) The Master LLC and each series must apply separately to qualify for any applicable franchise and excise tax exemption. On any application for exemption, the series should state that it is a limited liability company. Because each series is treated as a separate entity under state law, only that series' activities, income, and other attributes will be considered in any applicable exemption determination.

(5) If a series terminates its existence, it must obtain a separate tax clearance.

Authority: T.C.A. §§67-1-102(a), 67-4-2004, 67-4-2007, 67-4-2106, 48-249-101, 48-249-309, and 48-249-1003.

1320-06-01-.42 Sales Factor – Sales Other than Sales of Tangible Personal Property in this State.

(1) General Rules.

(a) Market-Based Sourcing. Sales, other than sales of tangible personal property, are in Tennessee if and to the extent that the taxpayer's market for the sales is in Tennessee. In general, the provisions in this section establish uniform rules for (1) determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Tennessee, (2) reasonably approximating the state or states of assignment where such state or states cannot be determined, and (3) excluding the sale where the state or states of assignment cannot be determined or reasonably approximated.

(b) Outline of topics. The provisions in this regulation are organized as follows.

(1) General Rules.

(a) Market-Based Sourcing
(b) Outline of Topics
(c) Definitions
(d) General Principles of Application; Contemporaneous Record
(e) Rules of Reasonable Approximation
(f) Exclusion of Sales from the Sales Factor

(2) Sale, Rental, Lease or License of Real Property.

(3) Rental, Lease or License of Tangible Personal Property.

(4) Sale of a Service.

(a) General Rule
(b) In-Person Services
(c) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer
(d) Professional Services
(e) Broadcast Advertising

(5) License or Lease of Intangible Property.

(a) General Rules
(b) License of a Marketing Intangible
(c) License of a Production Intangible
(d) License of a Broadcasting Intangible
(e) License of Mixed Intangible
(f) License of Intangible Property where Substance of the Transaction Resembles a Sale of Goods or Services
(g) Examples

(6) Sale of Intangible Property.

(a) Assignment of Sales
(b) Examples

(7) Special Rules.

(a) Software Transactions
(b) Sales or Licenses of Digital Goods and Services
(c) Enforcement of Legal Rights

(c) Definitions. For the purposes of this regulation the following terms have the following meanings.

1. "Billing address" means the location indicated in the books and records of the taxpayer as the primary mailing address relating to a customer's account as of the time of the transaction as kept in good faith in the normal course of business and not for tax avoidance purposes.

2. "Broadcast customer" means a person, corporation, partnership, limited liability company, or other entity, such as an advertiser or a platform distribution company, that has a direct connection or contractual relationship with the broadcaster under which revenue is derived by a broadcaster.

3. "Broadcaster" means a taxpayer that is a television broadcast network, a cable program network, or a television distribution company. The term "broadcaster" does not include a platform distribution company.

4. "Business customer" means a customer that is a business operating in any form, including an individual who operates a business through the form of a sole proprietorship. Sales to a non-profit organization, to a trust, to the U.S. Government, to any foreign, state or local government, or to any agency or instrumentality of such government shall be treated as sales to a business customer and shall be assigned consistent with the rules that apply to such sales.

5. "Commercial domicile" means the principal place from which the trade or business of a business entity is directed or managed.

6. "Film programming" means one or more performances, events, or productions (or segments of performances, events, or productions) intended to be distributed for visual and auditory perception, including but not limited to news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.

7. "Individual customer" means any customer who is not a business customer.

8. "Place of order," means the physical location from which a customer places an order for a sale other than a sale of tangible personal property from a taxpayer, resulting in a contract with the taxpayer.

9. "Platform distribution company" means a cable service provider, a direct broadcast satellite system, an Internet content distributor, or any other distributor that directly charges viewers for access to any film programming.

10. "State where a contract of sale is principally managed by the customer," means the primary location at which an employee or other representative of a customer serves as the primary contact person for the taxpayer with respect to the implementation and day-to-day execution of a contract entered into by the taxpayer with the customer.

(d) General Principles of Application; Contemporaneous Records. In order to satisfy the requirements of this regulation, a taxpayer's assignment of sales of other than tangible personal property must be consistent with the following principles:

1. A taxpayer's application of the rules set forth in this regulation shall be based on objective criteria and shall consider all sources of information reasonably available to the taxpayer at the time of its tax filing including, without limitation, the taxpayer's books and records kept in the normal course of business. A taxpayer's method of assigning its sales shall be determined in good faith, applied in good faith, and applied consistently with respect to similar transactions and year to year. A taxpayer shall retain contemporaneous records that explain the determination and application of its method of assigning its sales, including its underlying assumptions, and shall provide such records to the Commissioner of Revenue upon request.

2. The provisions of Rule 1320-06-01-.42(4)-(7) provide for various assignment rules that apply sequentially in a hierarchy. For each sale to which a hierarchical rule applies, a taxpayer must make a reasonable effort to apply the primary rule applicable to the sale before seeking to apply the next rule in the hierarchy (and must continue to do so with each succeeding rule in the hierarchy, where applicable). For example, in some cases, the applicable rule first requires a taxpayer to determine the state or states of assignment, and where the taxpayer cannot do so, the rule then requires the taxpayer to reasonably approximate such state or states. In such cases, the taxpayer must in good faith and with reasonable effort attempt to determine the state or states of assignment (i.e., apply the primary rule in the hierarchy) before it may reasonably approximate such state or states.

3. A taxpayer's method of assigning its sales, including the use of a method of approximation, where applicable, must reflect an attempt to obtain the most accurate assignment of sales consistent with the regulatory standards set forth in this regulation, rather than an attempt to lower the taxpayer's tax liability. A method of assignment that is reasonable for one taxpayer may not necessarily be reasonable for another taxpayer, depending upon the applicable facts.

(e) Rules of Reasonable Approximation.

1. In General. In general, the provisions of Rule 1320-06-01-.42(4)-(7) establish uniform rules for determining whether and to what extent the market for a sale other than the sale of tangible personal property is in Tennessee. The provisions of the regulation also set forth rules of reasonable approximation, which apply where the state or states of assignment cannot be determined. In some instances, the reasonable approximation must be made in accordance with specific rules of approximation prescribed by this regulation. *See, e.g.*, Rule 1320-06-01-.42(4)(d) (pertaining to professional services). In other cases, the applicable rule in this regulation permits a taxpayer to reasonably approximate the state or states of assignment, using a method that reflects an effort to approximate the results that would be obtained under the applicable rules or standards set forth in this regulation.

2. Approximation Based Upon Known Sales. In any instance where, applying the applicable rules set forth in Rule 1320-06-01-.42(4) (pertaining to sales of services), a taxpayer can ascertain the state or states of assignment of a substantial portion of its sales of substantially similar services ("assigned sales"), but not all of such sales, and the taxpayer reasonably believes, based on all available information, that the geographic distribution of some or all of the remainder of such sales generally tracks that of the assigned sales, it shall include those sales which it believes track the geographic distribution of the assigned sales in its sales factor in the same proportion as its assigned sales. This rule also applies in the context of licenses and sales of intangible property where the substance of the transaction resembles a sale of goods or services. *See* 1320-06-01-.42(5)(f) and (6)(a)4.

(f) Exclusion of Sales from the Sales Factor. In any case in which a taxpayer cannot ascertain the state or states to which a sale is to be assigned pursuant to the applicable rules set forth in this regulation (including through the use of a method of reasonable approximation, where relevant) using a reasonable amount of effort undertaken in good faith, the sale shall be excluded from the numerator and the denominator of the taxpayer's sales factor.

(2) Sale, Rental, Lease or License of Real Property. In the case of a sale, rental, lease or license of real property, the sale is in Tennessee if and to the extent that the property is in Tennessee.

(3) Rental, Lease or License of Tangible Personal Property. In the case of a rental, lease or license of tangible personal property, the sale is in Tennessee if and to the extent that the property is in Tennessee. If property is mobile property that is located both within and without Tennessee during the period of the lease or other contract, the receipts assigned to Tennessee shall be the receipts from the contract period multiplied by the fraction used by the taxpayer for property factor purposes (as adjusted when necessary to reflect differences between usage during the contract period and usage during the taxable year).

(4) Sale of a Service.

(a) General Rule. The sale of a service is in Tennessee if and to the extent that the service is delivered at a location in Tennessee. In general, the term "delivered" shall be construed to refer to the location of the taxpayer's market for the service provided and is not to be construed by reference to the location of the property or payroll of the taxpayer as otherwise determined for corporate apportionment purposes. The rules to determine the location of the delivery of a service in the context of several specific types of service transactions are set forth at Rule 1320-06-01-.42(4)(b)-(e).

(b) In-Person Services.

1. In General. Except as otherwise provided in this subsection, in-person services are services that are physically provided in person by the taxpayer, where the customer or the customer's real or tangible property upon which the services are performed is in the same location as the service provider at the time the services are performed. This rule includes situations where the services are provided on behalf of the taxpayer by a third-party contractor. Examples of in-person services include, without limitation, warranty and repair services; cleaning services; plumbing services; carpentry; construction contractor services; pest control; landscape services; medical and dental services, including medical testing and x-rays and mental health care and treatment; child care; hair cutting and salon services; live entertainment and athletic performances; and in-person training or lessons. In-person services include services within the description above that are performed at (1) a location that is owned or operated by the service provider or (2) a location of the customer, including the location of the customer's real or tangible personal property. Various professional services, including legal, accounting, financial and consulting services, and other such services as described in Rule 1320-06-01-.42(4)(d), although they may involve some amount of in-person contact, are not treated as in-person services within the meaning of this section.

2. Assignment of Sales. Except as otherwise provided in this subsection, where the service provided by the taxpayer is an in-person service, the delivery of the service is at the location where the service is received. Therefore, the sale is in Tennessee if and to the extent the customer receives the in-person service in Tennessee.

(i) Rule of Determination. In assigning its sales of in-person services, a taxpayer shall first attempt to determine the location where a service is received, as follows:

(I) Where the service is performed with respect to the body of an individual customer in Tennessee (e.g. hair cutting or x-ray services) or in the physical presence of the customer in Tennessee (e.g. live entertainment or athletic performances), the service is received in Tennessee.

(II) Where the service is performed with respect to the customer's real estate in Tennessee or where the service is performed with respect to the customer's tangible personal property at the customer's residence or in the customer's possession in Tennessee, the service is received in Tennessee.

(III) Where the service is performed with respect to the customer's tangible personal property and the tangible personal property is to be shipped or delivered to the customer, whether the service is performed in Tennessee or outside Tennessee, the service is received in Tennessee if such property is shipped or delivered to the customer in Tennessee.

(ii) Rule of Reasonable Approximation. In any instance in which the state or states where a service is actually received cannot be determined, but the taxpayer has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, the taxpayer shall reasonably approximate such state or states.

(c) Services Delivered to the Customer or on Behalf of the Customer, or Delivered Electronically Through the Customer.

1. In General. Where the service provided by the taxpayer is not an in-person service within the meaning of Rule 1320-06-01-.42(4)(b) or a professional service within the meaning of Rule 1320-06-01-.42(4)(d) and the service is delivered to or on behalf of the customer, or delivered electronically through the customer, the sale is in Tennessee if and to the extent that the service is delivered in Tennessee. For purposes of this section, a service that is delivered "to" a customer is a service in which the customer and not a third party is the recipient of the service. A service that is delivered "on behalf of" a customer is one in which a customer contracts for a service but one or more third parties, rather than the customer, is the recipient of the service, such as fulfillment services (see Rule 1320-06-01-.42(4)(c)2(i) or the direct or indirect delivery of advertising to the customer's intended audience (see Rule 1320-06-01-.42(4)(c)2(iii)). A service that is delivered electronically "through" a customer is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to an end user or other third-party recipient. Except in the instance of a service that is delivered through a customer (where the service must be delivered electronically), a service is included within the meaning of this section, irrespective of the method of delivery, e.g., whether such service is delivered by a physical means or through an electronic transmission.

2. Assignment of Sales. The assignment of a sale to a state or states in the instance of a service that is delivered to the customer or on behalf of the customer, or delivered electronically through the customer, depends upon the method of delivery of the service and the nature of the customer. Separate rules of assignment apply to services delivered by physical means and services delivered by electronic transmission. (For purposes of this section, a service delivered by an electronic transmission shall not be considered a delivery by a physical means). In any instance where, applying the rules set forth in this section, the rule of assignment depends on whether the customer is an individual or a business customer, and the taxpayer acting in good faith cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer.

(i) Delivery to or on Behalf of a Customer by Physical Means, Whether to an Individual or Business Customer. Services delivered to a customer or on behalf of a customer through a physical means include, for example, product delivery services where property is delivered to the customer or to a third party on behalf of the customer; the delivery of brochures, fliers or other direct mail services; the delivery of advertising or advertising-related services to the customer's intended audience in the form of a physical medium; and the sale of custom software (e.g.,

where software is developed for a specific customer in a case where the transaction is properly treated as a service transaction for purposes of corporate taxation) where the taxpayer installs the custom software at the customer's site. The rules in this subsection apply whether the taxpayer's customer is an individual customer or a business customer.

(I) Rule of Determination. In assigning the sale of a service delivered to a customer or on behalf of a customer through a physical means, a taxpayer must first attempt to determine the state or states where such services are delivered. Where the taxpayer is able to determine the state or states where the service is delivered, it shall assign the sale to such state or states.

(II) Rule of Reasonable Approximation. Where the taxpayer cannot determine the state or states where the service is actually delivered, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the service is delivered, it shall reasonably approximate such state or states.

(III) Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in Tennessee and is to apportion its income pursuant to T.C.A. §67-4-2012.

Example 1: Direct Mail Corp, a corporation based outside Tennessee, provides direct mail services to its customer, Business Corp. Business Corp transacts with Direct Mail Corp to deliver printed fliers to a list of customers that is provided to it by Business Corp. Some of Business Corp's customers are in Tennessee and some of those customers are in other states. Direct Mail Corp will use the postal service to deliver the printed fliers to Business Corp's customers. The sale of Direct Mail Corp's services to Business Corp is assigned to Tennessee to the extent that the services are delivered on behalf of Business Corp to Tennessee customers (i.e., to the extent that the fliers are delivered on behalf of Business Corp to Business Corp's intended audience in Tennessee).

Example 2: Ad Corp is a corporation based outside Tennessee that provides advertising and advertising-related services in Tennessee and in neighboring states. Ad Corp enters into a contract at a location outside Tennessee with an individual customer who is not a Tennessee resident to design advertisements for billboards to be displayed in Tennessee, and to design fliers to be mailed to Tennessee residents. All of the design work is performed outside Tennessee. The sale of the design services is in Tennessee because the service is physically delivered on behalf of the customer to the customer's intended audience in Tennessee.

Example 3: Same facts as Example 2, except that the contract is with a business customer that is based outside Tennessee. The sale of the design services is in Tennessee because the services are physically delivered on behalf of the customer to the customer's intended audience in Tennessee.

Example 4: Fulfillment Corp, a corporation based outside Tennessee, provides product delivery fulfillment services in Tennessee and in neighboring states to Sales Corp, a corporation located outside Tennessee that sells tangible personal property through a mail order catalog and over the Internet to customers. In some cases when a customer purchases tangible personal property from Sales Corp to be delivered in Tennessee, Fulfillment Corp will, pursuant to its contract with Sales Corp, deliver that property from its fulfillment warehouse located

outside Tennessee. The sale of the fulfillment services of Fulfillment Corp to Sales Corp is assigned to Tennessee to the extent that Fulfillment Corp's deliveries on behalf of Sales Corp are to recipients in Tennessee.

Example 5: Software Corp, a software development corporation, enters into a contract with a business customer, Buyer Corp, which is physically located in Tennessee, to develop custom software to be used in Buyer Corp's business. Software Corp develops the custom software outside Tennessee, and then physically installs the software on Buyer Corp's computer hardware located in Tennessee. The development and sale of the custom software is properly characterized as a service transaction, and the sale is assigned to Tennessee because the software is physically delivered to the customer in Tennessee.

Example 6: Same facts as Example 5, except that Buyer Corp has offices in Tennessee and several other states, but is commercially domiciled outside Tennessee and orders the software from a location outside Tennessee. The receipts from the development and sale of the custom software service are assigned to Tennessee because the software is physically delivered to the customer in Tennessee.

(ii) Delivery to a Customer by Electronic Transmission. Services delivered by electronic transmission include, without limitation, services that are transmitted through the means of wire, lines, cable, fiber optics, electronic signals, satellite transmission, audio or radio waves, or other similar means, whether or not the service provider owns, leases or otherwise controls the transmission equipment. In the case of the delivery of a service by electronic transmission to a customer, the following rules apply.

(I) Services Delivered By Electronic Transmission to an Individual Customer.

I. Rule of Determination. In the case of the delivery of a service to an individual customer by electronic transmission, the service is delivered in Tennessee if and to the extent that the taxpayer's customer receives the service in Tennessee. If the taxpayer can determine the state or states where the service is received, it shall assign the sale to such state or states.

II. Rules of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate such state or states. Where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, it shall reasonably approximate such state or states using the customer's billing address.

(II) Services Delivered By Electronic Transmission to a Business Customer.

I. Rule of Determination. In the case of the delivery of a service to a business customer by electronic transmission, the service is delivered in Tennessee if and to the extent that the taxpayer's customer receives the service in Tennessee. If the taxpayer can determine the state or states where the service is received, it shall assign the sale to such state or states. For purposes of this section, it is intended that the state or states where the service is

received reflect the location at which the service is directly used by the employees or designees of the customer.

II. Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the customer actually receives the service, but has sufficient information regarding the place of receipt from which it can reasonably approximate the state or states where the service is received, it shall reasonably approximate such state or states.

III. Secondary Rule of Reasonable Approximation. In the case of the delivery of a service to a business customer by electronic transmission where a taxpayer does not have sufficient information from which it can determine or reasonably approximate the state or states in which the service is received, such state or states shall be reasonably approximated as set forth in this section. In such cases, unless the taxpayer can apply the safe harbor set forth in Rule 1320-06-01-.42(4)(c)2(ii)(II)IV, the taxpayer shall reasonably approximate the state or states in which the service is received as follows: first, by assigning the sale to the state where the contract of sale is principally managed by the customer; second, if the state where the customer principally manages the contract is not reasonably determinable, by assigning the sale to the customer's place of order; and third, if the customer's place of order is not reasonably determinable, by assigning the sale using the customer's billing address; provided, however, that in any instance in which the taxpayer derives more than 5% of its sales of services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by that customer.

IV. Safe Harbor. In the case of the delivery of a service to a business customer by electronic transmission a taxpayer may not be able to determine, or reasonably approximate under Rule 1320-06-01-.42(4)(c)2(ii)(II)II, the state or states in which the service is received. In these cases, the taxpayer may, in lieu of the rule stated at Rule 1320-06-01-.42(4)(c)2(ii)(II)III, apply the safe harbor stated in this section (Rule 1320-06-01-.42(4)(c)2(ii)(II)IV). Under this safe harbor, a taxpayer may assign its sales to a particular customer based upon the customer's billing address in any taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether business or individual, and (2) does not derive more than 5% of its sales of services from such customer. This safe harbor applies only for purposes of Rule 1320-06-01-.42(4)(c)2(ii)(II) to services delivered by electronic transmission to a business customer, and not otherwise.

(III) Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in Tennessee and is to apportion its income pursuant to T.C.A. § 67-4-2012. Assume where relevant, unless otherwise stated, that the safe harbor set forth at Rule 1320-06-01-.42(4)(c)2(ii)(II)IV does not apply.

Example 1: Support Corp, a corporation that is based outside Tennessee, provides software support and diagnostic services to individual and business customers that have previously purchased certain software from third-party vendors. These individual and business

customers are located in Tennessee and other states. Support Corp supplies its services on a case-by-case basis when directly contacted by its customer. Support Corp generally provides these services through the Internet but sometimes provides these services by phone. In all cases, Support Corp verifies the customer's account information before providing any service. Using the information that Support Corp verifies before performing a service, Support Corp can determine where its services are received, and therefore must assign its sales to these locations. The sales made to Support Corp's individual and business customers are in Tennessee to the extent that Support Corp's services are received in Tennessee. See Rule 1320-06-01-.42(4)(c)2(ii)(I) and (II).

Example 2: Online Corp, a corporation based outside Tennessee, provides web-based services through the means of the Internet to individual customers who are residents of Tennessee and other states. These customers access Online Corp's web services primarily in their states of residence, and sometimes, while traveling, in other states. For a substantial portion of its sales, Online Corp either can determine the state or states where such services are received, or, where it cannot determine such state or states, it has sufficient information regarding the place of receipt to reasonably approximate such state or states. However, Online Corp cannot determine or reasonably approximate the state or states of receipt for all of such sales. Assuming that Online Corp reasonably believes, based on all available information, that the geographic distribution of the sales for which it cannot determine or reasonably approximate the location of the receipt of its services generally tracks those for which it does have this information, Online Corp must assign to Tennessee the sales for which it does not know the customers' location in the same proportion as those sales for which it has this information. See Rule 1320-06-01-.42(1)(e)2.

Example 3: Same facts as in Example 2, except that Online Corp reasonably believes that the geographic distribution of the sales for which it cannot determine or reasonably approximate the location of the receipt of its web-based services do not generally track the sales for which it does have this information. Online Corp must assign the sales of its services for which it lacks information as provided to its individual customers using the customers' billing addresses. See Rule 1320-06-01-.42(4)(c)2(ii)(I)II.

Example 4: Net Corp, a corporation based outside Tennessee, provides web-based services to a business customer, Business Corp, a company with offices in Tennessee and two neighboring states. Particular employees of Business Corp access the services from computers in each Business Corp office. Assume that Net Corp determines that Business Corp employees in Tennessee were responsible for 75% of Business Corp's use of Net Corp's services, and Business Corp employees in other states were responsible for 25% of Business Corp's use of Net Corp's services. In such case, 75% of the sale is received in Tennessee, and therefore 75% of the sale is in Tennessee. See Rule 1320-06-01-.42(4)(c)2(ii)(II). Assume alternatively that Net Corp lacks sufficient information regarding the location or locations where Business Corp's employees used the services to determine or reasonably approximate such location or locations. Under these circumstances, if Net Corp derives 5% or less of its sales from Business Corp, Net Corp must assign the sale under Rule 1320-06-01-.42(4)(c)2(ii)(II)III to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable, to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable, to the state of Business Corp's billing address. If Net Corp

derives more than 5% of its sales of services from Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state.

Example 5: Net Corp, a corporation based outside Tennessee, provides web-based services through the means of the Internet to more than 250 individual and business customers in Tennessee and in other states. Assume that for each customer Net Corp cannot determine the state or states where its web services are actually received, and lacks sufficient information regarding the place of receipt to reasonably approximate such state or states. Also assume that Net Corp does not derive more than 5% of its sales of services from any single customer. Net Corp may apply the safe harbor stated in Rule 1320-06-01-.42(4)(c)2(ii)(II)IV and may assign its sales using each customer's billing address.

(iii) Services Delivered Electronically Through or on Behalf of an Individual or Business Customer. A service delivered electronically "on behalf of" the customer is one in which a customer contracts for a service to be delivered electronically but one or more third parties, rather than the customer, is the recipient of the service, such as the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience. A service delivered electronically "through" a customer to third-party recipients is a service that is delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other third-party recipients.

(I) Rule of Determination. In the case of the delivery of a service by electronic transmission, where the service is delivered electronically to end users or other third-party recipients through or on behalf of the customer, the service is delivered in Tennessee if and to the extent that the end users or other third-party recipients are in Tennessee. For example, in the case of the direct or indirect delivery of advertising on behalf of a customer to the customer's intended audience by electronic means, the service is delivered in Tennessee to the extent that the audience for such advertising is in Tennessee. In the case of the delivery of a service to a customer that acts as an intermediary in reselling the service in substantially identical form to third-party recipients, the service is delivered in Tennessee to the extent that the end users or other third-party recipients receive such services in Tennessee. The rules in this subsection apply whether the taxpayer's customer is an individual customer or a business customer and whether the end users or other third-party recipients to which the services are delivered through or on behalf of the customer are individuals or businesses.

(II) Rule of Reasonable Approximation. If the taxpayer cannot determine the state or states where the services are actually delivered to the end users or other third-party recipients either through or on behalf of the customer, but has sufficient information regarding the place of delivery from which it can reasonably approximate the state or states where the services are delivered, it shall reasonably approximate such state or states.

(III) Select Secondary Rules of Reasonable Approximation.

I. Where a taxpayer's service is the direct or indirect electronic delivery of advertising on behalf of its customer to the customer's intended audience, if the taxpayer lacks sufficient information regarding the location of the audience from which it can determine or reasonably approximate such location, the taxpayer shall reasonably approximate the audience in a state for such advertising using the following secondary rules of reasonable

approximation. Where a taxpayer is delivering advertising directly or indirectly to a known list of subscribers, the taxpayer shall reasonably approximate the audience for advertising in a state using a percentage that reflects the ratio of the state's subscribers in the specific geographic area in which the advertising is delivered relative to the total subscribers in such area. For a taxpayer with less information about its audience, the taxpayer shall reasonably approximate the audience in a state using the percentage that reflects the ratio of the state's population in the specific geographic area in which the advertising is delivered relative to the total population in such area.

II. Where a taxpayer's service is the delivery of a service to a customer that then acts as the taxpayer's intermediary in reselling such service to end users or other third-party recipients, if the taxpayer lacks sufficient information regarding the location of the end users or other third-party recipients from which it can determine or reasonably approximate such location, the taxpayer shall reasonably approximate the extent to which the service is received in a state by using the percentage that reflects the ratio of the state's population in the specific geographic area in which the taxpayer's intermediary resells such services, relative to the total population in such area.

(IV) Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in Tennessee and is to apportion its income pursuant to T.C.A. § 67-4-2012.

Example 1: Web Corp, a corporation that is based outside Tennessee, provides Internet content to viewers in Tennessee and other states. Web Corp sells advertising space to business customers pursuant to which the customers' advertisements will appear in connection with Web Corp's Internet content. Web Corp receives a fee for running the advertisements that is determined by reference to the number of times the advertisement is viewed or clicked upon by the viewers of its website. Web Corp's sale of advertising space to its business customers is assigned to Tennessee to the extent that the viewers of the Internet content are in Tennessee, as measured by viewings or clicks. See Rule 1320-06-01-.42(4)(c)2(iii)(I). If Web Corp is unable to determine the actual location of its viewers, and lacks sufficient information regarding the location of its viewers to reasonably approximate such location, Web Corp must approximate the amount of its Tennessee sales by multiplying the amount of such sales by a percentage that reflects the Tennessee population in the specific geographic area in which the content containing the advertising is delivered relative to the total population in such area. See Rule 1320-06-01-.42(4)(c)2(iii)(III).

Example 2: Retail Corp, a corporation that is based outside of Tennessee, sells tangible property through its retail stores located in Tennessee and other states, and through a mail order catalog. Answer Co, a corporation that operates call centers in multiple states, contracts with Retail Corp to answer telephone calls from individuals placing orders for products found in Retail Corp's catalogs. In this case, the phone answering services of Answer Co are being delivered to Retail Corp's customers and prospective customers. Therefore, Answer Co is delivering a service electronically to Retail Corp's customers or prospective customers on behalf of Retail Corp, and must assign the proceeds from this service to the state or states from which the phone calls are placed by such customers or prospective customers. If Answer

Co cannot determine the actual locations from which phone calls are placed, and lacks sufficient information regarding the locations to reasonably approximate such locations, Answer Co must approximate the amount of its Tennessee sales by multiplying the amount of its fee from Retail Corp by a percentage that reflects the Tennessee population in the specific geographic area from which the calls are placed relative to the total population in such area. See Rule 1320-06-01-.42(4)(c)2(iii)(III)I.

Example 3: Web Corp, a corporation that is based outside of Tennessee, sells tangible property to customers via its Internet website. Design Co designed and maintains Web Corp's website, including making changes to the site based on customer feedback received through the site. Design Co's services are delivered to Web Corp, the proceeds from which are assigned pursuant to Rule 1320-06-01-.42(4)(c)2(ii). The fact that Web Corp's customers and prospective customers incidentally benefit from Design Co's services, and may even interact with Design Co in the course of providing feedback, does not transform the service into one delivered "on behalf of" Web Corp to Web Corp's customers and prospective customers.

Example 4: Wholesale Corp, a corporation that is based outside Tennessee, develops an Internet-based information database outside Tennessee and enters into a contract with Retail Corp whereby Retail Corp will market and sell access to this database to end users. Depending on the facts, the provision of database access may be either the sale of a service or the license of intangible property or may have elements of both. Assume that on the particular facts applicable in this example Wholesale Corp is selling database access in transactions properly characterized as involving the performance of a service. When an end user purchases access to Wholesale Corp's database from Retail Corp, Retail Corp in turn compensates Wholesale Corp in connection with that transaction. In this case, Wholesale Corp's services are being delivered through Retail Corp to the end user. Wholesale Corp must assign its sales to Retail Corp to the state or states in which the end users receive access to Wholesale Corp's database. If Wholesale Corp cannot determine the state or states where the end users actually receive access to Wholesale Corp's database, and lacks sufficient information regarding the location from which the end users access the database to reasonably approximate such location, Wholesale Corp must approximate the extent to which its services are received by end users in Tennessee by using a percentage that reflects the ratio of the Tennessee population in the specific geographic area in which Retail Corp regularly markets and sells Wholesale Corp's database relative to the total population in such area. See Rule 1320-06-01-.42(4)(c)2(iii)(III)II. Note that it does not matter for purposes of the analysis whether Wholesale Corp's sale of database access constitutes a service or a license of intangible property, or some combination of both. See Rule 1320-06-1-.42(5)(f).

(d) Professional Services.

1. In General. Except as otherwise provided in Rule 1320-06-01-.42(4)(d)2, professional services are services that require specialized knowledge and in some cases require a professional certification, license or degree. Professional services include, without limitation, management services, bank and financial services, financial custodial services, investment and brokerage services, fiduciary services, tax preparation, payroll and accounting services, lending and credit card services, legal services, consulting services, video production services, graphic and other design services, engineering services, and architectural services.

2. Overlap with Other Categories of Services.

(i) Certain services that fall within the definition of "professional services" set forth in Rule 1320-06-01-.42(4)(d)1 are nevertheless treated as "in-person services" within the meaning of Rule 1320-06-01-.42(4)(b), and are assigned under Rule 1320-06-01-.42(4)(b). Specifically, professional services that are physically provided in person by the taxpayer such as carpentry, certain medical and dental services or child care services, where the customer or the customer's real or tangible property upon which the services are provided is in the same location as the service provider at the time the services are performed, are "in-person services" and are assigned as such, notwithstanding that they may also be considered to be "professional services". However, professional services where the service is of an intellectual or intangible nature, such as legal, accounting, financial and consulting services, are assigned as professional services under Rule 1320-06-01-.42(4)(d), notwithstanding the fact that such services may involve some amount of in-person contact.

(ii) Professional services may in some cases include the transmission of one or more documents or other communications by mail or by electronic means. However, in such cases, despite this transmission, the assignment rules that apply are those set forth in Rule 1320-06-01-.42(4)(d), and not those set forth in Rule 1320-06-01-.42(4)(c), pertaining to services delivered to a customer or through or on behalf of a customer.

3. Assignment of Sales. In the case of a professional service, it is generally possible to characterize the location of delivery in multiple ways by emphasizing different elements of the service provided, no one of which will consistently represent the market for the services. Therefore, for purposes of consistent application of the market-sourcing rule stated in T.C.A. § 67-4-2012, the Commissioner has concluded that the location of delivery in the case of professional services is not susceptible to a general rule of determination, and must be reasonably approximated. The assignment of a sale of a professional service depends in many cases upon whether the customer is an individual or business customer. In any instance in which the taxpayer, acting in good faith, cannot reasonably determine whether the customer is an individual or business customer, the taxpayer shall treat the customer as a business customer. For purposes of assigning the sale of a professional service, a taxpayer's customer is the person who contracts for such service, irrespective of whether another person pays for or also benefits from the taxpayer's services.

(i) General Rule. Sales of professional services other than those services described in Rule 1320-06-01-.42(4)(d)3(ii) (architectural and engineering services) are assigned in accordance with this section.

(I) Professional Services Delivered to Individual Customers. Except as otherwise provided in this section, Rule 1320-06-01-.42(4)(d), in any instance in which the service provided is a professional service and the taxpayer's customer is an individual customer, the state or states in which the service is delivered shall be reasonably approximated as set forth in this section, Rule 1320-06-01-.42(4)(d)3(i)(I). In particular, the taxpayer shall assign the sale to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its sales of services from an individual customer, the taxpayer is required to identify the customer's state of primary residence and must assign the receipts from the service or services provided to that customer to that state.

(II) Professional Services Delivered to Business Customers. Except as otherwise provided in this section, Rule 1320-06-01-.42(4)(d), in any

instance in which the service provided is a professional service and the taxpayer's customer is a business customer, the state or states in which the service is delivered shall be reasonably approximated as set forth in this section, 1320-06-01-.42(4)(d)3(i)(II). In particular, unless the taxpayer may use the safe harbor set forth at 1320-06-01-.42(4)(d)3(i)(III), the taxpayer shall assign the sale as follows: first, by assigning the receipts to the state where the contract of sale is principally managed by the customer; second, if such place of customer management is not reasonably determinable, to the customer's place of order; and third, if such customer's place of order is not reasonably determinable, to the customer's billing address; provided, however, in any instance in which the taxpayer derives more than 5% of its sales of services from a customer, the taxpayer is required to identify the state in which the contract of sale is principally managed by the customer.

(III) Safe Harbor; Large Volume of Transactions. Notwithstanding the rules set forth in Rule 1320-06-01-.42(4)(d)3(i)(I) and (II), a taxpayer may assign its sales to a particular customer based on the customer's billing address in any taxable year in which the taxpayer (1) engages in substantially similar service transactions with more than 250 customers, whether individual or business, and (2) does not derive more than 5% of its sales of services from such customer. This safe harbor applies only for purposes of Rule 1320-06-01-.42(4)(d)3(i), and not otherwise.

(ii) Architectural and Engineering Services with Respect to Real or Tangible Personal Property. Architectural and engineering services with respect to real or tangible personal property are professional services within the meaning of this section Rule 1320-06-01-.42(4)(d). However, unlike in the case of the general rule that applies to professional services, (1) the sale of such an architectural service is assigned to a state or states if and to the extent that the services are with respect to real estate improvements located, or expected to be located, in such state or states; and (2) the sale of such an engineering service is assigned to a state or states if and to the extent that the services are with respect to tangible or real property located in such state or states, including real estate improvements located in, or expected to be located in, such state or states. These rules apply whether or not the customer is an individual or business customer. In any instance in which architectural or engineering services are not described in this section (Rule 1320-06-01-.42(4)(d)3(ii)), the sale of such services shall be assigned under the general rule for professional services. See Rule 1320-06-01-.42(4)(d)3(i).

Example 1: Architecture Corp provides building design services as to buildings located, or expected to be located, in Tennessee to individual customers who are residents of Tennessee and other states, and to business customers that are based in Tennessee and other states. Architecture Corp's sales are assigned to Tennessee because the locations of the buildings to which its design services relate are in Tennessee, or are expected to be in Tennessee. For purposes of assigning these sales, it is not relevant where, in the case of an individual customer, the customer primarily resides or is billed for such services, and it is not relevant where, in the case of a business customer, the customer principally manages the contract, placed the order for the services or is billed for such services. Further, such sales are assigned to Tennessee even if Architecture Corp's designs are either physically delivered to its customer in paper form in a state other than Tennessee or are electronically delivered to its customer in a state other than Tennessee. See Rule 1320-06-01-.42(4)(d)3(ii).

Example 2: Law Corp provides legal services to individual clients who are residents of Tennessee and other states. In some cases, Law Corp may prepare one or more legal documents for its client as a result of these services and/or the legal work may be related to litigation or a legal matter that is ongoing in a state

other than where the client is resident. Assume that Law Corp knows the state of primary residence for many of its clients, and where it does not know this state of primary residence, it knows the client's billing address. Also assume that Law Corp does not derive more than 5% of its sales of services from any one individual client. Where Law Corp knows its client's state of primary residence, it shall assign the sale to that state. Where Law Corp does not know its client's state of primary residence, but rather knows the client's billing address, it shall assign the sale to that state. For purposes of the analysis it is irrelevant whether the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or the litigation or other legal matter that is the underlying predicate for the services is in another state. See Rule 1320-06-01-.42(4)(d)2(ii) and 3(i)(I).

Example 3: Law Corp provides legal services to several multistate business clients. In each case, Law Corp knows the state in which the agreement for legal services that governs the client relationship is principally managed by the client. In one case, the agreement is principally managed in Tennessee; in the other cases, the agreement is principally managed in a state other than Tennessee. Where the agreement for legal services is principally managed by the client in Tennessee, the sale of the services shall be assigned to Tennessee; in the other cases, the sale is not assigned to Tennessee. In the case of the sale that is assigned to Tennessee, the sale shall be so assigned even if (1) the legal documents relating to the service are mailed or otherwise delivered to a location in another state, or (2) the litigation or other legal matter that is the underlying predicate for the services is in another state. See Rule 1320-06-01-.42(4)(d)2(ii) and 3(i)(II).

Example 4: Consulting Corp, a company that provides consulting services to law firms and other customers, is hired by Law Corp in connection with legal representation that Law Corp provides to Client Co. Specifically, Consulting Corp is hired to provide expert testimony at a trial being conducted by Law Corp on behalf of Client Co. Client Co pays for Consulting Corp's services directly. Assuming that Consulting Corp knows that its agreement with Law Corp is principally managed by Law Corp in Tennessee, the sale of Consulting Corp's services shall be assigned to Tennessee. It is not relevant for purposes of the analysis that Client Co is the ultimate beneficiary of Consulting Corp's services, or that Client Co pays for Consulting Corp's services directly. See Rule 1320-06-01-.42(4)(d)3(i)(II).

Example 5: Advisor Corp, a corporation that provides investment advisory services, provides such advisory services to Investment Co. Investment Co is a multistate business client of Advisor Corp that uses Advisor Corp's services in connection with investment accounts that it manages for individual clients, who are the ultimate beneficiaries of Advisor Corp's services. Assume that Investment Co's individual clients are persons that are residents of numerous states, which may or may not include Tennessee. Assuming that Advisor Corp knows that its agreement with Investment Co is principally managed by Investment Co in Tennessee, the sale of Advisor Corp's services shall be assigned to Tennessee. It is not relevant for purposes of the analysis that the ultimate beneficiaries of Advisor Corp's services may be Investment Co's clients, who are residents of numerous states. See Rule 1320-06-01-.42(4)(d)3(i)(II).

Example 6: Design Corp is a corporation based outside Tennessee that provides graphic design and similar services in Tennessee and in neighboring states. Design Corp enters into a contract at a location outside Tennessee with an individual customer to design fliers for the customer. Assume that Design Corp does not know the individual customer's state of primary residence and does not derive more than 5% of its sales of services from the individual customer. All of the design work is performed outside Tennessee. The sale is in Tennessee if the customer's billing address is in Tennessee. See Rule 1320-06-01-.42(4)(d)3(i)(I).

(e) Broadcast Advertising Services. Notwithstanding anything herein to the contrary, receipts from a broadcaster's sale of advertising services to a broadcast customer are assigned to Tennessee if the commercial domicile of the broadcast customer is in Tennessee. For purposes of this provision, "advertising services" means an agreement to include the broadcast customer's advertising content in the broadcaster's film programming.

(5) Rental, Lease, or License of Intangible Property.

(a) General Rules.

1. The receipts from the rental, lease, or license of intangible property are in Tennessee if and to the extent the intangible is used in Tennessee. In general, the term "use" shall be construed to refer to the location of the taxpayer's market for the use of the intangible property that is being rented, leased, or licensed and is not to be construed to refer to the location of the property or payroll of the taxpayer.

2. In general, a rental, lease, or license of intangible property that conveys all substantial rights in such property is treated as a sale of intangible property for tax purposes. See Rule 1320-06-01-.42(6). Note, however, that for purposes of Rule 1320-06-01-.42(5) and (6), a sale or exchange of intangible property is treated as a license of such property where the receipts from the sale or exchange derive from payments that are contingent on the productivity, use or disposition of the property.

3. Intangible property rented, leased, or licensed as part of the sale or lease of tangible property is treated under Rule 1320-06-01-.42 as the sale or lease of tangible property.

(b) License of a Marketing Intangible. Where a license is granted for the right to use intangible property in connection with the sale, rental, lease, license, or other marketing of goods, services, or other items (i.e., a marketing intangible), the royalties or other licensing fees paid by the licensee for such right are assigned to Tennessee to the extent that the fees are attributable to the sale or other provision of goods, services, or other items purchased or otherwise acquired by customers in Tennessee. Examples of a license of a marketing intangible include, without limitation, the license of a service mark, trademark, or trade name; certain copyrights and a franchise agreement. In each of these instances the license of the marketing intangible is intended to promote consumer sales. In the case of the license of a marketing intangible, where a taxpayer has actual evidence of the amount or proportion of its receipts that is attributable to Tennessee, it shall assign such amount or proportion to Tennessee. In the absence of actual evidence of the amount or proportion of the licensee's receipts that are derived from Tennessee customers, the portion of the licensing fee to be assigned to Tennessee shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the Tennessee population in the specific geographic area in which the licensee makes material use of the intangible property to regularly market its goods, services or other items relative to the total population in such area. Where the license of a marketing intangible is for the right to use the intangible property in connection with sales or other transfers at wholesale rather than directly to retail customers, the portion of the licensing fee to be assigned to Tennessee shall be reasonably approximated by multiplying the total fee by a percentage that reflects the ratio of the Tennessee population in the specific geographic area in which the licensee's goods, services, or other items are ultimately marketed using the intangible property relative to the total population of such area.

(c) License of a Production Intangible. Where a license is granted for the right to use intangible property other than in connection with the sale, lease, license, or other marketing of goods, services, or other items, and the license is to be used in a production capacity (a "production intangible"), the licensing fees paid by the licensee for such right are assigned to Tennessee to the extent that the use for which the fees are paid takes place in Tennessee. Examples of a license of a production intangible include, without limitation, the license of a patent, a copyright, or trade secrets to be used in a manufacturing process, where the value of the intangible lies predominately in its use in such process. In the case of a license of a

production intangible, it shall be presumed that the use of the intangible property takes place in the state of the licensee's commercial domicile (where the licensee is a business) or the licensee's state of primary residence (where the licensee is an individual) unless the taxpayer or the Commissioner can reasonably establish the location(s) of actual use. Where the Commissioner can reasonably establish that the actual use of intangible property pursuant to a license of a production intangible takes place in part in Tennessee, it shall be presumed that the entire use is in Tennessee except to the extent that the taxpayer can demonstrate that the actual location of a portion of the use takes place outside Tennessee.

(d) License of a Broadcasting Intangible. Where a broadcaster grants a license to a broadcast customer for the right to use film programming, the licensing fees paid by the licensee for such right are assigned to Tennessee to the extent that the broadcast customer is located in Tennessee. In the case of business customers, the broadcast customer's location shall be determined using the broadcast customer's commercial domicile. In the case of individual customers, the broadcast customer's location shall be determined using the address of the broadcast customer listed in the broadcaster's records.

(e) License of a Mixed Intangible. Where a license of intangible property includes both a license of a marketing intangible and a license of a production intangible (a "mixed intangible") and the fees to be paid in each instance are separately and reasonably stated in the licensing contract, the Commissioner will accept such separate statement for purposes of this section if it is reasonable. Where a license of intangible property includes both a license of a marketing intangible and a license of a production intangible and the fees to be paid in each instance are not separately and reasonably stated in the contract, it shall be presumed that the licensing fees are paid entirely for the license of the marketing intangible except to the extent that the taxpayer or the Commissioner can reasonably establish otherwise.

(f) License of Intangible Property where Substance of Transaction Resembles a Sale of Goods or Services.

1. In general. In some cases, the license of intangible property will resemble the sale of an electronically-delivered good or service rather than the license of a marketing intangible or a production intangible. In such cases, the receipts from the licensing transaction shall be assigned by applying the rules set forth in Rule 1320-06-01-.42(4)(c)2(ii) and (iii), as if the transaction were a service delivered to an individual or business customer or delivered electronically through an individual or business customer, as applicable. Examples of transactions to be assigned under this section (1320-06-01-.42(5)(f)) include, without limitation, the license of database access, the license of access to information, the license of digital goods (see Rule 1320-06-01-.42(7)(b)), and the license of certain software (*e.g.*, where the transaction is not the license of pre-written software that is treated as the sale of tangible personal property, see Rule 1320-06-01-.42(7)(a)).

2. Sublicenses. Pursuant to Rule 1320-06-01-.42(5)(f)1, Rule 1320-06-01-.42(4)(c)2(iii) may apply where a taxpayer licenses intangible property to a customer that in turn sublicenses the intangible property to end users as if the transaction were a service delivered electronically through a customer to end users. In particular, the rules set forth at Rule 1320-06-01-.42(4)(c)2(iii) that apply to services delivered electronically to a customer for purposes of resale and subsequent electronic delivery in substantially identical form to end users or other recipients may also apply with respect to licenses of intangible property for purposes of sublicense to end users, provided that for this purpose the intangible property sublicensed to an end user shall not fail to be substantially identical to the property that was licensed to the sublicensor merely because the sublicense transfers a reduced bundle of rights with respect to such property (e.g., because the sublicensee's rights are limited to its own use of the property and do not include the ability to grant a further sublicense), or because such property is bundled with additional services or items of property.

(g) Examples. Assume in each of these examples that the taxpayer that licenses the intangible property is taxable in Tennessee and is to apportion its income pursuant to T.C.A. §67-4-2012.

Example 1: Crayon Corp and Dealer Co enter into a license contract under which Dealer Co as licensee is permitted to use trademarks that are owned by Crayon Corp in connection with Dealer Co's sale of certain products to retail customers. Under the contract, Dealer Co is required to pay Crayon Corp a licensing fee that is a fixed percentage of the total volume of monthly sales made by Dealer Co of products using the Crayon Corp trademarks. Under the contract, Dealer Co is permitted to sell the products at multiple store locations, including store locations that are both within and without Tennessee. Further, the licensing fees that are paid by Dealer Co are broken out on a per-store basis. The licensing fees paid to Crayon Corp by Dealer Co represent fees from the license of a marketing intangible. The portion of the fees to be assigned to Tennessee shall be determined by multiplying the fees by a percentage that reflects the ratio of Dealer Co's receipts that are derived from its Tennessee stores relative to Dealer Co's total receipts. See Rule 1320-06-01-.42(5)(b).

Example 2: Network Corp is a broadcaster that licenses rights to its film programming to both platform distribution companies and individual customers. Platform distribution companies pay licensing fees to Network Corp for the rights to distribute Network Corp's film programming to the platform distribution companies' customers. Network Corp's individual customers pay access fees to Network Corp for the right to directly access and view Network Corp's film programming. Network Corp's receipts from each platform distribution company will be assigned to Tennessee if the broadcast customer's commercial domicile is in Tennessee. Network Corp's receipts from each individual broadcast customer will be assigned to Tennessee if the address of the broadcast customer listed in the broadcaster's records is in Tennessee. See Rule 1320-06-01-.42(5)(d).

Example 3: Moniker Corp enters into a license contract with Wholesale Co. Pursuant to the contract Wholesale Co is granted the right to use trademarks owned by Moniker Corp to brand sports equipment that is to be manufactured by Wholesale Co or an unrelated entity, and to sell the manufactured equipment to unrelated companies that will ultimately market the equipment to consumers in a specific geographic region, including a foreign country. The license agreement confers a license of a marketing intangible, even though the trademarks in question will be affixed to property to be manufactured. In addition, the license of the marketing intangible is for the right to use the intangible property in connection with sales to be made at wholesale rather than directly to retail customers. The component of the licensing fee that constitutes the Tennessee sales of Moniker Corp is determined by multiplying the amount of the fee by a percentage that reflects the ratio of the Tennessee population in the specific geographic region relative to the total population in such region. See Rule 1320-06-01-.42(5)(b).

Example 4: Formula, Inc and Appliance Co enter into a license contract under which Appliance Co is permitted to use a patent owned by Formula, Inc to manufacture appliances. The license contract specifies that Appliance Co is to pay Formula, Inc a royalty that is a fixed percentage of the gross receipts from the products that are later sold. The contract does not specify any other fees. The appliances are both manufactured and sold in Tennessee and several other states. Assume the licensing fees are paid for the license of a production intangible, even though the royalty is to be paid based upon the sales of a manufactured product (i.e., the license is not one that includes a marketing intangible). Because the Commissioner can reasonably establish that the actual use of the intangible property takes place in part in Tennessee, the royalty is assigned based on the location of such use rather than to location of the licensee's commercial domicile, in accordance with Rule 1320-06-01-.42(5)(c). It is presumed that the entire use is in Tennessee except to the extent that the taxpayer can demonstrate that the actual location of some or all of the use takes place outside Tennessee. Assuming that Formula, Inc can demonstrate the percentage of manufacturing that takes place in Tennessee using the patent relative to such manufacturing in other states, that percentage of the total licensing fee paid to Formula, Inc under the contract will constitute Formula, Inc's Tennessee sales. See Rule 1320-06-01-.42(5)(c).

Example 5: Axel Corp enters into a license agreement with Biker Co in which Biker Co is granted the right to produce motor scooters using patented technology owned by Axel Corp, and also to sell such scooters by marketing the fact that the scooters were manufactured using the special technology. The contract is a license of both a marketing and production intangible, i.e., a mixed intangible. The scooters are manufactured outside Tennessee. Assume that Axel Corp lacks actual information regarding the proportion of Biker Co's receipts that are derived from Tennessee customers. Also assume that Biker Co is granted the right to sell the scooters in a U.S. geographic region in which the Tennessee population constitutes 25% of the total population during the period in question. The licensing contract requires an upfront licensing fee to be paid by Biker Co to Axel Corp and does not specify what percentage of the fee derives from Biker Co's right to use Axel Corp's patented technology. Because the fees for the license of the marketing and production intangible are not separately and reasonably stated in the contract, it is presumed that the licensing fees are paid entirely for the license of a marketing intangible, unless either the taxpayer or Commissioner reasonably establishes otherwise. Assuming that neither party establishes otherwise, 25% of the licensing fee constitutes Tennessee sales. See Rule 1320-06-01-.42(5)(b) and (e).

Example 6: Same facts as Example 5, except that the license contract specifies separate fees to be paid for the right to produce the motor scooters and for the right to sell the scooters by marketing the fact that the scooters were manufactured using the special technology. The licensing contract constitutes both the license of a marketing intangible and the license of a production intangible. Assuming that the separately stated fees are reasonable, the Commissioner will: (1) assign no part of the licensing fee paid for the production intangible to Tennessee, and (2) assign 25% of the licensing fee paid for the marketing intangible to Tennessee. See Rule 1320-06-01-.42(5)(e).

Example 7: Better Burger Corp, which is based outside Tennessee, enters into franchise contracts with franchisees who agree to operate Better Burger restaurants as franchisees in various states. Several of the Better Burger Corp franchises are in Tennessee. In each case, the franchise contract between the individual and Better Burger provides that the franchisee is to pay Better Burger Corp an upfront fee for the receipt of the franchise and monthly franchise fees, which cover, among other things, the right to use the Better Burger name and service marks, food processes and cooking know-how, as well as fees for management services. The upfront fees for the receipt of the Tennessee franchises constitute fees paid for the licensing of a marketing intangible. These fees constitute Tennessee sales because the franchises are for the right to make Tennessee sales. The monthly franchise fees paid by Tennessee franchisees constitute fees paid for (1) the license of marketing intangibles (the Better Burger name and service marks), (2) the license of production intangibles (food processes and know-how) and (3) personal services (management fees). The fees paid for the license of the marketing intangibles and the production intangibles constitute Tennessee sales because in each case the use of the intangibles is to take place in Tennessee. See Rule 1320-06-01-.42(5)(b)-(c). The fees paid for the personal services are to be assigned pursuant to Rule 1320-06-01-.42(4).

Example 8: Online Corp, a corporation based outside Tennessee, licenses an information database through the means of the Internet to individual customers that are residents of Tennessee and other states. These customers access Online Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. The license is a license of intangible property that resembles a sale of goods or services and shall be assigned in accordance with Rule 1320-06-01-.42(5)(f). If Online Corp can determine or reasonably approximate the state or states where its database is accessed, then it must do so. Assuming that Online Corp cannot determine or reasonably approximate the location where its database is accessed, Online Corp must assign the sales made to the individual customers using the customers' billing addresses to the extent known. Assume for purposes of this example that Online Corp knows the billing address for each of its customers. In this case, Online Corp's sales made to its individual customers are in Tennessee in any case in which the customer's billing address is in Tennessee. See Rule 1320-06-01-.42(4)(c)2(ii)(I).

Example 9: Net Corp, a corporation based outside Tennessee, licenses an information database through the means of the Internet to a business customer, Business Corp, a company with offices in Tennessee and two neighboring states. The license is a license of intangible property that resembles a sale of goods or services and shall be assigned in accordance with Rule 1320-06-01-.42(5)(f). Assume that Net Corp cannot determine where its database is accessed but reasonably approximates that 75% of Business Corp's database access took place in Tennessee, and 25% of Business Corp's database access took place in other states. In such case, 75% of the receipts from database access is in Tennessee. Assume alternatively that Net Corp lacks sufficient information regarding the location where its database is accessed to reasonably approximate such location. Under these circumstances, if Net Corp derives 5% or less of its receipts from database access from Business Corp, Net Corp must assign the sale under Rule 1320-06-01-.42(4)(c)2(ii)(II) to the state where Business Corp principally managed the contract, or if that state is not reasonably determinable to the state where Business Corp placed the order for the services, or if that state is not reasonably determinable to the state of Business Corp's billing address. If Net Corp derives more than 5% of its receipts from database access from Business Corp, Net Corp is required to identify the state in which its contract of sale is principally managed by Business Corp and must assign the receipts to that state. See Rule 1320-06-01-.42(4)(c)2(ii)(II).

Example 10: Net Corp, a corporation based outside Tennessee, licenses an information database through the means of the Internet to more than 250 individual and business customers in Tennessee and in other states. The license is a license of intangible property that resembles a sale of goods or services and shall be assigned in accordance with Rule 1320-06-01-.42(5)(f). Assume that Net Corp cannot determine or reasonably approximate the location where its information database is accessed. Also assume that Net Corp does not derive more than 5% of its sales of database access from any single customer. Net Corp may apply the safe harbor stated in Rule 1320-06-01-.42(4)(c)2(ii)(II)IV, and may assign its sales to a state or states using each customer's billing address.

Example 11: Web Corp, a corporation based outside of Tennessee, licenses an Internet-based information database to business customers who then sublicense the database to individual end users that are residents of Tennessee and other states. These end users access Web Corp's information database primarily in their states of residence, and sometimes, while traveling, in other states. Web Corp's license of the database to its customers includes the right to sublicense the database to end users, while the sublicenses provide that the rights to access and use the database are limited to the end users' own use and prohibit the individual end users from further sublicensing the database. Web Corp receives a fee from each customer based upon the number of sublicenses issued to end users. The license is a license of intangible property that resembles a sale of goods or services and shall be assigned by applying the rules set forth in Rule 1320-06-01-.42(4)(c)2(iii). See 1320-06-01-.42(5)(f). If Web Corp can determine or reasonably approximate the state or states where its database is accessed by end users, then it must do so. Assuming that Web Corp lacks sufficient information from which it can determine or reasonably approximate the location where its database is accessed by end users, Web Corp must approximate the extent to which its database is accessed in Tennessee using a percentage that represents the ratio of the Tennessee population in the specific geographic area in which Web Corp's customer sublicenses the database access relative to the total population in such area. See Rule 1320-06-01-.42(4)(c)2(iii)(II).

(6) Sale of Intangible Property.

(a) Assignment of Sales. The assignment of a sale to a state or states in the instance of a sale or exchange of intangible property depends upon the nature of the intangible property sold. For purposes of this section (Rule 1320-06-01-.42(6)), a sale or exchange of intangible property includes a license of such property where the transaction is treated for tax purposes as a sale of all substantial rights in the property and the receipts from transaction are not contingent on the productivity, use or disposition of the property. For the rules that apply where the consideration for the transfer of rights is contingent on the productivity, use or disposition of the property, see Rule 1320-06-01-.42(5)(a) and (6)(a)3.

1. Contract Right or Government License that Authorizes Business Activity in Specific Geographic Area. In the case of a sale or exchange of intangible property where the property sold or exchanged is a contract right, government license or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area, the sale is assigned to a state if and to the extent that the intangible property is used or otherwise associated with the state. Where the intangible property is used in, or otherwise associated with, only Tennessee, the taxpayer shall assign the sale to Tennessee. Where the intangible property is used in or is otherwise associated with Tennessee and one or more other states, the taxpayer shall assign the sale to Tennessee to the extent that the intangible property is used in, or associated with, Tennessee, through the means of a reasonable approximation.

2. Agreement Not to Compete. An agreement or covenant not to compete in a specified geographic area requires the contract party to refrain from conducting certain business activity in that specified area. In the case of an agreement or covenant not to compete the receipts are to be assigned to a state based upon the percentage that reflects the state's population in the U.S. geographic area specified in the contract relative to the total population in such area.

3. Sale that Resembles a License (Receipts are Contingent on Productivity, Use or Disposition of the Intangible Property). In the case of a sale or exchange of intangible property where the receipts from the sale or exchange are contingent on the productivity, use or disposition of the property, the receipts from the sale shall be assigned by applying the rules set forth in Rule 1320-06-01-.42(5) (pertaining to the license or lease of intangible property).

4. Sale that Resembles a Sale of Goods and Services. In the case of a sale or exchange of intangible property where the substance of the transaction resembles a sale of goods or services and where the receipts from the sale or exchange do not derive from payments contingent on the productivity, use or disposition of the property, the receipts from the sale shall be assigned by applying the rules set forth in Rule 1320-06-01-.42(5)(f) (relating to licenses of intangible property that resemble sales of goods and services). Examples of such transactions include those that are analogous to the license transactions cited as examples in Rule 1320-06-01-.42(5)(f).

5. Except as otherwise provided in this section, the sale of intangible property that is not referenced in Rule 1320-06-01-.42(6)(a)1,2,4, or 5 shall be excluded from the numerator and the denominator of the taxpayer's sales factor.

(b) Examples. Assume in each of these examples that the taxpayer that provides the service is taxable in Tennessee and is to apportion its income pursuant to T.C.A. § 67-4-2012.

Example 1: Airline Corp, a corporation based outside Tennessee, sells its rights to use several gates at an airport located in Tennessee to Buyer Corp, a corporation that is based outside Tennessee. The contract of sale is negotiated and signed outside of Tennessee. The sale is in Tennessee because the intangible property sold is a contract right that authorizes the holder to conduct a business activity solely in Tennessee. See Rule 1320-06-01-.42(6)(a)1.

Example 2: Wireless Corp, a corporation based outside Tennessee, sells a license issued by the Federal Communications Commission (FCC) to operate wireless telecommunications services in a designated area in Tennessee to Buyer Corp, a corporation that is based outside Tennessee. The contract of sale is negotiated and signed outside of Tennessee. The sale is in Tennessee because the intangible property sold is a government license that authorizes the holder to conduct business activity solely in Tennessee. See Rule 1320-06-01-.42(6)(a)1.

Example 3: Same facts as in Example 2 except that Wireless Corp sells to Buyer Corp an FCC license to operate wireless telecommunications services in a designated area in Tennessee and an adjacent state. Wireless Corp must attempt to reasonably approximate the extent to which the intangible property is used in or associated with Tennessee. For purposes of making this reasonable approximation, Wireless Corp may rely upon credible data that identifies the percentage of persons that use wireless telecommunications in the two states covered by the license. See Rule 1320-06-01-.42(6)(a)1.

Example 4: Sports League Corp, a corporation that is based outside Tennessee, sells the rights to broadcast the sporting events played by the teams in its league in all 50 U.S. states to Network Corp. Although the games played by Sports League Corp will be broadcast in all 50 states, the games are of greater interest in the southeast region of the country, including Tennessee. Because the intangible property sold is a contract right that authorizes the holder to conduct a business activity in a specified geographic area, Sports League Corp must attempt to reasonably approximate the extent to which the intangible property is used in or associated with Tennessee. For purposes of making this reasonable approximation, Sports League Corp may rely upon audience measurement information that identifies the percentage of the audience for its sporting events in Tennessee and the other states. See Rule 1320-06-01-.42(6)(a)1.

Example 5: Business Corp, a corporation based outside Tennessee engaged in business activities in Tennessee and other states, enters into a covenant not to compete with Competition Corp, a corporation that is based outside Tennessee, in exchange for a fee. The agreement requires Business Corp to refrain from engaging in certain business activity in Tennessee and other states. The component of the fee that constitutes a Tennessee sale is determined by multiplying the amount of the fee by a fraction represented by the percentage of the Tennessee population over the total population in the specified geographic region. See Rule 1320-06-01-.42(6)(a)2.

Example 6: Inventor Corp, a corporation that is based outside Tennessee, sells patented technology that it has developed to Buyer Corp, a business customer that is based in Tennessee. Assume that the sale is not one in which the receipts derive from payments that are contingent on the productivity, use or disposition of the property. See Rule 1320-06-01-.42(6)(a)4. Inventor Corp understands that Buyer Corp is likely to use the patented technology in Tennessee, but the patented technology can be used anywhere (i.e., the rights sold are not rights that authorize the holder to conduct a business activity in a specific geographic area). The sale of the patented technology shall be excluded from the numerator and denominator of Inventor Corp's sales factor. See Rule 1320-06-01-.42(6)(a)5.

(7) Special Rules.

(a) Software Transactions. A license or sale of pre-written software for purposes other than commercial reproduction (or other exploitation of the intellectual property rights), when transferred on a tangible medium, is treated as the sale of tangible personal property, rather than as either the license or sale of intangible property or the performance of a service. In such cases, the receipts are assigned to Tennessee as a sale of tangible personal property. In all other cases, the receipts from a license or sale of software are to be assigned to Tennessee as determined otherwise under this regulation (e.g., depending on the facts, as the development and sale of custom software, see Rule 1320-06-01-.42(4)(c), as a license of a marketing intangible, see Rule 1320-06-01-.42(5)(b), as a license of a production intangible, see Rule 1320-06-01-.42(5)(c), as a license of intangible property where the substance of the transaction resembles a sale of goods or services, see Rule 1320-06-01-.42(5)(f), or as a sale of intangible property, see Rule 1320-06-01-.42(6)).

(b) Sales or Licenses of Digital Goods or Services. In the case of a sale or license of digital goods or services, including, among other things, the sale of various video, audio and software products or similar transactions, the receipts from the sale or license shall be assigned by applying the same rules as are set forth in Rule 1320-06-01-.42(4)(c)2(ii) or (iii), as if the transaction were a service delivered to an individual or business customer or delivered through or on behalf of an individual or business customer. For purposes of the

analysis, it is not relevant what the terms of the contractual relationship are or whether the sale or license might be characterized, depending upon the particular facts, as, for example, the sale or license of intangible property or the performance of a service. See Rules 1320-06-01-.42(5)(f) and (6)(a)5.

(c) Enforcement of Legal Rights. Receipts attributable to the protection or enforcement of legal rights of a taxpayer through litigation, arbitration, or settlement of legal disputes or claims, including the filing and pursuit of claims under insurance contracts, shall be excluded from the numerator and denominator of the taxpayer's sales factor. For purposes of this rule, in the case of a settlement agreement, it shall not be relevant how the parties to the agreement characterize the payment made under the agreement.

Authority: T.C.A. §§67-1-102(a) and 67-4-2012.
Administrative History: Original rule certified [date].

Repeal

1320-06-01-.04 ~~Initial Return Requirements.~~ Repealed.
~~Where there has been no closing of the books the taxpayer must file a return and pay the minimum franchise tax of $10.00. In preparation of the initial return where there has been no corporate closing prior to the end of the month subsequent to the expiration of a one year period from date of incorporation or domestication, only page one (1) of the tax form needs to be completed, and the minimum franchise tax must be paid. This return must be filed on or before the first day of the fourth month following the end of the month subsequent to the expiration of a one year period from date of incorporation or domestication.~~

Authority: T.C.A. §§67-1-102(a), 67-4-~~817,~~2015, and 67-4-~~907, and 67-4-915~~2119. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.05 ~~Short Period Return. Repealed~~Repealed.

~~(1) In the event of a corporate closing occurring within less than twelve (12) months of incorporation, domestication or commencing of business, the franchise tax of a domestic corporation will be prorated to cover the proportionate part of the year since the date of incorporation or the date of commencing business, whichever occurs first. The franchise tax of a foreign corporation will be prorated to cover the proportionate part of the year since beginning business in Tennessee. The excise tax may not be prorated.~~

~~(2) Annualization of rent paid will be required when determining the minimum measure of the franchise tax base in the event of a return covering less than one (1) year.~~

~~(3) A declaration of estimated excise tax shall not be required in any case if the taxable period is five (5) months or less but may be required if the taxable period is more than five (5) months. Annualization of the excise tax estimated to be due for the short period will be necessary to determine if such a declaration is required and, if so, the amount of each payment. When a required declaration for a period covering more than five (5) months but less than twelve (12) months is submitted, all estimated payments filing due within such short period and the payment due on the fifteenth (15th) day of the first month of the next taxable year will be paid in accordance with the provisions of T.C.A. §67-4-817, provided, however, that the payment due on the fifteenth (15th) day of the first month of the next taxable year will not be required if the interval between that date and the due date of the last quarterly payment required during such short period is less than (3) months. The amount due with each estimated excise tax declaration is the lesser of 25% of the excise tax liability shown on the prior year's twelve month return, or 25% of 80% of the current (short period) year's annualized excise tax. The various times when estimated tax payments are due for a return covering specific periods of less than twelve (12) months are as provided in §67-4-817(c)(1)(B).~~

Authority: T.C.A. §§67-1-102(a) and 67-4-817. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.06 ~~No Closing Within Two (2) Years.~~ Repealed.
~~Where no closing has been adopted within two (2) years from the end of the mouth of incorporation or domestication a taxpayer must report and pay the franchise tax according to the issue and outstanding stock or value of real and tangible personal property in Tennessee. Whichever is greater, as of the end of the month, two (2) years from date of incorporation or domestication.~~

Authority: T.C.A. §67-101(2). Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977.

1320-06-01-.08 ~~Extension of Time.~~ Repealed.
~~Any request for an extension of time up to but not exceeding nine (9) months in which to file the combined franchise-excise tax return will be granted automatically provided the appropriate payment of tax is made on or before the statutory due date of the return and such payment is made on the form prescribed by the department or reasonable facsimile thereof. The appropriate payment will be an amount equal to the prior year's total payment unless a statement is furnished as to the reason the prior year's total payment is not a true indication of present liability or there was no liability for the preceding year. If there was no liability for the preceding year, the total payment must equal at least 90% of the final liability. In the case of tax rate changes which have occurred since the prior year's liability was computed, the computation of the appropriate payment based on the prior year's liability will be the prior year's tax measure times the tax rate in effect for the fiscal year for which the report is filed. If the total payment does not equal the prior year's liability (or changes) or does not equal 90% of the final liability, penalty shall be applicable to the total deficient amount of taxes. The term "total payment" includes both franchise and excise taxes. Any payment of Tennessee estimated excise tax made for the tax year or any other credits should be considered in determining the amount to be paid. The deficient amount of taxes shall bear interest at the rate prescribed by law.~~

Authority: T.C.A. §§67-1-1-02(a), 67-4-819, and 67-4-916. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984. Amendment filed April 5, 1990; effective July 29, 1990.

1320-06-01-.09 ~~Privilege Period.~~ Repealed.
~~The franchise and excise taxes are accrued taxes and pay for a privilege period coextensive with the taxpayer's fiscal year closing or part thereof. However, any election as to privilege period made prior to July 1, 1963, will be deemed binding on the taxable entity. The corporate filing fee is prepaid and will pay for a privilege period not in excess of twelve (12) months following the date of close of the corporate fiscal year.~~

Authority: T.C.A. §67-101(2). Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977.

1320-06-01-.10 ~~Fiscal Year.~~ Repealed.
~~Once the taxpayer has elected a particular date as the close of its fiscal year. Such closing may not be changed without prior approval of the Commissioner. A return will be required based on every fiscal closing of the corporate records. The excise tax will not be subject to proration. The franchise tax will be prorated to cover the proportionate part of the year covered by the return.~~

Authority: T.C.A. §67-101(2). Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977.

1320-06-01-.11 ~~Surrender of Charter or Withdrawal.~~ Repealed.

~~(1) The proper procedure to dissolve a Tennessee charter is as follows: (a) File an Intent to Dissolve, in writing, with the Secretary of State pursuant to T.C.A. §§48-1001 or 48-1002; (b) File all required tax returns along with payment of taxes with the Department of Revenue. The Secretary of State will record the Articles of Dissolution and/or the application to withdraw, as the case may be, when the Department of Revenue furnishes to such office a certification that the corporation has paid all taxes required by the Department of Revenue.~~

~~(2) A corporation will be required to file a return or returns, as the case may be, based on all fiscal closings. The excise tax will be based on all net earnings of the corporation and will not be subject to proration. The franchise tax will be determined by using the closing near date of surrender, withdrawal or a closing associated with or immediately preceding merger, liquidation or consolidation. In all cases corporations must submit schedule of liquidation, distribution or disposition of all assets~~

Authority: T.C.A. §§67-1-102(a), 48-1001, 48-1001, 48-1007, and 48-1108. Administrative History: Original rule certified June 7, 1974. Repealed and refiled June 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

~~1320-06-01-.13 Federal Income Revisions.~~ 1320-06-01-.13 Repealed.
~~All federal income revisions not previously reported must be shown in the appropriate section of the tax form.~~

Authority: T.C.A. §67-101(2). Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977.

1320-06-01-.14 ~~Treasury Stock.~~ Repealed.
~~For purposes of computing the franchise tax, T.C.A. §67-4-904 provides that "issued and outstanding" stock shall not include treasury stock. Such stock shall be excluded to the extent of its cost; however, treasury stock is not to be excluded in determining the filing fee for periods ending before July 1, 1983.~~

~~Example (1): A real estate developer is the lessee of a motel building and operates it with rooms available for the use of guests on a daily basis for a daily charge. The lease payment made by the real estate developer must be included in the minimum measure of the franchise tax with the multiple of 8 applied and without an offset for the payments received from motel guests.~~

~~Example (2): Same as (1), except that the real estate developer subleases the entire building to a motel chain which operates it as a motel. The sublease payments received from the motel chain are subrentals to the real estate developer and may be offset against the lease payments included in the real estate developer's franchise tax minimum measure.~~

Authority: T.C.A. §§67-1-102(a) and 67-4-904. Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.16 ~~Reserves.~~ Repealed.

~~All reserves and allocations of surplus which do not represent definite and accrued legal liabilities or proper reductions in asset accounts must be included in determining the measure of the franchise tax. This shall include the entire reserves for bad debts as permitted under the federal Internal Revenue Code. Unrealized profits resulting from installment sales from personal property must be included as a part of surplus but the federal taxes that would be due on the reserve account alone, in the reported year, may be deducted.~~

Authority: T.C.A. §67-101(2). Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977.

1320-06-01-.19 ~~Adjustments to Net Earnings.~~ Repealed.

~~(1) (a) S Corporations (26 U.S.C. Section 1361 et seq.). For purposes of the Excise Tax Law, S corporations shall calculate their net earnings as if they had not elected S status.~~

~~(b) For fiscal years ending on or after July 15, 1988, corporations electing S corporation status for federal purposes shall calculate net earnings for Tennessee excise tax purposes by starting with the corporation's ordinary income reported on its federal return and making the following adjustments:~~

~~1. Add income items passed through to shareholders under 26 U.S.C. Section 1366 to the extent such items would be included in federal taxable income had the corporation not elected S status;~~

~~2. Subtract expense items passed through to shareholders under 26 U.S.C. Section 1366 to the extent such items would be deducted from federal taxable income had the corporation not elected S status;~~

~~3. Any other adjustments necessary to calculate net earnings as though the corporation had not elected S corporation status. The net earnings figure calculated above is then subject to the adjustments required by T.C.A. §67-4-805(b).~~

~~(c) S corporations shall include with each Tennessee excise tax return filed a copy of their Federal form 1120S filed with the Internal Revenue Service for the same tax year.~~

~~(2) Investment Tax Credit - Reduction in Basis of Assets. If a corporation is required to reduce the basis of its assets for federal tax purposes because it has taken an investment tax credit for federal tax purposes, the corporation shall also reduce the basis of its assets in the same manner for Tennessee excise tax purposes~~

Authority: T.C.A. §§67-1-102, 67-4-803, and 67-4-805. Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984. Amendment filed March 9, 1990; effective April 23, 1990.

1320-06-01-.22 ~~Gross Premiums Tax.~~ Repealed.

~~All insurance companies and self-insurers paying self-insurers' premium tax are permitted the option of expensing the amount of the gross premiums tax paid to this state, or as provided by T.C.A. §56-4-217 take the amount of the gross premiums tax paid to this state as a single credit against the sum total of franchise and excise taxes computed due. The gross premiums permitted as a credit is the tax paid based on the premiums collected (or imputed premium in the case of self-insurers) during the corresponding period covered by the franchise-excise tax return.~~

Authority: T.C.A. §§67-1-102(a), 67-4-808, and 56-4-217. Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.24 ~~Apportionment and Allocation.~~ Repealed.

~~(1) Definitions.~~

~~(a) "Taxpayer" means any entity (corporation or otherwise) described in T.C.A. §§67-4-903 and 67-4-806 and rule 1320-6-1-.02 which is subject to corporate franchise and excise taxes.~~

~~(b) "Apportionment" refers to the division of business earnings between states by the use of a formula containing apportionment factors.~~

~~(c) "Allocation" refers to the assignment of non-business earnings to a particular state.~~

~~(d) "Business activity" refers to the transactions and activity occurring in the regular course of the trade or business of a taxpayer.~~

~~(2) (a) Application Of Law: Apportionment. If the business activity in respect to the trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net earnings (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with T.C.A. §67-4-811; provided, however, that businesses which come under the provision of T.C.A. §67-4-814 through 67-4-816 shall apportion their earnings as set out in such sections.~~

~~(b) Application Of Law. Allocation. Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness earnings or loss within or without this state in accordance with §67-4-810.~~

~~(3) Consistency And Uniformity In Reporting. In filing returns with this state, if the taxpayer departs from or modifies the manner in which earnings have been classified as business earnings or nonbusiness earnings in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification~~

Authority: T.C.A. §§67-1-102(a), 67-4-806, 67-4-810, 67-4-811, 67-4-814, 67-4-815, 67-4-816, and 67-4-903. Administrative History: Original rule certified June 7, 1974. Amendment filed August 13, 1974; effective September 12, 1977. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.25 ~~Taxable in Another State~~Repealed.

~~(1) In General. Under T.C.A. §67-4-809 the taxpayer is subject to the allocation and apportionment of its net earnings if it has earnings from business activity that are taxable both within and without this state. A taxpayer's earnings from business activity are taxable without this state if such taxpayer, by reason of such business activity (i.e., the transactions and activity occurring in the regular course of its trade or business), is taxable in another state within the meaning of §67-4-809 (b). A taxpayer is taxable within another state if it meets either of two tests: (a) If by reason of business activity in another state the taxpayer is subject to one of the types of taxes specified in §67-4-809 (b)(1), namely: a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or (b) If by reason of such business activity another state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether or not the state imposes such a tax on the taxpayer. A taxpayer is not taxable in another state with respect to its regular trade of business merely because the taxpayer conducts activities in such other state pertaining to the production of nonbusiness earnings.~~

~~(2) Taxable in Another State: When a Taxpayer is "Subject To" a Tax Under §67-4-809 (b)(1).~~

~~(a) A taxpayer is "subject to" one of the taxes specified in §67-4-809 (b)(1) if it carries on business activities in such state and such states imposes such a tax thereon. Any taxpayer which asserts that it is subject to one of the taxes specified in §67-4-809(b)(1) in another state shall furnish to the Commissioner of Revenue of this state upon his request evidence to support such assertion. The Commissioner of Revenue of this state may request that such evidence include proof that the taxpayer has filed the requisite tax return in such other state and has paid any taxes imposed under the law of such other state; the taxpayer's failure to produce such proof may be taken into account in determining whether the taxpayer in fact is subject to one of the taxes specified in §67-4-809 (b)(1) in such other state.~~

~~(b) If the taxpayer voluntarily files and pays one or more of such taxes when not required to do so by the laws of that state or pays a minimal fee for qualification, organization or for the privilege of doing business in that state, but~~

~~1. does not actually engage in business activities in that state, or~~

~~2. does actually engage in some business activity, not sufficient for nexus, and the minimum tax bears no relation to the taxpayer's business activities within such state, the taxpayer is not "subject to" one of the taxes specified within the meaning of §67-4-809 (b)(1).~~

~~Example: State A has a corporation franchise tax measured by net income, for the privilege of doing business in that state. Corporation X files a return and pays the $50 minimum tax, although it carries on no business activities in State A. Corporation X is not "taxable" in State A.~~

~~(c) The concept of taxability in another state is based upon the premise that every state in which the taxpayer is engaged in business activities may impose an income tax even though every state does not to so. In states which do not, other types of taxes may be imposed as a substitute for an income tax. Therefore, only those taxes enumerated in §67-4-809 (b)(1) which may be considered as basically revenue raising rather than regulatory measures shall be considered in determining whether the taxpayer is "subject to" one of the taxes specified in §67-4-809 (b)(1) in another state.~~

~~Example I: State A requires all nonresident corporations which qualify or register in State A to pay to the Secretary of State an annual license fee or tax for the privilege of doing business in the state regardless of whether the privilege is in fact exercised. The amount paid is determined according to the total authorized capital stock of the corporation; the rates are progressively~~

~~higher by bracketed amounts. The statute sets a minimum fee of $50 and a maximum fee of $500. Failure to pay the tax bars a corporation from utilizing the state courts for enforcement of its rights. State A also imposes a corporation income tax. Nonresident Corporation X is qualified in State A and pays the required fee to the Secretary of State but does not carry on any business activity in State A (although it may utilize the courts of State A). Corporation X is not "taxable" in State A.~~

~~Example 2: Same facts as Example 1, except that Corporation X is subject to and pays the corporation income tax. Payment is prima facie evidence that Corporation X is "subject to" the net income tax of State A and is "taxable" in State A.~~

~~Example 3: State B requires all nonresident corporations qualified or registered in State B to pay to the Secretary of State an annual permit fee or tax for doing business in the state. The base of the fee or tax is the sum of (i) outstanding capital stock, and (ii) surplus and undivided profits. The fee or tax base attributable to State B is determined by a three factor apportionment formula. Nonresident Corporation X which operates a plant in State B, pays the required fee or tax to the Secretary of State. Corporation X is "taxable" in State B.~~

~~Example 4: State A has a corporation franchise tax measured by net income for privilege of doing business in that State. Corporation X files a return based upon its business activities in the state but the amount of computed liability is less than the minimum tax. Corporation X pays the minimum tax. Corporation X is subject to State A's corporation franchise tax.~~

~~(3) Taxable in Another State: When a State Has Jurisdiction to Subject a Taxpayer to a Net Income Tax. The second test, that in §67-4-809(b)(2), applies if the taxpayer's business activity is sufficient to give the state jurisdiction to impose a net income tax by reason of such business activity under the Constitution and statutes of the United States. Jurisdiction to tax is not present where the state is prohibited from imposing the tax by reason of the provisions of Public Law 86-272, 15 U.S.C.A. §§381-385. In the case of any "state" as defined in §67-4-804 (a)(7) other than a state of the United States or political subdivision of such state, the determination of whether such "state" has jurisdiction to subject the taxpayer to a net income tax shall be made as though the jurisdiction standards applicable to a state of the United States applied in that "state." If jurisdiction is otherwise present, such "state" is not considered as without jurisdiction by reason of the provisions of a treaty between that state and the United States.~~

~~Example: Corporation X is actively engaged in manufacturing farm equipment in State A and in foreign country B. Both State A and foreign country B impose a net income tax but foreign country B exempts corporations engaged in manufacturing farm equipment. Corporation X is subject to the jurisdiction of State A and foreign country B.~~

Authority: T.C.A. §§67-1-102(a), 67-4-804, and 67-4-809. Administrative History: Original rule certified June 7, 1974. Repealed and refiled July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984.

1320-06-01-.37 ~~Estimated Payments of Excise Tax~~Repealed

~~(1) Every corporation required by the provisions of T.C.A. §67-4-817 to make estimated quarterly payments of the excise tax, on or before the fifteenth (15th) day of the fourth (4th) month of its taxable year, shall file a declaration of its estimated excise tax in Tennessee for the taxable year. The declaration of estimated excise tax shall be an amount equal to the lesser of eighty percent (80%) of the total excise tax liability shown on the corporation's completed annual return to be due for the corporation's current taxable year or the total excise tax liability shown on the corporation's completed annual return to be due for the corporation's preceding taxable year of twelve (12) months.~~

~~(2) The estimated excise tax payment, as required by the provisions of T.C.A. §67-4-817, shall be an amount not less than the lesser of:~~

~~(a) the total excise tax liability shown on the return of the corporation for the preceding taxable year, or~~

~~(b) eighty percent (80%) of the total excise tax liability shown on the return for the current taxable year.~~

~~(3) In the event that the corporation's completed annual return for the corporation's preceding taxable year covers a period of less than twelve (12) months, the excise tax due in such return shall be annualized in order to determine the amount to be paid with each quarterly estimated payment.~~

~~Example: For the five-month period beginning August 1, 1986 and ending December 31, 1986, the excise tax computed amounted to $1,500. This amount must be annualized in order to determine a minimum basis for the estimated annual tax liability for the twelve (12) months beginning January 1, 1987 and ending December 31, 1987. Computations are as follows:~~

~~$1,500 (tax liability) x 12 = $3600 (estimated annual liability)~~
~~5 (tax period in months)~~

~~$3,600 (estimated annual liability) = $900 (quarterly estimated payment)~~
~~4~~

~~The total excise tax payment for the calendar year 1987 would have to be $3600 as computed above or 80% of the actual calendar year 1987 excise tax liability, whichever is less, to avoid accrual of penalty and interest for insufficient payment.~~

~~In the event that the return to be due for the corporation's current taxable year is to cover a period of less than twelve (12) months see rule 1320-6-1-.05(3).~~

~~(4) Estimated excise tax payment so determined shall be made by paying one-fourth (1/4) of the estimated amount on the fifteenth (15th) day of the fourth (4th) month of the current taxable year, one-fourth (1/4) of the estimated amount on the fifteenth (15th) day of the seventh (7th) month of the current taxable year, one-fourth (1/4) of the estimated amount on the fifteenth (15th) day of the tenth (10th) month of the current taxable year, and one-fourth (1/4) of the estimated amount on the fifteenth (15th) day of the first month of the subsequent taxable year.~~

~~(5) All estimated excise tax payments must be accompanied by the Tennessee estimated excise tax declaration or a copy thereof.~~

Authority: T.C.A. §§67-1-102 and 67-4-817. Administrative History: Original rule filed July 22, 1977; effective August 22, 1977. Amendment filed November 6, 1984; effective December 6, 1984. Amendment filed March 9, 1990; effective April 23, 1990.

1320-06-01-.39 ~~Deduction from the Measure of the Franchise Tax Base for Stock Held in Another Corporation.~~ Repealed.

~~As provided by T.C.A. §67-4-905(b), the value of stock held by any corporation in any other corporation paying the franchise tax and actually doing business in this state shall be deducted from the measure of the franchise tax of the first corporation. The value of the stock to be deducted is the amount at which the stock is stated on the books and records of the first corporation in accordance with generally accepted accounting principles. If a corporation is a financial institution member of a unitary business as defined in T.C.A. §67-4-804, the member may deduct the value of stock held in any other corporation, including another member of the group, if the other corporation or other member is paying the franchise tax and actually doing business in Tennessee.~~

Authority: T.C.A. §§67-1-102 and 67-4-905(b). Administrative History: Original rule filed September 4, 1992; effective December 29, 1992.

Chapter 1320-01-02 Taxpayer Remedies for Disputed Taxes
Rule 1320-01-02-.01 Repealed; Rule 1320-01-02-.05 Request for Informal Conference

Chapter 1320-02-01 Tax Enforcement Procedures Act
Rule 1320-02-01-.43 Assessment by Commissioner

Chapter 1320-04-05 Business Tax Rules and Regulations
Rule 1320-04-05-.08 Computation of Tax; Rule 1320-04-05-.09 Construction Contractors and Exterminators; Rule 1320-04-05-.11 Repealed; Rule 1320-04-05-.12 Deductions from Gross Sales; Rule 1320-04-05-.13 Definitions – General; Rule 1320-04-05-.14 Distribution from Warehouse or Other Central Location; Rule 1320-04-05-.15 Dominant Business Activity Defined for Classification Purposes; Rule 1320-04-05-.27 Local Adoption of Business Tax; Rule 1320-04-05-.28 Locations and Outlets – Operations in Other Localities; Rule 1320-04-05-.30 Tax Due Date – Delinquency Tax Periods; Rule 1320-04-05-.36 Persons Exempt from Business Tax; Rule 1320-04-05-.37 Repealed; Rule 1320-04-05-.41 Real Estate Sales and Rentals; Rule 1320-04-05-.42 Preservation of Records; Rule 1320-04-05-.47 Sales for Resale; Rule 1320-04-05-.53 Taxpayers' Returns and Records; Rule 1320-04-05-.57 Transfer of License; Rule 1320-04-05-.60 Repealed; Rule 1320-04-05-.61 Antique Malls, Flea Markets, Craft Shows, Antique Shows, Gun Shows, and Auto Shows

Chapter 1320-05-01 State Sales and Use Tax Rules
Rule 1320-05-01-.12 Repealed; Rule 1320-05-01-.26 Hospitals and Sanitariums; Rule 1320-05-01-.27 Installation Sales; Rule 1320-05-01-.36 Boarding Institutions; Rule 1320-05-01-.48 Photographs, Photostats, Blue Prints, Etc.; Rule 1320-05-01-.63 Registration Certificate; Rule 1320-05-01-.64 Repealed; Rule 1320-05-01-.67 Printing Industry; Rule 1320-05-01-.74 Taxpayer Reports; Rule 1320-05-01-.90 Billing of Sales and Use Tax; Rule 1320-05-01-.105 Repealed; Rule 1320-05-01-.106 Industrial Machinery; Rule 1320-05-01-.107 Electricity; Rule 1320-05-01-.115 Sales Tax on Amusement or Recreation Activity; Rule 1320-05-01-.116 Membership Sports and Recreation Clubs; Rule 1320-05-01-.121 Free, Complimentary, or Reduced Dues, Fees, or Admission Charges; Rule 1320-05-01-.122 Entering or Engaging in Amusement or Recreational Activity; Rule 1320-05-01-.127 Repealed; Rule 1320-05-01-.128 Research and Development

Chapter 1320-06-01 Franchise and Excise Tax Rules and Regulations
Rule 1320-06-01-.02 Due Date; Rule 1320-06-01-.04 Repealed; Rule 1320-06-01-.05 Repealed; Rule 1320-06-01-.06 Repealed; Rule 1320-06-01-.08 Repealed; Rule 1320-06-01-.09 Repealed; Rule 1320-06-01-.10 Repealed; Rule 1320-06-01-.11 Repealed; Rule 1320-06-01-.13 Repealed; Rule 1320-06-01-.14 Repealed; Rule 1320-06-01-.15 Indebtedness – Adequacy of Capital; Rule 1320-06-01-.16 Repealed; Rule 1320-06-01-.18 Minimum Measure of Franchise Tax; Rule 1320-06-01-.19 Repealed; Rule 1320-06-01-.20 Actual Charitable Contributions; Rule 1320-06-01-.21 Loss Carryovers; Rule 1320-06-01-.22 Repealed; Rule 1320-06-01-.23 Business and Nonbusiness Earnings; Rule 1320-06-01-.24 Repealed; Rule 1320-06-01-.25 Repealed; Rule 1320-06-01-.27 Property Factor; Rule 1320-06-01-.28 Property Factor – Valuation; Rule 1320-06-01-.29 Property Factor – Averaging Property Values; Rule 1320-06-01-.30 Payroll Factor; Rule 1320-06-01-.31 Payroll Factor – Compensation Paid in this State; Rule 1320-06-01-.32 Sales Factor; Rule 1320-06-01-.33 Sales Factor – Sales of Tangible Personal Property; Rule 1320-06-01-.34 Sales Factor – Qualified Member of a Qualified Group; Rule 1320-06-01-.35 Variances; Rule 1320-06-01-.37 Repealed; Rule 1320-06-01-.38 Constructing or Improving Real Property – Special Apportionment Rules; Rule 1320-06-01-.39 Repealed; Rule 1320-06-01-.40 Disregarded Entities; Rule 1320-06-01-.41 Series Limited Liability Companies; Rule 1320-06-01-.42 Sales Factor – Sales Other than Sales of Tangible Personal Property in this State

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

Herbert H. Slatery III
Attorney General and Reporter

6/24/2016
Date

Department of State Use Only

RECEIVED
2016 JUN 28 AM 8:33
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 6/28/16

Effective on: 9/26/16

Tre Hargett
Secretary of State

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Not Applicable					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Revenue on 04/26/16, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/25/2016

Rulemaking Hearing(s) Conducted on: (add more dates). 04/26/2016

Date: June 20, 2016

Signature: Richard H. Roberts

Name of Officer: Richard H. Roberts

Title of Officer: Commissioner

Subscribed and sworn to before me on: 6-20-16

Notary Public Signature: Tammy Crook

My commission expires on: 12-18-2017

TAMMY CROOK
STATE OF TENNESSEE
NOTARY PUBLIC
SUMNER COUNTY

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Finance and Administration, Bureau of TennCare
SUBJECT:	TennCare Standard; Definitions
STATUTORY AUTHORITY:	Tenn. Code Ann., Sections 71-5-105 and 71-5-109
EFFECTIVE DATES:	September 28, 2016, through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule amends the definition of Durable Medical Equipment (DME). The amendment clarifies the existing definition of DME by deleting the restrictive language that DME is used in the person's home and specifying that DME is suitable for any non-institutional setting where everyday life activities occur.

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: Commenter with the Opens Arms Care Corporation stated in a handout at the hearing and an e-mail that the revision is of concern to the private ICF/IID providers because it essentially rules out the utilization of DME services paid by the individual's TennCare MCO, except where there is customization and instead shifts the burden to the private ICF/IID. Individuals served by ICF/IID providers typically have co-occurring health and physical challenges which require the use of durable medical equipment. It is not uncommon for many of the individuals utilizing ICF/IID services to require wheelchairs (power, manual and all seating components) and repairs, oxygen concentrators, CPAP machines, hospital beds, enteral feeding, infusion pumps, glucose monitors, communication devices, walkers, canes, crutches, non custom orthotics/prosthetics (including knee immobilizers, AFO's back braces, compression stockings, hand splints, walking boots, cervical collars, etc), shower chairs, and mechanical lifts; which could cost an agency tens of thousands per person in any given year.

The commenter also stated that it was difficult to surmise what specific financial impact ICF/IID providers will assume as a result of this alteration in State Policy, it is clear that additional cash flow challenges will be created. The ICF/IID cost reimbursement rate structure is designed to provide allowable reimbursements for expenses; which providers have incurred in provision of services. However, there is an intrinsic lag time in formulation of rates which can cause significant cash flow challenges for providers who assume sizeable cost increases in any given year.

Response: Thank you for your comments of February 3, 2016, and February 5, 2016, on the above-referenced rules pertaining to the definition of durable medical equipment in the TennCare program. After reviewing and considering comments received from you and others, we have revised the language in the proposed rule. We hope this revision clarifies the intent of the rule, and its applicability in various types of settings. We appreciate the services your organization provides to Tennesseans with disabilities, and we appreciate your participation in the rulemaking process.

Comment: A commenter with the Department of Intellectual & Developmental Disabilities requested that additional language "wheelchair seating systems" be inserted in the rule to clarify that both wheelchairs (i.e., the frame, support components, and power controls) and wheelchair seating systems can both be customized to meet individual needs.

The commenter also requested that additional language "are individually measured and selected" be added to Subparagraph (b) to account for DME items that are recommended for a member based on an evaluation of his/her individual or unique positioning, support or mobility needs, but may be commercially available as opposed to custom-made.

Response: Thank you for your comments of February 5, 2016, on the rule pertaining to the definition of durable medical equipment in the TennCare program. After reviewing and considering comments received from you and others, we have revised the language in the proposed rule to incorporate your input. We hope this revision clarifies the intent and applicability of the rule. We appreciate our partnership with the Department of Intellectual & Developmental Disabilities as we seek to provide high-quality care to Tennesseans with disabilities.

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 rule is not anticipated to have an effect on small businesses.

Impact on Local Governments

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

The rule is not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

This Rule is being promulgated to amend the definition of Durable Medical Equipment (DME). The amendment clarifies the existing definition of DME by deleting the restrictive language that DME is used in the person's home and specifying that DME is suitable for any non-institutional setting where everyday life activities occur.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rule is lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

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

The persons and entities most directly affected by this Rule are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by these Rules is the Bureau of TennCare, Tennessee Department of Finance and Administration.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Rule was approved by the Tennessee Attorney General. No additional opinion was given or requested.

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

The promulgation of this rule is not expected to have an effect on state and local government revenues and expenditures.

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

John G. (Gabe) Roberts
General Counsel

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

John G. (Gabe) Roberts
General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

310 Great Circle Road
Nashville, TN 37243
(615) 507-6936
gabe.roberts@tn.gov

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

GW10216008

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-25-16
Rule ID(s): 6210
File Date: 6/30/16
Effective Date: 9/28/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@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**
1200-13-14	TennCare Standard
Rule Number	**Rule Title**
1200-13-14-.01	Definitions

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-14
TENNCARE STANDARD

1200-13-14-.01 DEFINITIONS.

(44) DURABLE MEDICAL EQUIPMENT (DME) shall mean equipment that can stand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of an illness or injury, is suitable for use in any non-institutional setting in which everyday life activities take place ~~appropriate for and used in the patient's home~~, and is related to the patient's physical disorder. ~~An institution is not considered a patient's or member's home if it meets the definition of a hospital or skilled facility.~~ Orthotics and prosthetic devices, and artificial limbs and eyes are considered DME. Non-institutional settings do not include a hospital or nursing facility (NF). Routine DME items, including but not limited to wheelchairs (except as defined below), walkers, hospital beds, canes, commodes, traction equipment, suction machines, patient lifts, weight scales, and other items provided to a member receiving services in a NF that are within the scope of per diem reimbursement for NF services shall not be covered or reimbursable under the Medicaid program separate and apart from payment for the NF service. Customized orthotics, prosthetics, wheelchairs, wheelchair seating systems, and other items that are beyond the scope of Medicaid reimbursement for NF services shall be covered by the member's managed care organization, so long as such items:

(a) are medically necessary for the continuous care of a member; and

(b) must be custom-made or modified or may be commercially available, but must be individually measured and selected to address the member's unique and permanent medical need for positioning, support or mobility; and

(c) are solely for the use of that member and not for other NF residents.

GW10116125

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 05/17/2016 (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: 12/09/15

Rulemaking Hearing(s) Conducted on: (add more dates). 02/03/16

Date: 5/17/2016

Signature:

Name of Officer: Darin J. Gordon

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

ROBIN A. PAGE
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY, TN

Subscribed and sworn to before me on: 5/17/2016

Notary Public Signature:

My commission expires on: 10/18/2016

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.

Herbert H. Slatery III
Attorney General and Reporter

6/28/2016
Date

Department of State Use Only

RECEIVED
2016 JUN 30 AM 11:23
SECRETARY OF STATE
PUBLICATIONS

Filed with the Department of State on: 6/30/16

Effective on: 9/28/16

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

AGENCY:	Department of Finance and Administration, Bureau of TennCare
SUBJECT:	TennCare Medicaid; Definitions
STATUTORY AUTHORITY:	Tenn. Code Ann., Sections 71-5-105 and 71-5-109
EFFECTIVE DATES:	September 28, 2016, through June 30, 2017
FISCAL IMPACT:	None
STAFF RULE ABSTRACT:	The rulemaking hearing rule amends the definition of Durable Medical Equipment (DME). The amendment clarifies the existing definition of DME by deleting the restrictive language that DME is used in the person's home and specifying that DME is suitable for any non-institutional setting where everyday life activities occur.

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: Commenter with the Opens Arms Care Corporation stated in a handout at the hearing and an e-mail that the revision is of concern to the private ICF/IID providers because it essentially rules out the utilization of DME services paid by the individual's TennCare MCO, except where there is customization and instead shifts the burden to the private ICF/IID. Individuals served by ICF/IID providers typically have co-occurring health and physical challenges which require the use of durable medical equipment. It is not uncommon for many of the individuals utilizing ICF/IID services to require wheelchairs (power, manual and all seating components) and repairs, oxygen concentrators, CPAP machines, hospital beds, enteral feeding, infusion pumps, glucose monitors, communication devices, walkers, canes, crutches, non custom orthotics/prosthetics (including knee immobilizers, AFO's back braces, compression stockings, hand splints, walking boots, cervical collars, etc), shower chairs, and mechanical lifts; which could cost an agency tens of thousands per person in any given year.

The commenter also stated that it was difficult to surmise what specific financial impact ICF/IID providers will assume as a result of this alteration in State Policy, it is clear that additional cash flow challenges will be created. The ICF/IID cost reimbursement rate structure is designed to provide allowable reimbursements for expenses; which providers have incurred in provision of services. However, there is an intrinsic lag time in formulation of rates which can cause significant cash flow challenges for providers who assume sizeable cost increases in any given year.

Response: Thank you for your comments of February 3, 2016, and February 5, 2016, on the above-referenced rules pertaining to the definition of durable medical equipment in the TennCare program. After reviewing and considering comments received from you and others, we have revised the language in the proposed rule. We hope this revision clarifies the intent of the rule, and its applicability in various types of settings. We appreciate the services your organization provides to Tennesseans with disabilities, and we appreciate your participation in the rulemaking process.

Comment: A commenter with the Department of Intellectual & Developmental Disabilities requested that additional language "wheelchair seating systems" be inserted in the rule to clarify that both wheelchairs (i.e., the frame, support components, and power controls) and wheelchair seating systems can both be customized to meet individual needs.

The commenter also requested that additional language "are individually measured and selected" be added to Subparagraph (b) to account for DME items that are recommended for a member based on an evaluation of his/her individual or unique positioning, support or mobility needs, but may be commercially available as opposed to custom-made.

Response: Thank you for your comments of February 5, 2016, on the rule pertaining to the definition of durable medical equipment in the TennCare program. After reviewing and considering comments received from you and others, we have revised the language in the proposed rule to incorporate your input. We hope this revision clarifies the intent and applicability of the rule. We appreciate our partnership with the Department of Intellectual & Developmental Disabilities as we seek to provide high-quality care to Tennesseans with disabilities.

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 rule is not anticipated to have an effect on small businesses.

Impact on Local Governments

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

The rule is not anticipated to have an impact on local governments.

Additional Information Required by Joint Government Operations Committee

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

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

The Rule is being promulgated to amend the definition of Durable Medical Equipment (DME). The amendment clarifies the existing definition of DME by deleting the restrictive language that DME is used in the person's home and specifying that DME is suitable for any non-institutional setting where everyday life activities occur.

(B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The Rule is lawfully adopted by the Bureau of TennCare in accordance with §§ 4-5-202, 71-5-105 and 71-5-109.

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

The persons and entities most directly affected by this Rule are the TennCare enrollees, providers, and managed care contractors. The governmental entity most directly affected by this Rule is the Bureau of TennCare, Tennessee Department of Finance and Administration.

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Rule was approved by the Tennessee Attorney General. No additional opinion was given or requested.

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

The promulgation of this rule is not anticipated to have an effect on state and local government revenues and expenditures.

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

John G. (Gabe) Roberts
General Counsel

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

John G. (Gabe) Roberts
General Counsel

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

310 Great Circle Road
Nashville, TN 37243
(615) 507-6936
gabe.roberts@tn.gov

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

GW10116008

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Email: publications.information@tn.gov

For Department of State Use Only

Sequence Number: 06-26-16
Rule ID(s): 6211
File Date: 6/30/16
Effective Date: 9/28/16

Rulemaking Hearing Rule(s) Filing Form

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

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

Agency/Board/Commission:	Tennessee Department of Finance and Administration
Division:	Bureau of TennCare
Contact Person:	George Woods
Address:	310 Great Circle Road
Zip:	37243
Phone:	(615) 507-6446
Email:	george.woods@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**
1200-13-13	TennCare Medicaid
Rule Number	**Rule Title**
1200-13-13-.01	Definitions

RULES
OF
TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION
BUREAU OF TENNCARE

CHAPTER 1200-13-13
TENNCARE MEDICAID

1200-13-13-.01 DEFINITIONS.

(39) DURABLE MEDICAL EQUIPMENT (DME) shall mean equipment that can stand repeated use, is primarily and customarily used to serve a medical purpose, generally is not useful to a person in the absence of an illness or injury, is suitable for use in any non-institutional setting in which everyday life activities take place ~~appropriate for and used in the patient's home~~, and is related to the patient's physical disorder. ~~An institution is not considered a patient's or member's home if it meets the definition of a hospital or skilled facility,~~ Orthotics and prosthetic devices, and artificial limbs and eyes are considered DME. Non-institutional settings do not include a hospital or nursing facility (NF). Routine DME items, including but not limited to wheelchairs (except as defined below), walkers, hospital beds, canes, commodes, traction equipment, suction machines, patient lifts, weight scales, and other items provided to a member receiving services in a NF that are within the scope of per diem reimbursement for NF services shall not be covered or reimbursable under the Medicaid program separate and apart from payment for the NF service. Customized orthotics, prosthetics, wheelchairs, wheelchair seating systems, and other items that are beyond the scope of Medicaid reimbursement for NF services shall be covered by the member's managed care organization, so long as such items:

(a) are medically necessary for the continuous care of a member; and

(b) must be custom-made or modified or may be commercially available, but must be individually measured and selected to address the member's unique and permanent medical need for positioning, support or mobility; and

(c) are solely for the use of that member and not for other NF residents.

GW10216125

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Finance and Administration (board/commission/ other authority) on 05/17/2016 (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: 12/09/15

Rulemaking Hearing(s) Conducted on: (add more dates). 02/03/16

Date: 5/17/2016

Signature:

Name of Officer: Darin J. Gordon

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

ROBIN A. PAGE
STATE OF TENNESSEE NOTARY PUBLIC
WILLIAMSON COUNTY, TN

Subscribed and sworn to before me on: 5/17/2016

Notary Public Signature: Robin A Page

My commission expires on: 10/18/2016

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.

Herbert H. Slatery III
Attorney General and Reporter

6/28/2016
Date

Department of State Use Only

Filed with the Department of State on: 6/30/16

Effective on: 9/28/16

Tre Hargett
Secretary of State

RECEIVED
2016 JUN 30 AM 11:23
SECRETARY OF STATE
PUBLICATIONS