G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Board for Licensing Contractors
SUBJECT:	Contractor Licensing Classifications
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 62-6-108
EFFECTIVE DATES:	January 7, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

Rule 0680-01-13 *Monetary Limitations* changes the word will" to "may" regarding what factors the Board will use in determining monetary limitations for applicants or licensees. There is also language added regarding accounts receivable and limiting the situations they can be used in determining capital worth of an applicant or licensee.

Rule 0680-01-16 Appendix A of Rule 0680-01-12 *(Classifications System)* adds several informational notations on existing license classifications and adds license classifications for activities the Board determines to fall within the definition of contracting.

Rule 0680-01-26 *License Requirement for Property Owners* is a new rule clarifying the license exemption found in Tennessee Code Annotated, § 62-6-103(2)(A). The rule clarifies that property owners are not exempt to build commercial properties because this does not fall under the "individual use" exemption.

Rule 0680-01-27 *Misconduct* is a new rule stating acts that may constitute "misconduct" per Tennessee Code Annotated, § 62-6- 118(a) and may be grounds for disciplinary actions. These grounds are not exclusive.

Rule 0680-01-28 *Emergency Actions* is a new rule detailing emergency actions that may be taken by the Executive Director without a meeting of the Board pursuant to Tennessee Code Annotated, § 62-6-109(g) and 62-6-111 (b)(1).

Rule 0680-01-29 *Limited Residential License* is a new rule describing the process by which the Limited Residential License is issued by the Board per Tennessee Code Annotated, § 62-6-112(e).

Rule 0680-04-05 *License Renewal* is amended in order to correct the rule to coincide with statutory language stating that a new application is required subsequent to ninety (90) days after expiration.

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.

Rule 0680-01-.13

A written comment was received from Attorney Buckley Cole requesting that the rule be amended to state that a parent company would only have to agree to guarantee for a subsidiary company all debts and obligations owed to the Board as opposed to all debts and obligations arising out of contracting activities.

Attorney Buckley Cole, Attorney John P. Williams, Susan Ritter and Mitzi Spann of the Homebuilders Association of Tennessee subsequently requested to speak to the full Board regarding concerns about the guaranty agreements. The Board voted at the July 24, 2012 Board meeting to not proceed with the amendments to Rule 0680-01-.13 relating to guaranty agreements and to hold another rulemaking hearing in the future to address these issues.

Rule 0680-01-.16

Larry Wix, an inspector for the Department of Commerce and Insurance, commented on the limited residential contractor category added to Paragraph A. Mr. Wix commented that it is difficult to build a home for seventy thousand dollars ($70,000.00) and suggested raising the monetary limitation on this license category.

A written comment from director of the Corporate Training Workforce Development and Continuing Education at Chattanooga Community College commented that the seventy thousand dollar ($70,000.00) limit is unfair due to the increases in the consumer price index. The director requested that the limit be raised to one hundred and twenty five thousand dollars ($125,000.00.)

The Board responded by stating that the limited residential contractor category was created to allow inexperienced contractors time to develop contracting skills on smaller jobs. The Board doesn't wish to increase the limit because no exam is required for this license classification. If the contractors want a larger limit then they should have to apply for the general contractor's license and take the exam. The seventy thousand dollars ($70,000.00) may limit contractors from building a home from the ground up but appears to be sufficient for residential remodeling projects. The Board encourages contractors with this classification to go ahead and obtain the general contractor's license after a few years of having the limited residential license. The Board voted to change the language describing the limited residential license from "construction of single family dwellings" to "remodel, repair, or improvement of single family dwellings."

Larry Wix, an inspector for the Department of Commerce and Insurance, commented on the one hundred thousand dollar ($100,000.00) masonry license and asked whether this was a new category or not.

The Board response is that this rule change was made in 2011 rulemaking.

Larry Wix, an inspector for the Department of Commerce and Insurance, commented on the changes to the Roofing Building Category which was addition of language "gutters and vinyl siding. Mr. Wix questioned whether a license would be needed if the vinyl is a separate bid on a commercial job and over twenty five thousand dollars ($25,000.00.)

The Board responded in the affirmative.

Larry Wix, an inspector for the Department of Commerce and Insurance, commented on the addition of "scaffolding" as a building category and questioned what it means.

The Board responded that this applies to the set up of scaffolding where total cost is over twenty five thousand dollars ($25,000.00.)

Larry Wix, an inspector for the Department of Commerce and Insurance, commented on the addition of "Storm Damage Cleanup" as a Heavy Construction category and questioned what it means.

The Board responded that this pertains to excavation and cleanup of storm debris. The Board clarified that someone with an "excavation" license could also perform this work.

Larry Wix, an inspector for the Department of Commerce and Insurance, commented on the addition of "Landfill Construction" as a Heavy Construction category and questioned what it means.

The Board responded that the license was issued as a specialty license in the past and this category clarifies that a license is needed.

Rule 0680-01-.20

Assistant Commissioner Bill Giannini commented that he would like the Board to consider foregoing any fee increases relating to name changes, classification additions, and requests for monetary limitation increases and to examine the current fee structure.

The Board voted to strike the amendment to the rule at this time and to examine the fee structure at a later date.

Rule 0680-04-.05

Larry Wix, an inspector for the Department of Commerce and Insurance, questioned whether there was any grace period on the expiration date of a license.

The Board responded that there is no grace period however, if a licensee renews within the ninety (90) day renewal period then they can renew as opposed to applying for a new license.

Rule 0680-01-.27

Mr. David Whitt commented that the rule doesn't go far enough and specifically requested that a rule be added stating that a builder is guilty of misconduct if he is found guilty of violating a building code and not going back within a thirty (30)-day period and repairing the code violation after being notified.

The Board responded that failing to comply with codes is already considered misconduct and that two of the grounds in the proposed rule pertain to this issue. The grounds regarding failure to abide by a warranty agreement and failure to respond to customer inquiry regarding dissatisfaction appear to cover the situations that Mr. Whitt is concerned about. The Board also stated that code compliance on commercial projects is the responsibility of an architect as opposed to the contractor. The contractor has an obligation to build to the architectural design.

Rule 0680-01-.29

A written comment from the director of the Corporate Training Workforce Development and Continuing Education at Chattanooga Community College stating that their current course is four (4) days for a total of thirty (30) hours. They would consider increasing the minimum hours and requirements if tied to an increase in the monetary limitation on the license.

The Board voted to change the language in the rule from "three day course as approved by the Board" to "a course as approved by the Board."

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

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

1. Overlap, duplicate, or conflict with other federal, state, and local governmental rules:
There is no overlap, duplication, or conflict with other federal, state or local governmental rules.

2. Clarity, conciseness, and lack of ambiguity in the rules:
The rules are clear in purpose and intended execution. The rules are not open to different interpretations.

3. Flexible compliance and/or reporting requirements for small businesses:
Regarding new rule 0680-01-.27, it is imperative to the health, safety, and welfare of the citizens of Tennessee that licensed contractors refrain from misconduct in the practice of contracting. The new rule clarifies what actions the Board may find to constitute misconduct and be grounds for disciplinary action by the Board.

4. Friendly schedules or deadlines for compliance and/or reporting requirements:
Rule 0680-04-.05 is amended to reflect the ninety (90) day time period for renewals on limited plumbing licenses which is required by statute. This means that any application filed after ninety (90) days will be treated as a new application. This time period is not a new requirement but only a correction to the previous language of the rule which failed to reflect the correct statutory language.
The rules will not take effect until after a public rulemaking hearing and ninety (90) days have passed since the time of filing with the Secretary of State.

5. Consolidation or simplification of compliance or reporting requirements:
The Department is working to clarify the rules which should reduce conflicts and possibilities for confusion and should result in simplification of compliance. Rule 0680-01-.16 is amended to add license classifications which the Board previously issued as specialty licenses or to clarify definitions of existing classifications. The purpose of the rule is to clarify what types of the work require a license from the Tennessee Board for Licensing Contractors.
New rule 0680-01-.26 is a clarification upon the already existing license exemption.
New rule 0680-01-.28 describes the exact process by which an applicant may obtain a temporary license.
New rule 0680-01-.29 describes the process of applying for a license included within the residential construction classification.

6. Performance standards for small businesses:
The Tennessee Board for Licensing Contractors expects all businesses, regardless of size, to follow the new requirements.

7. Barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:
None of the proposed rules appear to stifle entrepreneurial activity, curb innovation, or increase costs.

Economic Impact Statement:

1. Types of small businesses directly affected:
A small business that holds a contractor's license will be affected but there is no foreseeable impact specifically affecting small businesses in general.

2. Projected reporting, recordkeeping, and other administrative costs:
There is no foreseeable alteration in small business reporting or recordkeeping that will result from the promulgation of these rules.

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

4. Less burdensome, intrusive, or costly alternative methods:
The proposed changes to the existing rules are minimally burdensome/intrusive to small businesses.

5. Comparison with federal and state counterparts:
There are no federal counterparts to the issues addressed by these rules.

6. Effect of possible exemption of small businesses:
In order to ensure the health, safety and welfare of the citizens of Tennessee, it is imperative that small businesses are held to the same standards as larger businesses regarding licensing requirements; regarding licensure in the appropriate classification; and, regarding misconduct arising out of contracting activities. An exemption of small businesses from the aforementioned requirements could be a detriment to health, safety and welfare of the citizens of Tennessee.

Impact on Local Governments

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

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

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

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Tennessee Board for Licensing Contractors
Division:	
Contact Person:	Jenny Taylor
Address:	500 James Robertson Parkway, 12 Floor, Nashville, Tennessee
Zip:	37243
Phone:	615-532-6308
Email:	Jenny.Taylor@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**
0680-01	Licensing
Rule Number	**Rule Title**
0680-01-.13	Monetary Limitations
0680-01-.16	Appendix A of Rule 0680-01-.12 (Classifications System)
0680-01-.26	License Requirement for Property Owners
0680-01-.27	Misconduct
0680-01-.28	Emergency Actions
0680-01-.29	Limited Residential License

Chapter Number	**Chapter Title**
0680-04	Limited Licensed Plumbers
Rule Number	**Rule Title**
0680-04-.05	License Renewal

Chapter 0680-01
Licensing

Amendments

Rule 0680-01-.13 Monetary Limitations is amended by deleting the rule in its entirety and by substituting the following language so that as amended the rule shall read as follows:

Rule 0680-01-.13 Monetary Limitations

(1) Generally, the monetary limitation placed on a classification of a license ~~will~~ may be determined as follows:

(a) For applicants having no apparent deficiency with respect to plant or equipment, the lesser of:

1. ten (10) times the applicant's net worth; or

2. ten (10) times the applicant's working capital. Accounts receivable that are more than three (3) months overdue may not be included within the calculation of working capital.

(b) At the Board's discretion, renewal applicants having no apparent deficiency with respect to plant or equipment, but with limited working capital, the greater of:

1. ten (10) times the applicant's working capital; or

2. fifty percent (50%) of the applicant's net worth.

(c) For other applicants, a lesser amount reflecting the degree of lack of plant or equipment.

(2) Lines of credit and indemnities (on forms furnished by the Board) may be considered to raise a monetary limitation. Lines of credit may be added up to its full value to the working capital. Credit for indemnities will be limited to fifty percent (50%). However, if the applicant has a negative working capital, lines of credit will be recognized at fifty percent (50%) of value.

(3) A tolerance of ten percent (10%) will be allowed on the monetary limitation placed on any classification of a license other than a Limited Residential license.

(4) Subject to such tolerance, no contractor shall engage, or offer to engage, in any project of which the cost (including all material and labor furnished by or through another source other than the owner) would exceed the monetary limitation placed on his license. If a contractor holds a license with more that one classification with different monetary limits, the monetary limits shall not be combined to bid a project.

Authority: T.C.A. §§ 62-6-108, 62-6-111, 62-6-116.

Rule 0680-01-.16 Appendix A of Rule 0680-01-.12 (Classifications System) is amended by deleting the rule in its entirety and by substituting the following language so that as amended the rule shall read as follows:

Rule 0680-01-.16 Appendix A of Rule 0680-01-.12 (Classifications System)

Outline of Classifications

BC – Building Construction

A. Residential-"Residential building contractors" are those whose services are limited to construction,

B. remodeling, repair, or improvement of one (1), two (2), three (3), or four (4) family unit residences not exceeding three (3) stories in height and accessory use structures in connection therewith.

1. Limited Residential (r)- A limited residential contractor is authorized to bid on and contract for the remodel, repair, or improvement of single family dwellings the total cost of which does not exceed seventy thousand dollars ($70,000.00).

B. Commercial-A commercial building contractor is authorized to bid on and contract for the construction, erection,alteration, repair or demolition of any building or structure for use and occupancy by the general public, including residential construction with more than four (4) units or greater than three (3) stories in height.

1. Small Commercial (b)-A small commercial building contractor is authorized to bid on and contract for the construction,erection, alteration, repair or demolition of any building or structure for use and occupancy by the general public the total cost of which does not exceed ~~five hundred thousand dollars ($500,000.00)~~ seven hundred and fifty thousand dollars ($750,000.00).

C. Industrial-A contractor under this classification is authorized to bid on and contract for the erection, alteration, repair and demolition of buildings or structures used for industrial production and service, such as manufacturing plants.

Building Categories

1. Each building category may apply to any major construction classification.

2. Pursuant to T.C.A. § 62-6-113, a contractor may not be licensed in six (6) or more categories under any one (1) major classification without successfully passing the written or oral examination, or both, for the major classification.

1. Acoustical Treatments
2. Carpentry, Framing and Millwork, etc.
3. Drywall
4. Floor Covering
5. Foundations
6. Glass, Window and Door Construction
7. Institutional and Recreational Equipment
8. Lathe, Plaster, Stucco, and Aluminum Siding
9. Masonry -under one hundred thousand dollars ($100,000.00), materials and labor
10. Ornamental and Miscellaneous Metal
11. Painting, Interior Decorating
12. Roof Decks
13. Site and Subdivision Development
14. Special Coatings and Waterproofing
15. Tile, Terrazzo and Marble
16. Insulation

17. Elevators, Escalators, and Dumbwaiters

18. Erection and Fabrication of Structural Steel

19. Concrete

20. Sheet Metal

21. Roofing-includes gutters and vinyl siding

22. Conveyors

23. Sandblasting

24. Golf Courses

25. Tennis Courts

26. Swimming Pools

27. Outdoor Advertising

28. Excavation

29. Landscaping

30. Fencing

31. Demolition

32. Millwright

33. Irrigation

34. Scaffolding

HC – Heavy Construction

A. Marine
(Wharves, Docks, Harbor Improvements and Terminals)

B. Tunnel and Shaft

C. Energy and Power Plants

D. Dams, Dikes, Levees and Canals

E. Mining Surface and Underground

F. Oil Field Construction

G. Oil Refineries

H. Storm Damage Cleanup

I. Landfill Construction

Heavy Construction Categories (Apply to All Areas)

1. Structural Steel Erection

2. Tower and Stack Construction

3. Foundation Construction, Pile Driving, Foundation Drilling, and Stabilization

4. Demolition and Movement of Structures

5. Clearing, Grubbing, Snagging and Rip Rap

6. Slipform Concrete Structures

7. Rigging and Crane Rigging

8. Welding

HRA - Highway, Railroad and Airport Construction

A. Grading and Drainage-Includes grading, drainage pipe and structures, clearing and grubbing.

B. Base and Paving

1. Base Construction

2. Hot and Cold Mix Asphalt

3. Surface Treatment Asphalt

4. Concrete Paving

C. Bridges and Culverts

1. Painting

2. Repair

3. Demolition

4. Bridge Deck Overlay (Sealant)

5. Gunite

6. Cofferdam

7. Steel Erection

D. Railroad Construction and Related Items

E. Miscellaneous and Specialty Items

1. Traffic Safety

(a) Pavement Markers

(b) Signing

(c) Guardrail and Fencing

(d) Attenuators, signalization and roadway lighting

2. Landscaping-Includes seeding, sodding, planting, and chemical weed and brush control.

3. Pavement Rehabilitation-Includes pressure grouting, grinding and grooving, concrete joints, and underdrains.

4. Well Drilling

5. Miscellaneous Concrete-Includes sidewalks, driveways, curb and gutter, and box culverts.

MU – Municipal and Utility Construction-Municipal and Utility Construction includes all supervision, labor, material and equipment to complete underground piping, water and sewer plants and sewer disposal, grading and drainage, and paving(unless restricted to specific areas named).

A. Underground Piping-Furnish supervision, labor, material and equipment to complete all underground piping for municipal and utility construction (unless restricted to specific areas names).

1. Gas Distribution and Transmission Lines

2. Sewer Lines, Storm Drains, Rehabilitation and Structures

3. Waterlines

4. Underground Conduit

B. Water and Sewer Systems*-*Classification BC-B is necessary in order to construct water and sewer plants.

C. Grading and Drainage-Includes grading, drainage pipe and structures, clearing and grubbing.

D. Base and Paving

1. Base Construction

2. Hot and Cold Mix Asphalt

3. Surface Treatment Asphalt

4. Concrete Pavement

5. Miscellaneous Concrete (includes sidewalks, driveways, curb and gutter, and box culverts)

MC (CMC) – Mechanical Contracting (the classification CMC is noted on licenses issued after 1992 and represents that the licensee has passed the Board licensing exam and that no county or municipality shall require such state licensee or its employees to pass any county or municipal test or examination pursuant to T.C.A. § 62-6-111(i)(2)(C).

A. Plumbing and Gas Piping

B. Process Piping

C. HVAC, Refrigeration, Gas Piping

D. Sprinklers & Fire Protection

E. Insulation of Mechanical Work

F. Pollution Control

G. Pneumatic Tube Systems

H. Temperature Controls (Pneumatic)

I. Boiler Construction & Repairs

J. Fuel Gas Piping and Systems

LMC-Licensed Masonry Contractor

E (CE) - Electrical Contracting (the classification CE is noted on licenses issued after 1992 and represents that the licensee has passed the Board licensing exam and that no county or municipality shall require such state licensee or its employees to pass any county or municipal test or examination pursuant to T.C.A. § 62-6-111(i)(2)(C)).

A. Electrical Transmission Lines

B. Electrical Work for Buildings and Structures

C. Underground Electrical Conduit Installation

D. Sound and Intercom Systems, Fire Detection Systems, Signal and Burglar Alarm Systems and Security Systems up to seventy (70) volts do not require examination *Please note that a separate license, issued by the Tennessee Alarm Systems Contractors Board, is also required for alarm systems.

E. Electrical Signs

F. Telephone Lines and Ducts

G. Cable T.V.

H. Substations

I. Electrical Temperature Controls

J. Fire Detection Systems, Signal and Burglar Alarm Systems and Security Systems with conduit and wiring above seventy (70) volts require an electrical exam.

K. Roadway Lighting, Attenuators and Signalization - requires electrical examination.

L. Electric Meter Installation

S – Specialty ~~(Specify)~~ The Board will utilize the system of classifications set forth in Appendix A. The Board reserves the right to depart from the classification system in appropriate individual cases.

S - Specialty/Environmental work falling within the definition of contracting pursuant to T.C.A. § 62-6-102.

A. Asbestos Material Handling/Removing

B. Underground Storage Tank

C. Lead-Based Paint Abatement

D. Hazardous Waste Removal

E. Air, Water or Soil Remediation

F. Mold Remediation

In each of the above environmental classifications, the following requirements apply:

1. In order to be eligible for licensure in this specialty classification, the applicant shall

furnish evidence satisfactory to the Board that the designated employee(s) shall have completed all training courses as required by the applicant state and federal agencies. In the event training courses are unavailable, the applicant's education, training, experience and equipment will be determined and considered in order to qualify the applicant for licensure.

2. A contractor holding a license in this specialty classification shall, as a condition for renewal of such license, keep abreast of all applicable state and federal requirements to ensure "state of the art" handling and removing of above materials by requiring its designated employee(s) to do so.

3. A contractor shall, whenever work in this specialty classification is in progress, have physically on the job site the designated employee(s) directly responsible for the work.

4. A contractor shall notify the Board of any citation lodged against it, or any of its employees, relative to work in a specialty classification within ten (10) days of receipt of the citation.

S-Specialty/Medical Gas Piping installation, maintenance and repair work falling within the regulation of medical gas piping pursuant to T.C.A.§ 68-11-253.

A. Medical Gas Piping Installer Certification Requirements.

1. The minimum qualifications for board certification are the qualifications for certification established by the American Medical Gas Institute (AMGI) or the Piping Industry Progress and Education Trust Fund (PIPE). A minimum of thirty-two (32) hours of training, with eight (8) of such hours in brazing, shall be required for board certification. The board shall from time to time revise minimum qualifications for board certification to include the most current edition of NFPA 99C "Standard on Gas and Vacuum Systems."

(a) The minimum of thirty-two (32) hours of training for board certification as a medical gas installer shall include training in the following areas from the most current edition of NFPA 99C, Gas and Vacuum Systems:

(1) Medical Gas Systems.

(2) Gas Distribution Systems.

(3) Installation of Pressurized Gas Systems.

(4) Vacuum Piping.

(5) Brazing Techniques for Medical Gas Systems.

(6) Requirements for Levels of Patient Care.

2. The board may designate and approve independent examining agencies, as necessary, to provide the training and examinations necessary for board certification required by T.C.A. § 68-11-253. The board will review an examining agency's curriculum prior to its designation to determine compliance with the minimum qualifications listed above in A.1.(a).

3. ~~The board shall charge a $5.00 application processing fee in addition to all regular contractor licensing fees for the board certification required by this rule.~~ The designated examining agency may charge reasonable fees for training and examination as determined appropriate by the board.

Authority: T.C.A. §§ 62-6-108, 62-6-112

Chapter 0680-04
Limited Licensed Plumbers

Amendment

Rule 0680-04-.05 License Renewal is amended by deleting subsection three (3) in its entirety and by substituting the following language so that as amended the new subsection shall read as follows:

(3) License renewals that are received fewer than thirty (30) days before the license expiration will be subject to late renewal penalties of ten percent (10%) per month (or fraction thereof), with the total fee not to exceed twice the normal renewal fee, and renewal applications received subsequent to ~~the twelfth month~~ ninety (90) days after expiration will be treated as new applications for licensure.

Authority: T.C.A. §§ 62-6-108, 62-6-405, and 62-6-411

Chapter 0680-01

Licensing

New Rules

Table of Contents

Rule 0680-01-.26 License Requirement for Property Owners

The license exemption stated in T.C.A. § 62-6-103(2)(A) pertains to any person, firm, church, or other religious institution that owns property and constructs on the property single residences, farm buildings or other buildings for individual use. This exemption does not apply to construction pertaining to resale, lease, rent or other similar purpose. The exemption does not apply to persons constructing buildings for a business-type purpose that cater to and depend upon usage by members of the general public.

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

Rule 0680-01-.27 Misconduct

The following acts may constitute misconduct and may result in disciplinary action against licensees including possible revocation or suspension of license. The acts include, but are not limited to:

(1) Failure to cooperate with open investigation related to a complaint filed with the Board. This includes failure to respond in writing to any communication from the Board requesting a response within thirty (30) days of mailing such communication by registered or certified mail to the last address furnished to the Board by the licensee.

(2) Failure to abide by warranty agreement.

(3) Pulling a building, electrical, plumbing, or like permit for a job in which an unlicensed contractor is acting as the general contractor.

(4) Failure to maintain worker's compensation if insurance is required by Tennessee statute.

(5) Revocation, suspension, or voluntary surrender of contractor's license in another jurisdiction.

(6) Failure to pay a civil judgment rendered against the contractor by a court of competent jurisdiction if related to the contracting industry.

(7) Failure to respond to customer inquiries regarding completion of work and/or dissatisfaction with quality of work.

Authority: T.C.A. §§ 62-6-108, 62-6-111, 62-6-118, 62-6-121

Rule 0680-01-.28 Emergency Actions

(1) The Executive Director is permitted to approve increases in the monetary limits and to consider timely licensure applications or renewal applications for which there are no evident impediments to licensure and for which loss of substantial business is imminent if licensure is delayed. The Executive Director shall obtain consent of at least one (1) Board member for purposes of considering the issuance of the temporary license.

(2) The application for a temporary license may be denied or delayed in order to request more information regarding a contractor's financial statement or any other issue which is deemed to have a possible detrimental effect to the public safety and welfare.

(3) Notice of emergency actions shall be posted on the board's website and shall be scheduled as the first agenda item at the next scheduled meeting of the Board in order that the Board may review and, in its discretion, modify the actions of the executive director.

(4) Applicants who wish to apply for an emergency license shall submit the following:

(a) Contractor's License Application

(b) Written request from the project owner describing the hardship and letter must include: details of the hardship; reason the emergency application process should be utilized; reason for requiring the use of the applicant contractor as opposed to a currently licensed contractor; description of the project and location; and the bid date, if applicable.

Authority: T.C.A. §§ 62-6-108, 62-6-109, 62-6-111

Rule 0680-01-.29 Limited Residential License

(1) The Limited Residential License allows for the remodel, repair, or improvement of single family dwellings in which the total cost does not exceed seventy thousand dollars ($70,000.00).

(2) The ten percent (10%) tolerance for monetary limitations as stated in Rule and Regulation 0680-01-.13 is not applicable to the Limited Residential License.

(3) The financial statements for Limited Residential License must reflect a positive net worth and positive working capital.

(4) The Limited Residential License applicant shall provide proof of any relevant experience in order to qualify for licensure.

(5) The applicant must participate in a restricted residential license three day course as approved by the Board. The course may be taken at any community college approved by the Board. These courses are found on the Board website.

(6) The Limited Residential Licensee may upgrade the license by taking an appropriate trade exam.

Authority: §§ T.C.A. 62-6-108, 62-6-112

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

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Board for Licensing Contractors on 03/28/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 02/06/12

Rulemaking Hearing(s) Conducted on: (add more dates). 03/28/12

Date: 8-29-12

Signature: Jerry Taylor

Name of Officer: Jerry Taylor

Title of Officer: Assistant General Counsel

LINDA L. BLACK
STATE OF TENNESSEE NOTARY PUBLIC
TROUSDALE COUNTY

Subscribed and sworn to before me on: August 29th 2012

Notary Public Signature: Linda L Black

My commission expires on: 4/5/16

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

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Wildlife Resources Agency
DIVISION:	Law Enforcement
SUBJECT:	Hunting Devices
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 70-1-206
EFFECTIVE DATES:	January 3, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule allows the executive director of TWRA to substitute a hunting device during a proclaimed specific hunting season for hunters 18 years of age or younger who have been diagnosed with a life-threatening illness and who are being provided with a hunt by a charitable organization.

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.

RULE: 1660-01-08-.07*

New	X
Amendment	
Repeal	

[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

Regulatory Flexibility Addendum

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

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

The commission does not anticipate significant impact to small businesses in Tennessee.

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

The commission anticipates minimal record keeping associated with this rule.

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

The commission anticipates no probable effect to small businesses.

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

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

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

There are no state or federal counterparts to this rule.

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

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

Impact on Local Governments

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

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

The commission does not anticipate any significant financial impact on local governments in Tennessee.

Please describe the increase in expenditures or decrease in revenues:

The commission does not anticipate any increase or decrease in state expenditures as a result of this rule.

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

Rulemaking Hearing Rule(s) Filing Form

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

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

Revision Type (check all that apply):

___ Amendment
_X_ New
___ Repeal

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

Chapter Number	**Chapter Title**
1660-01-08	Rules and Regulations of Hunts
Rule Number	**Rule Title**
1660-01-08-.07	Special Hunts Provided By Charitable Organizations

1660-01-08

Rules and Regulations of Hunts

New Rule

1660-01-08-.07 Special Hunts Provided By Charitable Organizations

The Executive Director may allow for hunting devices proclaimed for a specific season to be substituted by a different device in order to accommodate hunters 18 years of age and under who are diagnosed with a life threatening illness and who are being provided with a hunt from a charitable organization. Such organization must be properly incorporated and approved by the internal revenue service as organizations that are exempt from federal income tax under § 501(a) of the Internal Revenue Code, codified in 26 U.S.C. § 501(a), by virtue of being organizations described in § 501(c)(3) of the Internal Revenue Code, codified in 26 U.S.C. § 501(c)(3). Such organizations must make requests to the Executive Director in writing prior to any requested hunt, and the individual in question must be 18 years of age or younger and diagnosed with a medically certified life threatening illness. All other laws, regulations and proclamations pertaining to hunting will remain in effect. The individual will be required to have all requisite licenses and permits. No requests for elk hunts will be allowed pursuant to this part.

Authority: §§70-1-206 and 70-1-304

* 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
William L. Brown	✓			
Jim Bledsoe	✓			
Harold Cannon	✓			
Jeffrey H. Griggs	✓			✓
Julius Johnson				✓
Robert Martineau				
Jeff McMillin	✓			
Mitchell S. Parks	✓			
Julie Schuster	✓			
Trey Teague	✓			
Eric Wright	✓			
Danya Welch				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 06/15/2012 (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: *04/20/2012*

Rulemaking Hearing(s) Conducted on: (add more dates). *06/15/2012*

Date: 6-18-12

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 6-18-12

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

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

R E Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

9-25-12
Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Wildlife Resources Agency
DIVISION:	Wildlife
SUBJECT:	Waterfowl Hunting on West Sandy Wildlife Management Area
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 70-1-206
EFFECTIVE DATES:	January 3, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The TWRA and the TVA cooperatively manage West Sandy Wildlife Management Area for wildlife habitat. The levee system and pump house there are in need of repair and maintenance, and to safely do this work, the water levels will be lowered to a point where waterfowl hunting opportunities will be negatively impacted. West Sandy Wildlife Management Area has permanently registered waterfowl blinds, and the holders thereof are afforded lifetime rights to hunt the area; however, these holders are not allowed to participate in other TWRA blind drawing opportunities. This rule allows waterfowl blind holders at West Sandy Wildlife Management Area to participate in other TWRA blind drawing opportunities without losing their status as a registered blind holder at West Sandy during the 2-3 years that water levels will be adversely impacted.

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.

RULE: 1660-01-02

New	____
Amendment	__X__
Repeal	____

[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

Regulatory Flexibility Addendum

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

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

The Commission does not anticipate significant impact to small businesses in Tennessee. The rule allows persons holding lifetime rights to permanent registered waterfowl blinds the opportunity to participate in other agency waterfowl hunts during the time that the water levels around their blinds are lowered to unsuitable levels for waterfowl hunting while the TVA conducts maintenance on the levee and the pump house infrastructures.

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

The Commission anticipates no record keeping associated with this rule.

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

The Commission anticipates no probable effect to small businesses.

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

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

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

The Commission is unaware of federal or state counterparts to this rule.

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

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

Impact on Local Governments

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

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

The Commission is not aware of any projected financial impacts on local governments.

Please describe the increase in expenditures or decrease in revenues:

n/a

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Sequence Number: 10-05-12
Rule ID(s): 5313
File Date: 10/5/12
Effective Date: 1/3/13

Rulemaking Hearing Rule(s) Filing Form

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

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

Revision Type (check all that apply):
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**
1660-01-02	Rules and Regulations for Birds
Rule Number	**Rule Title**
1660-01-02-.02	Migratory Bird Hunting

Chapter 1660-01-02
Migratory Bird Hunting

Amendment

Rule 1660-01-02-.02(2)(d), West Sandy Wildlife Management Area, is amended by adding the following new paragraph:

16. Safety concerns require that the Tennessee Valley Authority (TVA) conduct repairs and maintenance to levee and pump house infrastructures that may create water levels incompatible for waterfowl hunting during the 2012-13, 2013-14 and possibly the 2014-15 waterfowl seasons. During this time, the Executive Director shall have the discretion to deem those permanent registered blind sites duly registered during the period of maintenance and repair by TVA while suspending the registration and all other annual requirements of this rule. Further, the Executive Director shall have the discretion to allow those permanent registered blind site holders to compete for or sign on any other Tennessee Wildlife Resources Agency blind sites in the state. Waterfowl blind drawings at this location will be suspended when TVA repair work creates conditions incompatible for waterfowl hunting.

Authority: *T.C.A. §§70-1-206 and 70-4-107.* ***Administrative History:*** *Original rule certified May 8, 1974. Amendment filed October 29, 1974; effective November 29, 1974. Amendment filed November 4, 1974; effective December 4, 1974. Amendment filed June 25, 1975; effective July 25, 1975. Amendment filed July 19, 1976; effective August 18, 1976. Amendment filed June 29, 1977, effective July 29, 1977. Amendment filed June 9, 1978; effective July10, 1978. Amendment filed July 2, 1979; effective August 16, 1979. Amendment filed May 19, 1980; effective July 3, 1980. Amendment filed August 2, 1982; effective August 31, 1982. Amendment filed May 27, 1983; effective June 27, 1983. Amendment filed November 13, 1984 effective December 13, 1984. Amendment filed June 27, 1985; effective July 27, 1985. Amendment filed June 9, 1986; effective July 9, 1986. Amendment filed September 24, 1986; effective November 8, 1986. Amendment filed June 27, 1988; effective August 11, 1988. Amendment filed June 8, 1989; effective July 23, 1989. Amendment filed December 18, 1989; effective February 1, 1990. Amendment filed June 7, 1990; effective July 22, 1990. Amendment filed December 12, 1990; effective January 26, 1991.Amendment filed April 28, 1993; effective June 12, 1993. Amendment filed August 9, 1993; effective October 23, 1993. Amendment filed August 26, 1993; effective November 9, 1993. Amendment filed January 30, 1995; effective April 15, 1995. Amendment filed February 8, 1996; effective April 23, 1996. Amendment filed April 22, 1996; effective July 6, 1996. Amendment filed August 13, 1998; effective October 27, 1998. Amendment filed August 26, 1998; effective November 9, 1998. Amendment filed September 17, 1998; effective December 1, 1998. Amendment filed November 24, 1999; effective February 7, 2000. Amendment filed May 19, 2000; effective August 2, 2000. Amendment filed October 2, 2000, effective December 16, 2000. Amendment filed December 1, 2000; effective February 14, 2001. Amendment filed July 19, 2001; effective October 2, 2001 Amendment filed March 5, 2002; effective May 19, 2002. Amendment filed May 20, 2003; effective August 3, 2003. Amendment filed June 3, 2004; effective August 17, 2004. Amendment filed May 25, 2005; effective August 8, 2005. Amendment filed March 1, 2009; effective May 16, 2009. Amendment filed June 16, 2010; effective September 14, 2010.*

* 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
William L. Brown				✓
Jim Bledsoe				✓
Harold Cannon	✓			
Jeffrey H. Griggs	✓			
Julius Johnson				✓
Robert Martineau				✓
Jeff McMillin	✓			
Mitchell S. Parks	✓			
Julie Schuster				✓
Trey Teague	✓			
Eric Wright	✓			
Danya Welch				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 05/18/2012 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *03/02/2012*

Rulemaking Hearing(s) Conducted on: (add more dates). *05/18/2012*

Date: 5-31-12

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Wildlife Resources Agency
DIVISION:	Fisheries
SUBJECT:	Resident Senior Commercial Fishing License
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 70-1-206
EFFECTIVE DATES:	January 3, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The Resident Senior Commercial Fishing License (Type 100) was inadvertently omitted from the original rule filing. This rule corrects the omission. This type of license is issued free of charge to those residents 70 years of age or older in accordance with Tennessee Code Annotated, 70-2-205(f).

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.

RULE: 1660-01-28-.04

New	____
Amendment	X
Repeal	____

[✓] There were no public comments to the above-described rule.

[ ] Attached hereto are the responses to public comments.

Regulatory Flexibility Addendum

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

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

The Commission anticipates no negative impact to commercial fishers. The Nonresident Commercial Helper License – Fishing (Type 104) will be combined with the current Resident Commercial Helper License – Fishing (Type 102) with no fee increase. The combined Commercial Helper License – Fishing (Type 102) will allow nonresident commercial fishers to purchase the necessary licenses at a reduced cost. Also, the addition of a Resident/Nonresident Commercial Turtle License – Fishing (Type 106) and Resident/Nonresident Commercial Bow License – Fishing (Type 119) will not add additional cost to the commercial fisher. The addition of the Resident/Nonresident Commercial Bow License – Fishing (Type 119) may benefit commercial fishers by allow an additional method of harvest.

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

The Commission anticipates no change in reporting, recordkeeping, or other administrative costs to incorporate the proposed rule change into the existing the TWRA system.

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

The Commission anticipates no effect or impact to small businesses and consumers

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

The Commission is unaware of a possible negative impact by reducing cost to commercial fishers and increasing methods by which they may harvest commercial species. .

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

The Commission is not aware of any federal or state counterparts to this rule.

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

Nonresident commercial fishers would realize an immediate reduction in license cost. This reduction in license cost may promote license sales and increase sales of commercial products to wholesale fish dealers.

Impact on Local Governments

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

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

We do not anticipate any significant fiscal impact to local governments as a result of this rule amendment.

Please describe the increase in expenditures or decrease in revenues:

We do not anticipate any increase in expenditures or decrease in revenues.

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

Rulemaking Hearing Rule(s) Filing Form

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

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

Revision Type (check all that apply):
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**
1660-01-28	Rules And Regulations Governing License And Permit Fees
Rule Number	**Rule Title**
1660-1-28-.04	Miscellaneous Licenses, Permits And Fees

Chapter 1660-1-28
Rules and Regulations Governing Licenses, Permits and Fees

Amendment

Rule 1660-1-28-.04, Miscellaneous Licenses, Permits and Fees, is hereby amended by changing the Resident Commercial Helper License – Fishing (Type 102) to a Commercial Helper License – Fishing (Type 102). The rule is also amended by creating a Resident/Nonresident Commercial Turtle Permit – Supplemental (Type 106) and a Resident/Nonresident Commercial Bow License – Fishing (Type 119) at no cost. The Nonresident Commercial Fisher License – Fishing (Type 104) is deleted in its entirety. As amended, the rule shall read:

1660-1-28-.04 MISCELLANEOUS LICENSES, PERMITS AND FEES

(1) Licenses, permits and fees are set out as follows:

Type:	Description:	
06	Migratory Bird Permit (Harvest Inventory Permit)	$1.00
07	Facility Fishing License	no cost
12	Apprentice Hunting License	$10.00
101	Resident Commercial Fisher License	$200.00

102	~~Resident~~ Commercial Helper License - Fishing	$200.00
103	Nonresident Commercial Fisher License	$1,000.00
~~104~~	~~Nonresident Commercial Helper License - Fishing~~	~~$1,000.00~~
105	Resident Commercial Musseler License	$200.00
106	Resident/Nonresident Commercial Turtle Permit – Supplemental	no cost
107	Nonresident Commercial Musseler License	$1,000.00
108	Resident Commercial Roe Fish Permit – Supplemental	$1,000.00
109	Cultured Pearl License	$1,000.00
110	Nonresident Commercial Roe Fish Permit, Supplemental	$1,500.00
111	Resident Wholesale Roe Fish Permit	$500.00
112	Nonresident Wholesale Roe Fish Dealer	$1,000.00
113	Wholesale Fish Dealer's License	$500.00
115	Wholesale Mussel Dealer's License	$500.00
116	Nonresident Fish Dealer's License	$500.00
117	Falconry General Permit – Supplemental	$60.00
118	Resident Fish Dealer's License	$50.00
119	Resident/Nonresident Commercial Bow License - Fishing	no cost
120	Nonresident Trapping License	$400.00
121	Resident/Non-resident Fur Buyer License	$150.00
122	Falconry Apprentice Permit – Supplemental	$60.00
123	Falconry Master Permit – Supplemental	$60.00
124	Commercial Wildlife Preserve - Big Game Permit	$300.00
125	Commercial Wildlife Preserve - Small Game Permit	$150.00
141	Taxidermist Permit	$100.00
149	Animal Importation Permit, One Shipment	$25.00
150	Animal Importation Permit, Annual	$200.00
160	Permanent Exhibitor Permit	$1,000.00
161	Temporary Exhibitor Permit	$250.00
166	Resident Senior Citizen's Permanent License	$10.00
167	Annual Senior Citizen's Permit - Supplemental	$40.00
170	Personal Possess Permit, Class I, One Animal,	$150.00
171	Personal Possess Permit, Class I, Entire Facility,	$1,500.00
172	Personal Possession Permit, Class II, One Animal	$25.00
173	Personal Possession Permit, Class II, Entire Facility	$250.00
174	Propagation Facility Permit, Small Game/Waterfowl	$50.00
175	Propagation Facility Permit, Class II, Except Small Game/Waterfowl	$250.00
176	Propagation Facility Permit, Class I	$2,500.00
189	Resident Permanent Sport Combination Hunting and Fishing License - Permanent Wheelchair Restricted	$10.00
190	Slat Basket Tag Permit	$8.00
194	Replacement License or Permit – Cost for replacement of one license or permit in a single transaction	$6.00
195	Replacement License or Permit $1.00 – Cost for replacement of each additional license or permit in a single Type 194 transaction	$1.00
197	Resident Permanent Sport Fishing License - Certified Blind	$10.00
198	Resident Permanent Sport Combination Hunting and Fishing License (Sport Fishing and Hunting License) - Disabled Veterans	$10.00
199	Resident Permanent Sport Fishing License – Persons Drawing Social Security Benefits Due to Mental Retardation	$10.00
500	Hunter Education Replacement Card	$6.00

Statutory Authority: T.C.A. §70-1-206.

Authority: *T.C.A. §70-1-206.* ***Administrative History:*** *Original rule filed February 10, 2005; effective April 26, 2005. Amendment filed July 29, 2005; effective October 12, 2005. Amendment filed September 29, 2006; effective December 13, 2006. Amendment filed February 26, 2007; effective May 12, 2007.*

* 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
William L. Brown				✓
Jim Bledsoe				✓
Harold Cannon	✓			
Jeffrey H. Griggs	✓			
Julius Johnson				✓
Robert Martineau				✓
Jeff McMillin	✓			
Mitchell S. Parks	✓			
Julie Schuster				✓
Trey Teague	✓			
Eric Wright	✓			
Danya Welch				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 05/18/2012 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *03/23/2012*

Rulemaking Hearing(s) Conducted on: (add more dates). *05/18/2012*

Date: 5-31-12

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 5-31-12

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

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

R E Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

9-25-12

Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT:	Wildlife Resources Agency
DIVISION:	Fisheries
SUBJECT:	Commercial Helper Licenses
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 70-1-206
EFFECTIVE DATES:	January 3, 2013 through June30, 2013
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

The Nonresident Commercial Helper License - Fishing (Type 104) is being combined with the current Resident Commercial Helper License - Fishing (Type 102) with no fee increase. The combined Commercial Helper License — Fishing (Type 102) will allow nonresident commercial fishers to purchase the necessary licenses at a reduced cost. Instead of $1,000 per year , non-residents will pay the same $200 per year that residents presently pay.

Also, the addition of a Resident/Nonresident Commercial Turtle Permit — Supplemental (Type 106) and Resident/Nonresident Commercial Bow License — Fishing (Type 119), both at no cost, will add no additional costs to the commercial fisher. The addition of the Resident/Nonresident Commercial Bow License — Fishing (Type 119) may benefit commercial fishers by allowing an additional method of harvest.

The agency reports that his rule amendment reduces costs to commercial fishers and increases the methods allowed to commercial harvesters of invasive species.

D:\My Documents\Word\twra comm helper.doc

Department of State
Division of Publications
312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
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Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 10-07-12
Rule ID(s): 5315
File Date: 10/5/12
Effective Date: 1/3/13

Rulemaking Hearing Rule(s) Filing Form

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

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

Revision Type (check all that apply):
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**
1660-01-28	Rules And Regulations Governing License And Permit Fees
Rule Number	**Rule Title**
1660-1-28-.04	Miscellaneous Licenses, Permits And Fees

Chapter 1660-1-28
Rules and Regulations Governing Licenses, Permits and Fees

Amendment

Rule 1660-1-28-.04, Miscellaneous Licenses, Permits and Fees, is hereby amended by adding the Resident Senior Commercial Fishing License (Type 100) at no cost. As amended, the rule shall read:

1660-1-28-.04 MISCELLANEOUS LICENSES, PERMITS AND FEES

(1) Licenses, permits and fees are set out as follows:

Type:	Description:	
06	Migratory Bird Permit (Harvest Inventory Permit)	$1.00
07	Facility Fishing License	no cost
12	Apprentice Hunting License	$10.00
100	Resident Senior Commercial Fisher License	no cost
101	Resident Commercial Fisher License	$200.00
102	Commercial Helper License - Fishing	$200.00

103	Nonresident Commercial Fisher License	$1,000.00
104	Nonresident Commercial Helper License - Fishing	$1,000.00
105	Resident Commercial Musseler License	$200.00
107	Nonresident Commercial Musseler License	$1,000.00
108	Resident Commercial Roe Fish Permit – Supplemental...	$1,000.00
109	Cultured Pearl License	$1,000.00
110	Nonresident Commercial Roe Fish Permit, Supplemental	$1,500.00
111	Resident Wholesale Roe Fish Permit	$500.00
112	Nonresident Wholesale Roe Fish Dealer	$1,000.00
113	Wholesale Fish Dealer's License	$500.00
115	Wholesale Mussel Dealer's License	$500.00
116	Nonresident Fish Dealer's License	$500.00
117	Falconry General Permit – Supplemental	$60.00
118	Resident Fish Dealer's License	$50.00
120	Nonresident Trapping License	$400.00
121	Resident/Non-resident Fur Buyer License	$150.00
122	Falconry Apprentice Permit – Supplemental	$60.00
123	Falconry Master Permit – Supplemental	$60.00
124	Commercial Wildlife Preserve - Big Game Permit	$300.00
125	Commercial Wildlife Preserve - Small Game Permit	$150.00
141	Taxidermist Permit	$100.00
149	Animal Importation Permit, One Shipment	$25.00
150	Animal Importation Permit, Annual	$200.00
160	Permanent Exhibitor Permit	$1,000.00
161	Temporary Exhibitor Permit	$250.00
166	Resident Senior Citizen's Permanent License	$10.00
167	Annual Senior Citizen's Permit - Supplemental	$40.00
170	Personal Possess Permit, Class I, One Animal,	$150.00
171	Personal Possess Permit, Class I, Entire Facility,	$1,500.00
172	Personal Possession Permit, Class II, One Animal	$25.00
173	Personal Possession Permit, Class II, Entire Facility.	$250.00
174	Propagation Facility Permit, Small Game/Waterfowl	$50.00
175	Propagation Facility Permit, Class II, Except Small Game/Waterfowl	$250.00
176	Propagation Facility Permit, Class I	$2,500.00
189	Resident Permanent Sport Combination Hunting and Fishing License - Permanent Wheelchair Restricted	$10.00
190	Slat Basket Tag Permit	$8.00
194	Replacement License or Permit – Cost for replacement of one license or permit in a single transaction	$6.00
195	Replacement License or Permit $1.00 – Cost for replacement of each additional license or permit in a single Type 194 transaction	$1.00
197	Resident Permanent Sport Fishing License - Certified Blind	$10.00
198	Resident Permanent Sport Combination Hunting and Fishing License (Sport Fishing and Hunting License) - Disabled Veterans	$10.00
199	Resident Permanent Sport Fishing License – Persons Drawing Social Security Benefits Due to Mental Retardation	$10.00
500	Hunter Education Replacement Card	$6.00

Statutory Authority: T.C.A. §70-1-206.

Authority: *T.C.A. §70-1-206.* ***Administrative History:*** *Original rule filed February 10, 2005; effective April 26, 2005. Amendment filed July 29, 2005; effective October 12, 2005. Amendment filed September 29, 2006; effective December 13, 2006. Amendment filed February 26, 2007; effective May 12, 2007.*

* 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
William L. Brown				✓
Jim Bledsoe				✓
Harold Cannon	✓			
Jeffrey H. Griggs	✓			
Julius Johnson				✓
Robert Martineau				✓
Jeff McMillin	✓			
Mitchell S. Parks	✓			
Julie Schuster				✓
Trey Teague	✓			
Eric Wright	✓			
Danya Welch				✓

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Wildlife Resources Commission on 05/18/2012 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *03/23/2012*

Rulemaking Hearing(s) Conducted on: (add more dates). *05/18/2012*

Date: 5-31-12

Signature: Ed Carter

Name of Officer: Ed Carter

Title of Officer: Executive Director

LISA CRAWFORD STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 5-31-12

Notary Public Signature: Lisa Crawford

My commission expires on: 5-5-15

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

RE Cooper Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

9-25-12

Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Health
DIVISION:	Health Related Boards
SUBJECT:	Fees for Copies of Public Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-506
EFFECTIVE DATES:	January 14, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule deletes the fees for copies of public records maintained by the Division. Instead, fees for copies of such public records will be governed by new Rule 1200-34-01-.05.

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 HEARING COMMENTS

RULEMAKING HEARING

Department of Health

Division of Health Related Boards

The rulemaking hearing for the Division of Health Related Boards was held on October 25, 2010 at 11:00 a.m. CDT in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Mary Kennedy, Deputy General Counsel, presided over the hearing.

No members of the public attended the rulemaking hearing. No oral comments were received at the rulemaking hearing.

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.

This rules only affects State government and has no impact 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)

This rule amendment will have no projected impact on local governments.

(Rule 1200-10-1-.08, continued)

(3) The Division of Health Related Boards shall provide or ascertain that office space is provided to the Boards in order to properly carry out their functions. In providing space, the Director shall determine that the space is consistent with the efficient administration of the Boards.

(4) The Division of Health Related Boards shall be responsible for providing special space requirements for the Boards for the conduct of examinations, hearings and meetings, and the Director shall approve all leases or agreements for the rental of such space in advance. Available space in the State or public buildings, or other suitable space as may be available at no cost shall be utilized to the fullest extent.

(5) Administrative hearings shall be conducted in accordance with the laws and regulations applicable to each board. Court reporters and witnesses shall be provided as required and shall be compensated as prescribed by law and/or State policy. The office of the Attorney General shall be advised well in advance and kept currently informed of hearings in which he will be expected to participate.

(6) The Division of Health Related Boards shall serve as the coordinating office between the Boards on matters of common concern or interest and it shall be its' responsibility to assist the Boards in any reasonable manner in carrying out their responsibilities and programs.

Authority: *T.C.A. §§63-1-132, 68-1-101, 4-5-202, and 4-5-204.* ***Administrative History:*** *Original rule certified June 7, 1974. (Formerly chapter 1200-6-1; filed December 3, 1990; effective January 15, 1991). Amendment filed August 25, 1995; effective November 8, 1995.*

1200-10-1-.09 FEES.

~~(1) Directories and/or Computer Printouts of licensees shall be made available upon request and the fees charged for such information shall be based on and equal to the costs derived to create the requested information.~~

(21) Payments for any imposed Civil Penalties shall be made by Cashier's Check, Certified Check, Money Order or Cash. Payment by personal or business check will not be accepted.

Authority: *T.C.A. §§63-1-114, 63-1-132, 4-5-202, and 4-5-204.* ***Administrative History:*** *Original rule filed August 5, 1986; effective September 19, 1986. Amendment filed January 13, 1990; effective March 17, 1990. (Formerly chapter 1200-10-1-.01; filed December 3, 1990; effective January 15, 1991). Amendment filed August 25, 1995; effective November 8, 1995.*

1200-10-1-.10 LICENSEE RENEWAL APPLICATIONS. The Division, with the Commissioner of Health's approval, establishes a system of license renewal at alternative intervals which will allow for the distribution of the license workload as uniformly as is practicable throughout the calendar year. Notwithstanding any law to the contrary, licenses issued under the alternative method are valid for twenty-four (24) months, and expire on the last day of the last month of the license period. All authorizations to practice must be renewed pursuant to the Division's alternative renewal system.

(1) Definitions - the following terms as used in this rule shall have the following meanings ascribed to them:

(a) Expiration Date - The date on which an existing license, certification or registration to practice any of the health related professions is scheduled to expire and on which renewal is due.

(b) License - Any license, certificate or registration to practice any profession regulated by Boards, Councils or Committees assigned to the Division of Health Related Boards.

(c) Licensee - Any person holding a license as defined in this rule.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Health
SUBJECT:	Inspection and Copying of Department Records
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 68-1-103 and 10-7-501 et seq.
EFFECTIVE DATES:	January 3, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rules implement statutory law relative to requests for inspection and copying of public records pursuant to Tennessee Code Annotated, Section 68-1-103 and Tennessee Code Annotated, Title 10, Chapter 7, Part 5. These rules set forth the procedures for requesting to review and copy public records and implement the fee schedule for requests for copies of public records. A records custodian may waive or reduce copying charges that total $10 or less. The Commissioner of Health may waive or reduce copying charges exceeding $10. These rules define "routine" and "non-routine" records, as well as records having commercial value. These rules address the provision of electronic, as well as hard, copies of department records.

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.

INSPECTION AND COPYING OF DEPARTMENT RECORDS

The rulemaking hearing for the Department of Health was held on October 25, 2010 at 10:30 a.m. CDT in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Mary Kennedy, Deputy General Counsel, presided over the hearing.

No members of the public attended the rulemaking hearing. No oral comments were received at the rulemaking hearing.

The Department solicited comments from the Office of Open Records Counsel and received the following:

In the definitions portion of the rules, there are definitions for "record having commercial value" and "vital records"; and rule 1200-35-01(1)(e) and (f) should be clarified to charge for labor when an actual copy of extract is requested and not when the request is for inspection.

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.

This rule only affects State government and does 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)

This rule amendment will have no projected impact on local governments.

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For Department of State Use Only

Sequence Number: 10-10-12
Rule ID(s): 5318
File Date: 10/5/12
Effective Date: 1/3/13

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Department of Health
Division:	Inspection and Copying of Department Records
Contact Person:	Mary Kennedy Deputy General Counsel, Department of Health
Address:	425 Fifth Avenue North, Cordell Hull Building, Third Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-4878
Email:	Mary.Kennedy@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-35-01	Inspection and Copying of Department Records
Rule Number	**Rule Title**
1200-35-01-.01	Purpose
1200-35-01-.02	Definitions
1200-35-01-.03	Making a Request
1200-35-01-.04	Inspection and Copying of Public Records
1200-35-01-.05	Payment of Costs for Reproduction of Public Records

(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)

Department of Health
Inspection and Copying of Department Records
Chapter 1200-35-01

New Rules

1200-35-01-.01 Purpose.
1200-35-01-.02 Definitions.
1200-35-01-.03 Making a Request.
1200-35-01-.04 Inspection and Copying of Public Records.
1200-35-01.-05 Payment of Costs for Reproduction of Public Records.

1200-35-01-.01 Purpose.

The purpose of these rules is to establish procedures to accommodate requests to inspect and/or copy records maintained by the Tennessee Department of Health, to the extent that such records are public records open to inspection by citizens of the State of Tennessee under the Tennessee Public Records Act, T.C.A. §10-7-501, et seq., while preserving the confidentiality of confidential records and/or confidential information as provided in Federal or State law. These rules do not govern charges made for copies of records made pursuant to a law other than the Tennessee Public Records Act. In addition, these rules establish procedures and standard fees for recovering the cost of providing copies of public records upon request.

Authority: T.C.A. §§ 10-7-503, 10-7-504 and 10-7-506.

1200-35-01-.02 Definitions. As used in these rules, the following terms are defined as follows:

(1) "Commissioner" means the Commissioner of the Tennessee Department of Health.

(2) "Confidential record" means any Department record that is considered confidential or privileged under Federal or State law, including without limitation, and without waiving any privilege or any right to confidentiality available under Federal or State law, as follows:

(a) Any record or portion of any record that is not subject to public inspection or is defined as confidential under the Public Records Act;

(b) Any record or portion of any record that is not subject to discovery or admissible into evidence in any Federal or State court proceeding or in any action for damages under the provisions of 23 U.S.C. § 409;

(c) Any record or portion of any record that is otherwise protected as confidential or privileged under any Federal or State law or regulation or pursuant to any court order;

(d) Any record that is protected under the attorney/client privilege;

(e) Any record that is protected under the attorney work product doctrine; and

(f) Any record that is protected under any other statutory or common law privilege.

(3) "Department" means the Tennessee Department of Health.

(4) "Non-routine record" means a record, in any form, that cannot be readily produced for public inspection or copied upon request without more than minimal assistance or processing from the Records Custodian, and including without limitation:

(a) Archived records;

(b) Microfilmed records;

(c) Audio recordings;

(d) Records accessed only through the manipulation of electronically or digitally stored information;

(e) Oversized pages or bound volumes that cannot be fed automatically into and copied on a standard office photocopier; and

(f) Records containing or located within files containing material that may be a confidential record under Federal or State law.

(5) "OORC" means the Office of Open Records Counsel.

(6) "Public record" means any Department record that is open to inspection by any citizen of the State of Tennessee under the provisions of the Public Records Act, and is not otherwise considered a confidential record under Federal or State law.

(7) "Public Records Act" means the Tennessee Public Records Act as codified in T.C.A. § 10-7-501, et seq.

(8) "Record" means any document or stored information, in any form, that has been generated or received and maintained by the Department pursuant to law or in connection with the transaction of the Department's official business.

(9) "Record available for a fee" means a record generated by the Department in connection with official business that the Department also offers for sale to other governmental agencies, bidders, and/or individuals as a service to the public, including without limitation as follows:

(a) Specialized output including but not limited to maps, tables, html and xtml documents and spreadsheets;

(b) Custom and specialized aggregations or records and data;

(c) Custom reports not otherwise produced;

(d) Data sets; and

(e) Vital Records.

(10) "Records Custodian" means an employee of the Department who has direct supervisory authority over the specific division, section or office of the Department where the requested Department records are maintained.

(11) "Redacted record" means a record that has been edited to remove information that is confidential under Federal or State law.

(12) "Routine record" means a public record, in any form, that can be readily produced for public inspection or copied upon request with minimal assistance from the Records Custodian, including without limitation:

(a) An unbound paper record of standard letter or legal size which can be automatically fed into and copied on a standard office photocopier;

(b) Any electronically or digitally stored record that can be readily accessed and printed on a standard office printer; provided, however, that such a record shall not be considered a routine record if each separate screen-page of the record must be printed as a separate page.

Authority: T.C.A. §§ 8-4-604, 10-7-503, 10-7-504, 10-7-506, and 68-3-102.

1200-35-01-.03 Making a Request.

(1) Business Hours.

(a) A request to inspect or copy public records of the Department pursuant to the Public Records Act shall be made, and any inspection or copying shall be conducted, during the Department's normal business hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding holidays.

(2) Notice of Requests.

(a) Notice of a request to inspect or copy public records of the Department, other than a record available for purchase, may be made orally or in writing to the appropriate Records Custodian where the requested records are maintained.

(b) The Department may request the notice to be made or confirmed in writing if, in the judgment of the Department, the request is for any non-routine record or for multiple routine records that cannot be readily produced for inspection in the specific office where the request has been made. The Department may require a request for copies of public records to be made in writing.

(c) Any form of written notice, e.g., letter, facsimile transmission or e-mail, will be acceptable.

(d) The notice shall identify the record or records requested for inspection or copying with as much specificity as reasonably possible.

(e) Any record available for purchase may be obtained by contacting the appropriate office where the record is offered for sale to the public.

Authority: T.C.A. §§ 8-4-604, 10-7-503 and 10-7-506.

1200-35-01-.04 Inspection and Copying of Public Records.

(1) Preliminary Review of Request.

(a) Upon receiving a request to inspect a Department record, other than a record available for purchase, the Records Custodian shall make a preliminary assessment of the nature and scope of the request. If the Records Custodian determines that it is not practicable to make the record promptly available for inspection and/or copying, the Records Custodian shall, within seven business days:

1. Make the information available to the requestor; or

2. Deny the request in whole or in part by providing a completed records request response in the form provided by OORC stating the basis for any denial; or

3. Provide the requestor with a completed records request response form in the form provided by OORC stating the time reasonably necessary to produce the record.

(b) To preserve a record of the request, the Department may ask the requestor to submit the request in writing, in accordance with Rule 1200-35-01-.03(2) above; provided, that failure to put the request in writing shall not prevent the requestor from making a personal inspection of records at the appropriate office during normal business hours.

(c) In processing a request for the inspection of non-routine records, the Department will first determine whether the requested records exist within the custody of the Department. If the requested records exist within the custody of the Department, the Department will locate and review the requested records as soon as reasonably practicable, taking into consideration the nature and/or volume of the request and the availability of Department staff.

(d) If the requested records either do not exist within the custody of the Department, or are confidential records, the requestor shall be so advised; provided, however, that nothing in this Chapter shall be construed to require the Department to generate a detailed description of each confidential record withheld from inspection, such as may be required with respect to the production of documents in discovery under the Tennessee Rules of Civil Procedure.

(e) If a requested record contains confidential information (e.g., certain information maintained in personnel records) but is otherwise a public record, the Department will generate a copy of the record from which the confidential information has been removed and the redacted record will be made available for inspection. As provided in Rule 1200-35-01-.05(1) below, the Department may require reimbursement for the employee time associated with making the redacted record for copying.

(f) If the requested record or information is available in an electronic or digital database or other non-printed form, and providing access to the record will require development of a program/application or the reloading of backup files to produce the record or put it into a readable format, the Department may require reimbursement for any employee time and/or other costs associated with developing the program or application and producing the record for copying, as provided in Rule 1200-35-01-.05(2) below.

(2) Form of Record Produced.

(a) Nothing in this Chapter shall be construed to require the Department to make any public record available for inspection in the exact form requested by the requestor, e.g., the Department may make a public record maintained in electronic or digital form available for inspection in printed form.

Authority: T.C.A. § 8-4-604, §§10-7-503, 10-7-504 and 10-7-506.

1200-35-01.-05 Payment of Costs for Reproduction of Public Records.

(1) The Department adopts the "Schedule of Reasonable Charges for Copies of Public Records" and any successor schedule developed by the Office of the Open Records Counsel for copies of public records made pursuant to the Tennessee Public Records Act, T.C.A. § 10-7-501 et. seq. Any charges not specifically listed or in addition to the amounts specified in the Schedule must be documented by the Records Custodian.

(2) If the requested records exist electronically, but not in the format requested or a new or modified computer program or application is necessary to put the records in a readable and reproducible format or it is necessary to access backup files, the custodian shall charge the requesting party the actual costs incurred in producing the records in the format requested or in creating or modifying a computer program or application necessary to put the records in a readable and reproducible format or in accessing backup files.

(3) Electronic records will be produced only in a read-only format.

(4) If the custodian utilizes an outside vendor to produce copies of the requested records because the Department is unable to produce the copies, the cost charged by the vendor to the Department shall be recovered from the requesting party.

(5) Delivery and/or shipping costs incurred may be included in the total amount charged for the records release if appropriate.

(6) Payment must be made in advance in the form of a check or money order made payable to the "Treasurer, State of Tennessee".

(7) The Department adopts the "Frequent and Multiple Requests Policy" and any successor policy developed by the Office of the Open Records Counsel for copies of public records made pursuant to the Tennessee Public Records Act, T.C.A. § 10-7-501, et. seq. A Records Custodian may aggregate such requests on any level, whether by agency, department, bureau, division, office or otherwise.

(8) A Records Custodian may waive or reduce charges governed by these rules if:

(a) Charges total less than Ten Dollars ($10.00);

(b) The person requesting the copies is indigent pursuant to Federal poverty guidelines and signs a statement to that effect; or

(c) The person requesting the copies does so on behalf of a government agency.

(9) The Commissioner may waive or reduce charges governed by these rules if the charges exceed Ten Dollars ($10.00). A person requesting such reduction or waiver must do so in writing submitted to the Records Custodian.

Authority: T.C.A. §§ 4-4-103, 4-5-218(b) and (d), 8-4-604 and 10-7-506(a).

* 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)
NA					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Health on 10/25/2010, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/31/10

Rulemaking Hearing(s) Conducted on: (add more dates). 10/25/10

Date: 10/11/11

Signature: Mary Kennedy

Name of Officer: Mary Kennedy

Title of Officer: Deputy General Counsel, Department of Health

THERESA R. DUNCAN STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY

Subscribed and sworn to before me on: 10-11-11

Notary Public Signature: Theresa R. Duncan

My commission expires on: 1-9-2012

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.

R E Cooper

Robert E. Cooper, Jr.
Attorney General and Reporter

10-13-11
Date

Department of State Use Only

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Filed with the Department of State on: 10/5/12

Effective on: 1/3/13

Tre Hargett by Wm Hart, BA

Tre Hargett
Secretary of State

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Health
DIVISION:	Non-Smoker Protection Act
SUBJECT:	Copy Costs
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 10-7-501 et seq.
EFFECTIVE DATES:	January 3, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	The section of the Non-Smoker Protection Act rules relative to copy costs is being deleted. Instead, copy costs will be regulated by the new Rule 1200-34-01-.05, Inspection and Copying of Department Records.

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.

Non-smoker Protection Act Rules

The rulemaking hearing for the Department of Health was held on October 25, 2010 at 11:30 a.m. CDT in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Mary Kennedy, Deputy General Counsel, presided over the hearing.

No members of the public attended the rulemaking hearing. No oral comments were received at the rulemaking hearing.

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.

This rule only affects State government and does 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)

This rule amendment will have no projected impact on local governments.

RULES
OF
TENNESSEE DEPARTMENT OF HEALTH
CHAPTER 1200-32-1
NON-SMOKER PROTECTION ACT RULES

TABLE OF CONTENTS

1200-32-1-.01 PURPOSE.

(1) The Non-Smoker Protection Act ("Act") requires that on and after October 1, 2007, smoking be prohibited in all enclosed public places within the State of Tennessee. It is the purpose of these rules to supplement the provisions of that Act and provide the mechanisms by which the Department of Health ("Department") shall implement the enforcement duties placed upon it by T.C.A. § 39-17-1801 et seq.

Authority: *T.C.A. § 39-17-1811.* ***Administrative History:*** *Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 27, 2007; effective March 11, 2008.*

1200-32-1-.02 PUBLIC PLACES REGULATED.

(1) The Department shall be responsible for the enforcement activities required by the Act in the following enclosed public places:

(a) All health care facilities licensed, permitted or certified pursuant to Tennessee Code Annotated, Title 68, Chapter 11; and

(b) All enclosed public places for which a license, permit or certification must be obtained from any health related board assigned to the Department's Division of Health Related Boards pursuant to Tennessee Code Annotated, 68-1-101 before a health related profession may be practiced therein; and

(c) All enclosed public places for which a license, permit or certification must be obtained from the Department's Division of Emergency Medical Services; and

(d) All other enclosed public places over which the Department has regulatory authority pursuant to Tennessee Code Annotated, Title 62, Title 68 or otherwise, including, but not limited, to the following:

1. Restaurants

2. Indoor swimming pools

3. Food Service Establishments

4. Hotels

5. Bed and Breakfasts

6. Fast Food Establishments

1200-32-1-.07 ENFORCEMENT PROCESS, APPEALS AND PAYMENT OF PENALTIES.

(1) Upon receipt of verification of a violation of the Act the Department shall issue a written notice to the offender of the violation and the penalty applicable to the violation. The written notice may be issued by certified mail, delivery service, or personal service.

(2) Any person receiving a notice of violation and penalty who wishes to contest the determination of the violation and/or the assessment of the penalty must, within ten (10) business days of receipt of the notice, file a written request for an appeal with the Department.

(3) Any hearing held in response to a request for an appeal timely received by the Department shall be conducted pursuant to the provisions of the Uniform Administrative Procedures Act complied at Tennessee Code Annotated, Title 4, Chapter 5 and the Administrative Procedures Division of the Secretary of State's rules governing contested case proceedings compiled at Chapter 1360-4-1.

(a) In contested cases pursuant to this rule, the Department shall have the burden of proof by a preponderance of the evidence to establish that a person violated the Act.

(4) Civil Penalty Payments

(a) Any person who is assessed a civil penalty pursuant to the Act who does not timely file an appeal of that assessment must pay such civil penalty on or before the thirtieth (30th) day after receipt of the notice of violation and penalty.

(b) If the assessed civil penalty is timely appealed, the assessed penalty must be paid no later than thirty (30) days after the date of a final order affirming the assessed penalty.

(c) Payment of any civil penalty shall be made by check or money order made payable to "Treasurer, State of Tennessee" and mailed or delivered in person to the Department.

Authority: *T.C.A. § 4-5-102(3), 68-1-103, 68-1-104, Tenn. Const. Art. 1 § 8 and 39-17-1811.* ***Administrative History:*** *Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 27, 2007; effective March 11, 2008.*

~~1200-32-1-.08 COPY COSTS.~~

~~(1) Information gathered under or generated pursuant to the Act or rules promulgated pursuant thereto shall, pursuant to the Public Records Act, be made available to any citizen of the State of Tennessee upon request and payment of a fee in the amount of twenty-five cents ($0.25) per page.~~

~~(2) Payment of fees set forth in this rule shall be by check or money order made payable to "Treasurer, State of Tennessee." Fees must be prepaid before requested information is sent. Payment of fees in cash shall not be accepted by the Department.~~

~~*Authority: T.C.A. §§ 68-1-103, 10-7-503, 10-7-506 and 39-17-1811. Administrative History: Public necessity rule filed September 28, 2007; effective through March 11, 2008. Original rule filed December 27, 2007; effective March 11, 2008.*~~

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Health
DIVISION:	Emergency Medical Services
SUBJECT:	Air Ambulance Standards
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-140-304
EFFECTIVE DATES:	January 2, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	Rule 1200-12-01-.05 relative to Air Ambulance Standards is being amended by adding a new subparagraph (2)(n). The new language requires each air ambulance that the board currently permits to have an environmental control system with a factory-installed or FAA-approved add-on air conditioner by March 31, 2014, in order to ensure patient comfort and medical care, as well as the safety of patients, crew members, and ground personnel. The rule requires an air medical aircraft newly permitted after the effective date of the rule to have an air conditioner and heater. The rule further provides that the air craft operator will be required to follow environmental performance criteria approved by the board in the event of a non-functioning air conditioner.

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 HEARING COMMENTS

RULEMAKING HEARING

TENNESSEE BOARD OF EMERGENCY MEDICAL SERVICES

The rulemaking hearing for the Tennessee Board of Emergency Medical Services was held on June 20, 2012, in the Department of Health Conference Center's Iris Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Lucille F. Bond, Assistant General Counsel, Department of Health, presided over the meeting.

Written Comments:

A written comment was received from Mark Meredith, MD, FAAP, Assistant Professor of Pediatric and Emergency Medicine at Monroe Carrell Children's Hospital at Vanderbilt expressing support of the rule.

The Board thanked him for his comment.

Verbal Comments:

Dr. Kevin Brinkmann, chairman of the Counsel on Pediatric Emergency Care, spoke in support of the rule as written.

The Board thanked him for his comment.

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)

Regulatory Flexibility Analysis

(1) The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.

(2) The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

(3) The proposed rules are not written with special consideration for the flexible compliance and/or requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations. The rules are written to amend the requirements for air ambulances in the state of Tennessee.

(4) The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the division to achieve its mandated mission in licensing and regulating emergency medical services. There is sufficient notice between the rulemaking hearing and the final promulgation of these rules to allow services and providers to come into compliance with the proposed rules.

(5) Compliance requirements in the proposed rules are not consolidated or simplified for small businesses for the protection of the health, safety and welfare of Tennesseans.

(6) The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards for small businesses.

(7) There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Department of Health, Emergency Medical Services Board.

Rulemaking hearing date: June 20, 2012

Types of small businesses that will be directly affected by the proposed rules:

These rule changes only affect air ambulance services, not small businesses.

Types of small businesses that will bear the cost of the proposed rules:

The rule changes impact air ambulance services only. Economic impact was a considered when drafting the proposed rules with an effort to make sure that they have minimal additional costs for small businesses.

Types of small businesses that will directly benefit from the proposed rules:

None.

Description of how small business will be adversely impacted by the proposed rules:

The rule changes are not expected to adversely impact small businesses.

Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

The Department of Health, Emergency Medical Services Board does not believe there are less burdensome alternatives to the proposed rule amendments.

Comparison of the proposed rule with federal or state counterparts:

Federal: None.

State: The proposed rule amendment will have no state counterpart because the Department of Health, Emergency Medical Services Board is the only agency in Tennessee charged with regulating air ambulance services. The rule amendment is similar to those regulating heating and/or air conditioning in air ambulances in the eight contiguous states surrounding Tennessee.

Impact on Local Governments

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

This amendment to the rule is not expected to have an impact on local governments.

(Rule 1200-12-01-.04, continued)

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-140-504, 68-140-506, 68-140-508, 68-140-509, 68-140-511, 68-140-517, 68-140-518, 68-140-520, 68-140-525, and 42 USC §247d-6d.* ***Administrative History:*** *Original rule filed March 20, 1974; effective April 19, 1974. Amendment filed February 4, 1976; effective March 5, 1976. Repeal and new rule filed February 8, 1983; effective May 16, 1983. Amendment filed November 30, 1984, effective February 12, 1985. Amendment filed August 22, 1985; effective September 21, 1985. Amendment filed February 21, 1986; effective May 13, 1986. Amendment filed September 18, 1986; effective December 29, 1986. Amendment filed April 8, 1987; effective May 23, 1987. Amendment filed June 30, 1987; effective August 14, 1987. Amendment filed October 22, 1987; effective December 6, 1987. Amendment filed January 17, 1989; effective March 3, 1989. Amendment filed September 24, 1990; effective November 8, 1990. Amendment filed October 21, 1993; effective January 4, 1994. Amendment filed April 13, 1994; effective June 27, 1994. Amendment filed August 5, 1996; effective October 19, 1995. Amendment filed August 29, 2003; effective November 12, 2003. Amendment filed December 16, 2005; effective March 1, 2006. Amendments filed April 13, 2006; effective June 27, 2006. Amendment filed September 21, 2007; effective December 5, 2007. Emergency rule filed October 27, 2009; effective through April 25, 2010. Emergency rule filed October 27, 2009, expired; On April 26, 2010, the rule reverted to its previous status.*

1200-12-01-.05 AIR AMBULANCE STANDARDS. All air ambulance service providers and crew members operating in Tennessee must comply with Chapter 140 of Title 68 of the Tennessee Code Annotated and this Rule. Failure to comply shall subject the service provider and/or its personnel to disciplinary action pursuant to T.C.A. 68-140-511.

(1) Definitions - As used in this Rule, the following terms shall have the following meanings:

(a) "Air Medical Communications Specialist" means any person employed by an air ambulance service coordinating acknowledgement of medical requests, medical destination, and medical communications during an air medical response and patient transfer.

(b) "Medical Crew Member" means any person employed by an air ambulance service for the purpose of providing care to patients transported by and receiving medical care from an air ambulance service.

(c) "Special Medical Equipment" means any device which shall be approved by the air ambulance service medical director for the medical care of an individual patient on an air ambulance.

(d) "Specialty Crew Member" means any person the air ambulance service medical director assigns for a regular medical crew member for a specialty mission.

(e) "Specialty Mission" means an air ambulance service assignment necessitating the medical director to substitute special medical care providers and/or equipment to meet the specified needs of an individual patient.

(f) "Utilization Review" means the critical evaluation of health care processes and services delivered to patients to ensure appropriate medical outcome, safety and cost effectiveness.

(2) Medical Equipment and Supplies. The medical director for the emergency medical service shall ensure that the following medical equipment and supplies are provided on each fixed-wing or helicopter flight mission:

(a) Litter or stretcher with at least three sets of restraining straps;

(Rule 1200-12-01-.05, continued)

(b) An installed and a portable suction apparatus, each of which has the capacity to deliver adequate suction, including sterile suction catheters and a rigid suction tip for both adult and pediatric patients;

(c) Bag/valve/mask resuscitator(s) with clear masks and an oxygen reservoir with connections capable of achieving 95% fraction inspired oxygen to provide resuscitation for both adult and pediatric patients;

(d) Airway devices for adult and pediatric patients including the following:

1. Oropharyngeal airways;

2. Endotracheal tubes;

3. Laryngoscope with assorted blades and accessory items for intubation; and,

4. Alternative advanced airway devices as approved by the service medical director;

(e) Resuscitation board suitable for cardiac compression, unless a rigid stretcher or spine board is employed for patient transfer;

(f) Medical oxygen equipment on board capable of adjustable flow from 2 to 15 liters per minute including the following:

1. Masks and supply tubing capable of administering variable oxygen concentrations from 24% to 95% fraction inspired oxygen for both adult and pediatric patients;

2. Medical oxygen to allow for treatment during 150% of estimated transport time; and,

(g) Sanitary supplies including the following:

1. Bedpan (fixed-wing flight mission only);

2. Urinal (fixed-wing flight mission only);

3. Towelettes (fixed-wing flight mission only);

4. Tissues (fixed-wing flight mission only);

5. Emesis bags;

6. Plastic trash disposable bags; and,

7. Non-latex gloves;

(h) Sheets and blankets for each patient transported;

(i) Patient assessment devices for adult and pediatric patients, including:

1. Flashlight and/or penlight;

2. Stethoscope and Doppler stethoscope;

3. Sphygmomanometer and blood pressure cuffs;

(Rule 1200-12-01-.05, continued)

4. Electro-cardiographic monitor/recorder and defibrillator, with transcutaneous pacemaker, having a back-up power source;

5. Pulse oximetry;

6. Capnography, both continuous and portable;

7. Transport ventilator; and

8. Clinical thermometer or temperature strips;

(j) Trauma supplies, including:

1. Sterile dressings;

2. Roller bandages;

3. Device for chest decompression;

4. Surgical airway device as approved by medical direction; and

5. Semi-rigid immobilization devices;

(k) Intravenous fluids and administration devices;

(l) Appropriate medications including the advanced life support medications described in Rule 1200-12-01-.03; and

(m) Neonatal transport equipment that shall conform to the standards adopted in the Tennessee Perinatal Care System Guidelines for Transportation, Tennessee Department of Health, Women's Health and Genetics Section, Fifth Edition, 2006 or successor publication.

1. Isolette shall be capable of being opened from its secured position within the aircraft.

(n) In order to help ensure patient comfort and medical care as well as the safety of patients, crew members and ground personnel, each air ambulance the Board currently permits shall have an environmental control system with factory-installed or FAA approved add-on air conditioner and heater by March 31, 2014.

1. Any air medical aircraft newly permitted by the Board after the effective date of this rule shall have an air conditioner and heater.

2. In the event of a non-functioning air conditioner and/or heater, the aircraft operator shall be required to follow environmental performance criteria including, but not limited to, temperature ranges as approved by the Board.

(3) In addition to the medical equipment and supplies required on either a fixed wing or helicopter flight mission as described in paragraph (2) above, the medical director for the emergency medical service shall ensure that the following medical equipment and supplies are provided on each helicopter flight mission:

(a) Medical oxygen equipment capable of adjustable flow from 2 to 15 liters per minute which shall include:

(Rule 1200-12-01-.05, continued)

1. Portable medical oxygen system with a usable supply of at least 300 liters of oxygen; and

2. A backup source of oxygen that shall be delivered via a non-gravity dependent delivery source which may be the required portable tank if it is carried in the patient care area during flight;

(b) Trauma supplies, including:

1. Lower extremity traction device; and

2. Semi-rigid cervical collars.

(4) Each air ambulance service shall offer its instruction materials to other EMS providers within its response area to familiarize them with its requirements for control of helicopter access and ground to air communications on the scene.

(5) Air Ambulance Personnel Qualifications and Duties

(a) Medical Director Qualifications and Duties

1. Each helicopter air ambulance service shall employ a Medical Director who is responsible for providing medical direction for the helicopter air ambulance service.

2. The Medical Director for a helicopter air ambulance service must be a physician having the following qualifications:

(i) Currently licensed in the State of Tennessee;

(ii) Board certified or eligible for Board certification by a professional association or society in General or Trauma Surgery, Family Practice, Internal Medicine, Pediatrics, Emergency Medicine, or Aerospace Medicine;

(iii) Certification in Advanced Cardiac Life Support (unless Board certified or eligible for Board certification in Emergency Medicine);

(iv) Certification in Advanced Trauma Life Support; and

(v) Certification in Pediatric Advanced Life Support or equivalent (unless Board certified or eligible for Board certification in Emergency Medicine), including the following:

(I) Certification in a Neonatal Resuscitation Program; and

(II) Possess adequate knowledge regarding altitude physiology/stressors of flight.

3. Duties of the Medical Director for a helicopter air ambulance service shall include the following:

(i) Active involvement in the Quality Improvement process;

(ii) Active involvement in the hiring, training and continuing education of all medical personnel for the service; and

(iii) Responsibility for on-line medical control or involved in orienting and collaborating with physicians providing on-line medical direction according to the policies, procedures and patient care protocols of the medical transport service.

4. The service Medical Director shall establish mission specific and clinical procedures. He shall require each medical crew member to complete and maintain documentation of initial and annual training in such procedures, which shall at least include didactic and hands–on components for the following clinical procedures:

(i) Pharmacological Assisted Intubation – Adult and Pediatric;

(ii) Emergency cricothyrotomy;

(iii) Alternative airway management – Adult and Pediatric;

(iv) Chest decompression; and

(v) Intraosseous Access – Adult and Pediatric.

(b) The medical crew shall include:

1. Each patient transported by a fixed-wing ambulance shall be accompanied by either a physician, a registered nurse, or an EMT-P licensed in the State of Tennessee.

2. Each transport of patients by a helicopter air ambulance shall require staffing by a regular medical crew which as a minimum standard shall consist of one Registered Nurse licensed in the State of Tennessee and another licensed medical provider (i.e., EMT-P, Respiratory Therapist, Nurse, or Physician licensed in the State of Tennessee). The composition of the medical team may be altered for specialty missions upon order of the medical director of the air ambulance service.

3. On a fixed-wing flight mission only, the air ambulance service medical director may allow transport of patients in the presence of only one medical professional; the minimum level of licensure in such a situation would be that of EMT-P.

(c) Medical crew training and qualifications

1. The service medical director shall make a determination that each regular medical crew member serving on an air ambulance is physically fit for duty by ensuring the service has documentation that each regular crew member has had a pre-employment and annual medical examination.

2. A Registered Nurse serving as a medical crew member on an air ambulance shall meet the following qualifications:

(i) Have three years of registered nursing experience in critical care nursing, or two years fulltime flight paramedic experience and one year critical care nursing experience;

(ii) Possess a current Tennessee nursing license, unless exempted by T.C.A. § 63-7-102(8);

(iii) Obtain certification as an Emergency Medical Technician within twelve (12) months of employment; and

(iv) Obtain advance nursing certification within twelve (12) months of employment through one of the following programs:

(I) Certified Emergency Nurse; or

(II) Critical Care Registered Nurse; or

(III) Certified Flight Registered Nurse.

3. An EMT-Paramedic serving as a medical crew member on an air ambulance shall meet the following qualifications:

(i) Possess a current Tennessee EMT-P license and have three years experience as an EMT-P in an advanced life support service;

(ii) Obtain advanced paramedic certification within twenty-four (24) months of employment through one of the following programs:

(I) Critical Care Paramedic; or

(II) Certified Flight Paramedic.

4. Each medical crew member on an air ambulance shall have and maintain certification in Advanced Cardiac Life Support, Pediatric Advanced Life Support or equivalent (Emergency Nursing Pediatric Course, PEPP), and in neonatal resuscitation.

5. Each medical crew member on an air ambulance shall attend and maintain training in one of the following:

(i) Trauma Nurse Advanced Trauma Course;

(ii) International Trauma Life Support;

(iii) Prehospital Trauma Life Support; or,

(iv) Trauma Nurse Core Course.

(d) Each fixed wing air ambulance service shall have an air medical consultant who shall be a physician licensed within the jurisdiction of the base of operations and shall advise on the restrictions and medical requirements for patient transport.

(e) Each helicopter air ambulance service shall have a Medical Control Physician who shall be available to provide on line medical control continuously via radio or telephone who shall be board certified or eligible for board certification by a professional association or society in General or Trauma Surgery, Internal medicine, Pediatrics, Emergency Medicine, Family Practice, or Aerospace Medicine.

(f) Air Medical Communications specialist qualifications and duties:

1. Each air medical communications specialist shall meet the following qualifications:

(Rule 1200-12-01-.05, continued)

(i) At a minimum, be licensed as an Emergency Medical Technician; or

(ii) Be a higher level licensed health care professional with at least two years of emergency medical or emergency communications experience; and

2. Have initial and recurrent training for medical coordination and telecommunications.

3. Air medical communications specialists shall be certified through the National Association of Air Medical Communication Specialists (NAACS) or obtain such certification within twelve (12) months of employment.

(i) Air medical communication specialists shall coordinate helicopter air ambulance service flights.

4. Air medical communications specialists shall not be required to work more than sixteen (16) hours in any one twenty-four (24) hour period.

(g) Duty time for medical crew members on an air ambulance shall not exceed twenty-four (24) consecutive hours or more than forty-eight (48) hours within a seventy-two (72) hour period. The air ambulance service shall provide the medical flight crew adequate rest and meal time. Personnel must have at least eight (8) hours of rest with no work-related interruptions prior to any scheduled shift of twelve (12) hours or more in the air transport environment.

(6) Flight Coordination

(a) Each air ambulance service operations office director shall maintain an Operations Manual detailing policies and procedures and shall ensure that it is available for reference in the operations office. Personnel shall be familiar and comply with policies contained within the manual which shall include:

1. Criteria for medical conditions including indications or contraindications for transfer;

2. Procedures for call verification and advisories to the requesting party;

3. Radio and telephone communications procedures;

4. Policies and procedures for accidents and incidents;

5. Procedures for informing the requesting party of operations procedure, ambulance arrival, termination of mission and delayed responses, including the following:

(i) Estimated Time of Arrival includes time of operations acceptance to time of landing on scene; and

(ii) Any deviation from ETA greater than 5 minutes will be reported to the requesting agency;

6. Procedures shall be established for communications failure or overdue transports;

7. Emergency protocols for alerting search and rescue; and

(Rule 1200-12-01-.05, continued)

8. Utilization of the Air Medical Communication Safety Questionnaire (as approved by the board).

(7) Telecommunications

(a) The operations center for an air ambulance service operating in Tennessee shall include radio and telephone equipment to enable personnel to contact the helicopters and crew. Telecommunications devices shall include the following:

1. EMS Communications on the established frequencies of 155.205 MHz, 155.340 MHz, and/or upon such specific channels or frequencies as may be designated within each region as approved and published as a supplement to the State EMS Telecommunications Plan;

2. Direct telephone circuits accessible by air communication; and

3. Recording equipment for both telephone and radio messages and instant message recall.

(8) Helicopter Air Ambulance Response and Destination Guidelines and Procedures.

(a) Medical necessity shall govern air ambulance service response, including medical responsibility and destination coordination, to emergency medical situations.

(b) Medical Necessity.

1. The medical director for the helicopter air ambulance service shall determine whether there is a medical necessity to transport a patient by air ambulance. Medical necessity will be met if the following conditions occur:

(i) At the time of transport the patient has an actual or anticipated medical or surgical need requiring transport or transfer that would place the patient at significant risk for loss of life or impaired health without helicopter transport; or

(ii) Patient meets the criteria of the trauma destination guidelines; or

(iii) Available alternative methods may impose additional risk to the life or health of the patient; or,

(iv) Speed and critical care capabilities of the helicopter are essential; or,

(v) The patient is inaccessible to ground ambulances; or,

(I) Patient transfer is delayed by entrapment, traffic congestion, or other barriers; or,

(II) Necessary advanced life support is unavailable or subject to response time in excess of twenty (20) minutes.

(vi) Specialty Missions with specialized medical care personnel, special medical products and equipment, emergency supplies, and special assistance for major casualty incidents or disasters, or mutual aid to other aero medical services are medically necessary when their availability might lessen aggravation or deterioration of the patient's condition.

(Rule 1200-12-01-.05, continued)

(c) The incident commander or his designee will coordinate the transfer of medical responsibility to the medical flight crew by emergency services responsible for the patient at the scene of the incident.

1. If a helicopter air ambulance lands on a scene and it is determined through patient assessment and coordination between ground and air medical personnel that it is not medically necessary to transport the patient by helicopter, the appropriate ground EMS agency will transport the patient.

2. Interfacility transfers shall not be initiated unless an appropriate physician at the receiving facility has accepted the patient for transfer.

(d) Patient destination shall be established pursuant to Rule 1200-12-01-.21.

(9) Records and Reports

(a) The air ambulance service shall maintain records including the following:

1. A record for each patient transported including:

(i) Name of the person transported;

(ii) Date of transport;

(iii) Origin and destination of transport;

(iv) Presenting illness, injury, or medical condition necessitating air ambulance service;

(v) Attending and medical personnel;

(vi) Accessory ground ambulance services;

(vii) Medical facilities transferring and receiving the patient;

(viii) Documentation of treatment during transport; and

(ix) A copy shall be provided to the receiving facility.

2. Each air ambulance service shall report the number of air ambulance transfers performed annually on the form provided for such purposes to the Division of Emergency Medical Services.

(b) Each air ambulance service shall retain patient records for at least ten years.

(10) Utilization Review (UR)

(a) The air ambulance service management shall ensure appropriate utilization review process based on:

1. Chart review of medical benefits delivered to a random sample of patients, including the following:

(i) Timeliness of the transport as it relates to the patient's clinical status;

(Rule 1200-12-01-.05, continued)

(ii) Transport to an appropriate receiving facility;

(iii) On scene transports (Rotor Wing) – the following types of criteria are used in the triage plan for on-scene transports:

(I) Anatomic and physiological identifiers;

(II) Mechanism of injury identifiers;

(III) Situational identifiers;

(IV) Pediatric and Geriatric Patients;

(iv) Specialized medical transport personnel expertise available during transport are otherwise unavailable;

2. Structured, periodic review of transports shall be performed at least semi-annually and result in a written report; and

3. The service shall list criteria used to determine medical appropriateness. It will maintain records of such reviews for two years.

(11) Quality Improvement (QI)

(a) The service shall have an established Quality Improvement program, including, at a minimum, the medical director(s) and management.

(b) The service shall conduct an ongoing Quality Improvement program designed to assess and improve the quality and appropriateness of patient care provided by the air medical service.

(c) The service shall have established patient care guidelines/standing orders. The QI committee and medical director(s) shall periodically review such guidelines/standing orders.

(d) The Medical Director(s) is responsible for ensuring timely review of patient care, utilizing the medical record and pre-established criteria.

(e) Operational criteria shall include at least the following quantity indicators:

(i) Number of completed transports;

(ii) Number of air medical missions aborted and canceled due to weather; and

(iii) Number of air medical missions aborted and canceled due to patient condition and use of alternative modes of transport.

(f) For both QI and utilization review programs, the air ambulance service shall record procedures taken to improve problem areas and the evaluation of the effectiveness of such action.

(g) For both QI and utilization review programs, the air ambulance service shall report results to its sponsoring institution(s) or agency (if applicable) indicating that there is integration of the medical transport service's activities with the sponsoring institution or agency (if applicable).

(Rule 1200-12-01-.05, continued)

(12) Compliance. Compliance with the foregoing regulations shall not relieve the air ambulance operator from compliance with other statutes, rules, or regulations in effect for medical personnel and emergency medical services, involving licensing and authorizations, insurance, prescribed and proscribed acts and penalties.

(13) Separation of Services. Air ambulance service shall constitute a separate class of license and authorization from the Board and Department.

Authority: *T.C.A. §§4-5-202, 4-5-204, 68-140-504, and 68-140-507.* ***Administrative History:*** *Original rule filed March 20, 1974; effective April 19, 1974. Amendment filed November 30, 1984; effective February 12, 1985. Amendment filed February 4, 1988; effective March 20, 1988. Amendment filed June 28, 1988; effective August 12, 1988. Amendment filed August 11, 1993; effective October 25, 1993. Amendment filed January 7, 1997; effective March 23, 1997. Repeal and new rule filed January 7, 1997; effective March 23, 1997. Repeal and new rule filed June 30, 2011; effective September 28, 2011.*

1200-12-01-.06 SCHEDULE OF FEES.

(1) The fees are as follows:

(a) Application fee for licensure or certification - A fee to be paid by all applicants as indicated, including those seeking licensure by reciprocity. It must be paid each time an application for licensure is filed.

(b) Endorsement/verification - A fee paid for each level of certification or endorsement as may be recognized by the Board within each category of personnel license.

(c) Examination fee - A fee paid each time an applicant requests to sit for any initial, retake, or renewal test or examination, written or practical.

(d) License fee - A fee to be paid prior to the issuance of the initial license.

(e) License Renewal fee - A fee to be paid by all license holders. This fee also applies to personnel who may reinstate an expired or lapsed license.

(f) Reinstatement fee - A fee to be paid when an individual fails to timely renew a license or certification.

(g) Replacement license or permit fee - A fee to be paid when a request is made for a replacement when the initial license has been changed, lost, or destroyed.

(h) Volunteer non-profit ambulance services eligible for reduced license fees under paragraph (5) shall be provided by all volunteer personnel and shall not assess any fees for their services, and shall be primarily supported by donations or governmental support for their charitable purposes.

(2) All fees shall be established pursuant to the rules approved by the Board.

(3) All fees for initial licensing or certification shall be submitted to the Division of Emergency Medical Services to the attention of the Revenue Control office. Fees shall be payable by check or money order payable to the Tennessee Department of Health.

(4) Emergency Medical Services Personnel Fees – Personnel applying for licensure, certification, authorization, renewal, or reinstatement shall remit application processing and license fees as follows.

(a) Fees for licensed personnel

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Health
DIVISION:	Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists
SUBJECT:	Licensure Requirements and Qualifications
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 63-22-102
EFFECTIVE DATES:	January 23, 2013 through June 20, 2013
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

0450-01-01 Changes the definitions of Approved Supervisor, Clinical Setting and Supervision. **0450-01-04** Deletes (1) and replaces it with a requirement that an applicant must complete the qualifications for licensure before submitting the application. Adds a course on multicultural counseling to the graduate coursework required for a professional counselor by examination and a professional counselor with mental health services provider designation. Deletes grandfathering period for up until June 30, 1997 for a professional counselor with mental health services provider designation. Deletes language regarding what the rules were before July 1, 2009.

0450-01-07 Deletes the right to a contested case hearing for licensure denials in (5) and replaces it with an informal appeals process, which gives applicants an opportunity to appear before the Board.

0450-01-08 Adds the ACA Code of Ethics to qualify the type of professional ethics tested on the jurisprudence examination.

0450-01-.10 Deletes (1) and replaces it with new requirements for supervisors, including adding clinical pastoral therapists to the list of who can serve as a supervisor, training requirements, and a requirement that at least 75 of the 150 contact hours for those training for LPC/MHSP designation must come from supervision by a LPC/MHSP. Requires supervisors for LPC/MHSP to have the MHSP if they are licensed only as LPC. Adds a new (2) to provide a grandfathering period for up until January 31, 2013 for a LPC supervisor already providing supervision to someone training for LPC/MHSP designation. Deletes (5) and replaces it with renumbered (6) which eliminates language about requirements before July 1, 2009 and eliminates language which would be now duplicative of information in the new paragraph (1).

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 HEARING COMMENTS

RULEMAKING HEARING

TENNESSEE DEPARTMENT OF HEALTH

BOARD OF LICENSED PROFESSIONAL COUNSELORS, MARITAL AND FAMILY THERAPISTS, AND CLINICAL PASTORAL THERAPISTS

RULES AFFECTING LICENSED PROFESSIONAL COUNSELORS

The rulemaking hearing for the Tennessee Department of Health, Board of Licensed Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists was held on January 28, 2011 in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Rachel Appelt, Assistant General Counsel, presided over the hearing.

There were three (3) written comments received prior to the January 28th hearing. Additionally, several comments were received from the audience during the hearing.

Comments regarding the definition of clinical setting (0450-01-.01(11)):

Comment 1: The Tennessee Licensed Professional Counselors Association (TLPCA) submitted a written comment before the hearing and verbal comments by TLPCA representatives and submitted its proposed rule language addressing these concerns. Tennessee Mental Health Counselors Association also supported this language.

Board Response:

a) The Board did not make changes to the definitions of mental health and non-mental health service providers, as the language in the rule currently mirrors the language in the §63-22-150, which is beyond the scope of this rulemaking to change.

b) The Board determined it is best to let the standards of internship programs be dictated by the programs because each program has its own requirement. However, the Board felt that having written provisions ensures that all parties understand their respective roles and responsibilities and makes the arrangement easier to regulate.

c) The Board agreed that private practice settings may be necessary for post-masters applicants to find places to get supervision. To address concerns of unlicensed persons in private practice the rule will include the provision that the facility may not be owned or operated by the applicant and will include a prohibition on clinical settings that violate the ACA code of ethics regarding multiple relationships.

The Board further adopted the TLPCA proposed language stating that the applicant must be an employee or affiliated by contract. However, the Board chose to leave out the proposed sentence stating that any money must be paid to the facility and not the applicant, opting for more flexibility in the payment arrangements. The Board felt the provisions preventing independent ownership and operation by the applicant would cover the issue because that language prevents wholly private practice. The Board did consider the fact that there is the provision of the statutes that allows for a temporary license, which might be a way to protect against unlicensed practice, however changing the method of earning a temporary license was beyond the scope of the rule-making notice so the Board chose not to make temporary licenses a requirement.

The Board agreed that another issue of protecting the public from persons in a completely autonomous independent practice could be solved by having a licensed mental health professional – either the supervisor or another staff member – available for consultation, as TLPCA suggested. However the Board chose to extend this even more to require the person to be present 20 hours a week, not just available by telephone for consultation as TLPCA suggested. There must also be a written emergency plan to handle scenarios where the applicant is unprepared for a crisis. This provides some protection without being too restrictive.

Comment 2: Dr. Peter Wilson of Trevecca Nazarene's graduate counseling program submitted a written comment prior to the meeting and made verbal comments at the hearing, to the effect that Trevecca was in support of nearly all the proposed language by TLPCA. However, the program disagreed with TLPCA on the issue of whether applicants must be employees of the practice who cannot receive fees. If supervisors have to require that the applicant be an employee, provide the clients, and collect the fees directly, most supervisors would shy away from the responsibility, limiting the placements for graduates. As long as an applicant is working in a setting with a licensed professional available to them and they are under the supervision of an approved supervisor, the public is well protected even if they accept money directly.

Board Response: The Board agreed with Trevecca's assertion that its program's graduates are well prepared to practice independent and should be allowed to accept money. The adoption of a rule that bars the applicant from independently owning or operating the practice and requiring that the applicant must be an employee or affiliated by contract protects the public without eliminating the possibility of direct compensation.

Comment 3: Rob Rickman spoke as a recent graduate of the Vanderbilt counseling program who is concerned about the temporary license being required to practice. The classes he had to take to get to 60 hours are not the core classes (not CACREP). He graduated from Vanderbilt with a 48 hours program and he thinks it is unfair that he has to get to 60 hours to even be eligible to test for the temporary license. He suggested that there be a way upon graduation for people to take those tests, regardless of the hours required.

Board Response: This is something the Board has been contemplating, but the requirements for temporary licensure are outside the scope of this rule-making hearing.

Comments regarding the definition of supervision (0450-01-.01(39)):

Comment 1:Francis Martin of TMHCA remarked that the definitions of supervision (a) and (b) are acceptable to the TMHCA. For (c), defining individual supervision as triadic, CACREP has not developed models of triadic clinical supervision. Post-degree supervision is different – one cannot apply standards of CACREP to post-degree supervision as they apply to pre-degree programs. In addition, an analysis of licensees from TN revealed 38-40 institutions, but only 6 are accredited by CACREP, which means if the Board defines supervision to allow all 150 hours of triadic supervision, people from the majority of programs will become counselors having never had individual supervision. Rob Rickman echoed these comments.

Board Response: One of the issues is trying to get people able to afford supervision. With triadic supervision at least they can split the fees with other applicants.

Comment 2: Dr. Wilson, on behalf of Trevecca stated that the real issue is well trained supervisors, and not how many supervisors. TLPCA agrees and feels that that because the Board is increasing supervisor requirements, they will be more highly qualified and triadic supervision is adequate.

Board Response: The Board deemed it appropriate to limit triadic supervision to 50 hours out of the 150 hours required for supervision. This will make a balance of 50 individual, 50 triadic, and 50 group hours.

Comments regarding the qualifications for licensure (0450-01-.04):

Comment 1: The Council on Rehabilitation Education submitted a written comment regarding qualifications for licensure. Specifically, the Council requested that the Board recognize the Council on Rehabilitation Education accreditation as an equivalent for the Council for Accreditation of Counseling and Related Educational Programs. Additionally, the Council requested that the Board consider the Certified Rehabilitation Counselor Examination as an equivalent to the National Board of Certified Counselor's

National Counselor Examination for licensure as a professional counselor.

Board Response: Because this comment addressed a part of the rule not noticed in the Notice of Rulemaking Hearing, the Board deferred the comment to consider it as correspondence at their next meeting on March 4, 2011.

Comments regarding the supervision requirements (0450-01-.10):

Comment 1: Dr. Wilson of Trevecca raised concerns that the current rules do not state that LPC should not able to supervise LPC/MHSP, and that not only should this be made very clear in the changed rules, but that the new rules should state that no one can be grandfathered in without having gotten supervision by an LPC/MHSP simply because they started supervision prior to the rule change.

Board Response: The Board pointed out that rules already state in 0450-01-.10(5)(e) that supervisors for LPC/MHSP candidates are limited to LPC/MHSP, licensed MFT and a list of other licenses that can do clinical work, so supervision by an LPC only should not be happening at all. Going forward, at least 75 of the 150 hours must be supervised by a LPC/MHSP and the other 75 hours must be by another licensed professional who can do clinical work – i.e. NOT an LPC.

Comment 2: TLPCA commented there needs to be a provision to deal with people coming from other states who were supervised only by LPCs, because those other states don't designate a difference between LPCs and LPC/MHSPs.

Board Response: The Board agreed to insert "or equivalent" and add into the language in (e) "licensed clinical pastoral therapists".

Comment 3: TLPCA asked to eliminate psychological examiners as supervisors and add psychiatric nurses. It has had discussions on and off over the years regarding this issue. TMHCA echoed this position. Dr. Wilson of Trevecca stated he is licensed by the Psych Board and the specification of senior psych examiners is sufficiently limiting. It is a very high level of training.

Board Response: Because the Board is not familiar with the training for psychiatric nurses the Board put this issue aside.

Comment 4: Francis Martin on behalf of TMHCA stated that some of the training methods for becoming a qualified supervisor take out the experiential aspect, which lowers the standard.

Board Response: It was the Board's understanding that most accredited courses on supervision involve experiential learning as part of the course, so the standards do not seem to be so loose. Also, the Board was not prepared to immediately clamp down harshly on supervisor training because it would mean many fewer supervisors in a time period when people are already having difficulty finding supervisors and finding positions to complete their post-masters training in.

A special Board meeting was held on January 30, 2012 to address additional changes to the rules voted on at the 1/28/11 rulemaking hearing. These changes were requested by the Board's chairperson as a result of informal feedback she received from other professionals in the community and in an effort to ensure the Board was taking the proper steps to protect the public.

Comments regarding the definition of clinical setting (0450-01-.01(11)):

Comment 1: TLPCA representatives proposed draft rule language that would assign a job duty to the licensed mental health professionals on site requiring them to be immediately available to the applicant for supervision and or consultation at any time the applicant is engaging in the practice of counseling or counseling related services. In addition, TLPCA wanted to add to part (f) that compensation for services provided by the applicant would be paid directly to the place or practice and that the applicant may do pro bono work.

Board Response: After a short discussion the Board adopted all of the suggested provisions and added language specifying that it is in solo or group private practice that these protections are needed. In addition the Board changed the affiliation "by contract" language to affiliation "by agreement" so as to eliminate the impression that the applicant may be an independent contractor and added some elements the agreement must contain.

The Board was also concerned about how an unlicensed person defined themselves to the public. The Board discussed requiring persons who are working towards licensure to explain that they are not licensed and are being supervised. The Board further discussed the fact that requiring temporary licensure would solve this issue. However, the Board didn't want to require temporary licensure to begin supervision because it might discourage persons from attempting to get the LPC/MSHP – it would be an added hurdle – and making the temporary licensure easier to get is beyond the scope of this rule-making.

Comment 2: Dr. Wilson of Trevecca Nazarene's graduate program in counseling argued that having a licensed professional on site at all times is very limiting and that the previously discussed twenty hours a week is sufficient.

Board Response: The Board disagreed that twenty hours a week is enough, as that may not adequately protect the public. The language will reflect that the person must be on site at all times the applicant is engaging in counseling.

Comments regarding the definition of supervision (0450-01-.01(39)):

Comment 1: TLCPA urged the Board to allow more triadic or group hours of supervision for cost effectiveness.

Board Response: The Board found that TLPCA's statements were persuasive and deemed triadic supervision sufficient to protect the public, striking the language that limited triadic supervision to 50 of the 150 hours of supervision.

At the regularly scheduled board meeting on March 9, 2012 the Board addressed the possibility of rescinding the amendments to the rules that were made at the January 30, 2012 meeting and returning to the language of the original proposed rules of January 28, 2011. This change was contemplated by the Board due to numerous phone calls and other informal comments received from applicants, practitioners, supervising licensed mental health providers, and others professionals in the community, that prompted the Board to become concerned about the burden they were placing on applicants and the licensees that supervise the applicants during their clinical hours, as well as supervisorial liability.

Comments regarding the definition of clinical setting (0450-01-.01(11)):

Comment 1: TLPCA representatives reiterated their interest in keeping the language that was added during the January meeting that requires:

a) That a licensed mental health professional be immediately available on the premises whenever an unlicensed applicant is engaging in counseling;
b) That there be an agreement between the applicant and the place or practice that outlines supervision, job duties, liabilities, etc.
c) That the payment should be directly to the practice; and
d) That applicants may work pro bono.

In addition TLPCA proposed language to add detail to the rule requiring a facility emergency plan, which the Board implemented in the original proposed rules from the January 28, 2011 hearing.

Board Response:

a) The Board polled other states and talked to members of the profession and decided to return to language from the original rulemaking hearing that requires a licensed mental health professional to be on site a minimum of 20 hours a week, but added that someone must be available at all times.
b) The Board agreed that the supervisor takes on great responsibility and liability once they take on an applicant, so it is necessary to have an agreement to protect the supervisor. They retained the language suggested at the January 30, 2012 meeting by TLPCA.
c) The Board agreed that having payment go directly to the practice will prevent the perception that

applicants are practicing independently without a license. The Board retained this language.

d) The Board agreed that pro bono work is good for society and retained this language.

The Board adopted the language suggested by TLPCA that more specifically describes the written emergency plan that each clinical setting must have because this more adequately protects the public and the applicants and facility.

Comment 2: Two licensees who are currently engaged in supervising applicants and one current applicant in supervision strongly encouraged the board to not adopt the provision prohibiting the applicant from accepting money directly.

Board Response: The Board is sensitive to the need for more supervisors and more clinical settings, however they cannot allow unlicensed practice. They therefore required at least a specific agreement with or employment by the clinical setting, and if the practitioner will be accepting money directly from clients the Board required a temporary license. The Board adopted the provision because it provides protection for the public.

Comment 3: Dr. Wilson of Trevecca Nazarene's graduate program in counseling suggested that a temporary license might become a requirement to prevent students from practicing unlicensed, especially if the requirements for earning a temporary license are eased.

Board Response: Changing the requirements for a temporary licensure is outside the scope of this rulemaking hearing so the Board will not require temporary licensure, however the Board added an exception that if the applicant has a temporary license they may accept payment directly or practice pro bono.

At the Board meeting on September 7, 2012 the Board discussed changing some portions of the rule to clarify language and make the rules consistent throughout.

Comments regarding the supervision requirements (0450-01-.10):

Comment 1: Robin Lee of the TLCPA commented that TLPCA was in favor of some confusing language prohibiting supervision in a setting focused solely on one area of counseling was intended to have been removed in this section as it was removed from another section of the rules.

Board Response: The Board removed the language.

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

(1) The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.

(2) The proposed rules exhibit clarity, conciseness, and lack of ambiguity.

(3) The proposed rules are not written with special consideration for the flexible compliance and/or reporting requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.

(4) The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the Division to achieve its mandated mission the protection of the health, safety and welfare of the citizens of Tennessee. There is sufficient notice between the rulemaking hearing and the final promulgation of rules to allow licensees to come into compliance with the proposed rules.

(5) Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.

(6) The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards for small businesses.

(7) There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Department of Health, Board of Licensed Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists.

Rulemaking hearing date: January 28, 2011.

Types of small businesses that will be directly affected by the proposed rules:

These rule changes only affect licensed professional counselors. There is no impact on small businesses.

Types of small businesses that will bear the cost of the proposed rules:

These rule changes only affect licensed professional counselors. There is no cost to small businesses.

Types of small businesses that will directly benefit from the proposed rules:

These rule changes only affect licensed professional counselors. There is no benefit to small businesses.

Description of how small business will be adversely impacted by the proposed rules:

These rule changes only affect licensed professional counselors. There is no adverse impact on small businesses.

Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

The Department of Health, Board of Licensed Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists does not believe there are less burdensome alternatives to the proposed rule amendments which achieve the same level protection for the public.

Comparison of the proposed rule with federal or state counterparts:

Federal: The Department of Health, Board of Licensed Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists is not aware of any federal counterparts.

State: The proposed rule amendments have no state counterpart.

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 rule amendments are not expected to have an impact on local government.

RULES
OF
TENNESSEE BOARD FOR PROFESSIONAL COUNSELORS, MARITAL AND FAMILY THERAPISTS, AND CLINICAL PASTORAL THERAPISTS

CHAPTER 0450-01
GENERAL RULES GOVERNING PROFESSIONAL COUNSELORS

TABLE OF CONTENTS

0450-01-.01 DEFINITIONS. As used in this rule, the terms and acronyms shall have the following meanings ascribed to them.

(1) Actively engaged - Engaged in the practice of professional counseling 10 clock or more face-to-face client contact hours per week.

(2) Advertise - Means, but is not limited to, the issuing or causing to be distributed any card, sign, or device to any person, or the causing, permitting or allowing any sign or marking on or in any building or structure, or in any newspaper, or magazine or in any directory, or on radio or television, or by advertising by any other means designed to secure public attention;

(3) Applicant - Any individual seeking licensure by the board who has submitted an official application and paid the application fee.

~~(4) Approved Supervisor - PC - An approved supervisor for professional experience subsequent to the master's degree is defined as a currently Licensed Professional Counselor, Licensed Professional Counselor with Mental Health Service Provider designation, Licensed Marital and Family Therapist, Licensed Clinical Social Worker, Licensed Psychologist with Health Service Provider designation, Licensed Senior Psychological Examiner, or Licensed Psychiatrist, who has been licensed at least five (5) years and who takes responsibility for the practice of the supervisee during a specific time to enable the supervisee to meet the requirements of licensing.~~

(4) Approved Supervisor - An approved supervisor for professional experience subsequent to the master's degree must be a currently Licensed Professional Counselor, Licensed Marital and Family Therapist, Licensed Clinical Pastoral Therapist, Licensed Clinical Social Worker, Licensed Psychologist with Health Service Provider designation, Licensed Senior Psychological Examiner, or Licensed Psychiatrist, who has been licensed at least five (5) years and who takes responsibility for the practice of the supervisee during a specific time to enable the supervisee to meet the requirements of licensing. If the supervisor is a Licensed Professional Counselor who is supervising a candidate for Licensed Professional Counselor with Mental Health Service Provider designation, the supervisor must have the Mental Health Service Provider designation.

(Rule 0450-01-.01, continued)

(5) Board - The Board for Professional Counselors, Marital and Family Therapists, Clinical Pastoral Therapists.

(6) Board administrative office - The office of the administrator assigned to the board located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.

(7) Board Designee - Any person who has received a written delegation of authority from the board to perform board functions subject to review and ratification by the full board where provided by these rules.

(8) Certified Associate Counselor - Any person who has met the qualifications for CAC and holds a current, unsuspended or unrevoked certificate which has lawfully been issued by the board.

(9) Certified Professional Counselor - Any person who has met the qualifications for CPC and holds a current, unsuspended or unrevoked certificate which has lawfully been issued by the board.

(10) Clinically-related activities - Clinically-related workshops, trainings and seminars, treatment teams, clinical supervision, and research and leadership preparation for individual and group counseling. Graduate coursework in pursuit of licensure and administrative supervision in the work setting are not clinically-related activities.

~~(11) Clinical setting - A setting that applies the principles, methods, and therapeutic techniques practiced by professional counselors including diagnosis, appraisal, assessment, treatment and treatment planning of a broad spectrum of client problems including, but not limited to, developmental, mental, emotional, family, and DSM disorders. A clinical setting is that which ensures adequate supervision by no fewer than two (2) licensed mental health professionals, as listed in Rule 0450-01-.05 (5) (b) 1, and shall provide adequate supervision and training experiences with the physical resources necessary to allow for supervision and appropriate service delivery. A clinical setting shall include, but not be limited to, mental health or community agency settings pursuant to T.C.A. §§ 63-22-104 (3) (B). Clinical settings which are exclusively in a private practice and/or clinical settings which focus exclusively on only one (1) aspect of professional counseling (i.e. counseling of children) are not acceptable for meeting the supervision requirements of Rule 0450-01-.10.~~

(11) Clinical setting - A place where the practice of professional counseling occurs. An appropriate setting for an applicant's pre and post master's professional experience must meet the following criteria:

(a) The place or practice shall be a public, private, or community agency/mental health setting and must have integrated programs for the delivery of clinical mental health counseling in accordance with these rules and defined by definition (29) for non-Mental Health Service Provider designation and definition (30) for the Mental Health Service Provider designation.

(b) The place or practice shall offer adequate physical resources, such as a private space that meets HIPAA requirements, necessary to allow for supervision and appropriate service delivery.

(c) The place or practice shall have at least one licensed mental health professional on site for a cumulative minimum of 20 hours per week whose assigned job duties include being available to the applicant for supervision and/or consultation while the applicant is engaging in the practice of counseling or counseling related services. In addition, the place or practice shall have a written emergency plan in

(Rule 0450-01-.01, continued)

place to include method(s) of contacting supervisor(s) or other consultant(s), alternative contacts when supervisors() is(are) unavailable, information regarding crisis services, and crisis decision-making. The licensed mental health professional can serve as the applicant's supervisor if he or she meets the supervisor requirements pursuant to 0450-01-.10. If the licensed mental health professional on staff at the place or practice is unable or unwilling to serve as the applicant's supervisor, the applicant must secure a supervisor who meets the supervisor requirements pursuant to 0450-01-.10.

(d) For an applicant pursuing post-master's professional experience, the place or practice shall not be owned, or independently operated by the applicant. An applicant shall not seek a clinical setting or supervision that is in conflict with the multiple relationships addressed by the American Counseling Association's Code of Ethics. Prior to choosing a clinical setting, if an applicant is uncertain, he or she shall seek advice about what is considered acceptable from the Board.

(e) In the case of pre-master's professional experience, the place or practice shall have written provisions to provide supervision and training experience as defined by graduate counseling program expectations.

(f) The applicant shall be an employee of the place or practice, or shall be affiliated by agreement. All agreements shall include but not be limited to the following information: the name of the individual responsible for supervision, specific job duties/responsibilities, method for obtaining and scheduling clients, liability insurance information, payment arrangements, emergency plan, and facility and service logistics. Compensation for services provided by the applicant shall be paid directly to the place or practice unless the applicant has a temporary license, at which time the applicant may be paid on an agreed upon basis or may provide services on a pro bono basis.

(12) Client Contact Hour - A 50 minute period a counselor or therapist spends working with an individual, family or group.

(13) Closed Files - An administrative action which renders an incomplete or denied file inactive.

(14) Clock hour - Sixty minutes in a continuing education activity. Providers who measure continuing education activities in "continuing education units" shall define CEU in clock hours.

(15) Continuing education - Education beyond the basic licensing educational requirement which is related to the practice of professional counseling.

(16) Department - Tennessee Department of Health.

(17) Division - The Division of Health Related Boards, Tennessee Department of Health, from which the board receives administrative support.

(18) Fee - Money, gift, services or anything of value offered or received as compensation in return for rendering services.

(19) Fee Splitting - The practice of paying commissions to colleagues out of fees received from clients who have been referred by the colleague for services.

(20) Good Moral Character - Any individual being highly regarded in personal behavior and professional ethics.

(Rule 0450-01-.01, continued)

(21) He/she His/her - When he or his appears in the text of these rules the word represents both the feminine and masculine genders.

(22) HRB - When the acronym HRB appears in this rule, it is intended to mean Health Related Boards.

(23) Internship - The supervised, planned, practical experience completed near the end of the education process and obtained in the clinical setting by observing and applying the principles, methods, and techniques learned in training and/or educational settings. The internship involves a longer period of time than the practicum.

(24) License - Document issued to an applicant who successfully completes the licensure process. The license takes the form of an "artistically designed" license as well as other versions bearing an expiration date.

(25) Licensed Professional Counselor - Any person who has met the qualifications for professional counselor and holds a current, unsuspended, or unrevoked license which has been lawfully issued by the board.

(26) Mental health/community agency setting - For purposes of the supervision requirements of this chapter, a clinical setting as defined in paragraph (11).

(27) NBCC - When the acronym NBCC appears in this rule, it is intended to mean National Board for Certified Counselors and may be referred to in these rules as the "testing agency".

(28) Person - Any individual, firm, corporation, partnership, organization, or body politic.

(29) Practice of Professional Counseling (without the designation as a mental health service provider) –Rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, techniques, methods, or procedures of the counseling profession, including appraisal activities, as defined by the law, counseling, consulting and referral activities. Nothing in this section shall be construed to permit the treatment of any mental, emotional or adjustment disorder other than marital problems, parent-child problems, child, and adolescent antisocial behavior, adult antisocial behavior, other specified family circumstances, other interpersonal problems, phase of life problems, other life circumstance problems, occupational problems, and uncomplicated bereavement.

(30) Practice of counseling as a mental health services provider - the application of mental health and human development principles in order to:

(a) facilitate human development and adjustment throughout the life span;

(b) prevent, diagnose, and treat mental, emotional or behavioral disorders and associated disorders which interfere with mental health;

(c) conduct assessments and diagnoses for the purpose of establishing treatment goals and objectives within the limitations prescribed in T.C.A. § 63-22-150(1); and

(d) plan, implement, and evaluate treatment plans using counseling treatment interventions. Counseling treatment interventions shall mean the application of cognitive, affective, behavioral and systemic counseling strategies which include principles of development, wellness, and pathology that reflect a pluralistic society. Nothing in this definition shall be construed to permit the performance of any act which licensed professional counselors designated as mental health service providers are not

(Rule 0450-01-.01, continued)

educated and trained to perform, nor shall it be construed to permit the designation of testing reports as "psychological".

(31) Practicum - The supervised, planned, practical experience occurring in a clinical setting, for an early introduction to subject matter. It is generally time-bound and for a shorter period of time than an internship, but it allows for demonstration and testing of information, knowledge, and skills acquired. (30) Professional Counseling - Assisting an individual, through the counseling relationship, in a manner intended to facilitate normal human growth and development, using a combination of mental health and human development principles, methods and techniques, to achieve mental, emotional, physical, social, moral, educational, spiritual, and/or career development and adjustment through the lifespan.

(32) Professional Counseling - Assisting an individual, through the counseling relationship, in a manner intended to facilitate normal human growth and development, using a combination of mental health and human development principles, methods and techniques, to achieve mental, emotional, physical, social, moral, educational, spiritual, and/or career development and adjustment through the lifespan.

(33) Professional Experience - A minimum of 10 client contact hours per week engaged in activities as described in the definition of professional counseling, and practice of counseling excluding volunteer hours.

(34) Private Practice - Practice of counseling or therapy other than in a public or nonprofit agency or entity.

(35) Recognized educational institution - Any educational institution that is accredited by a nationally or regionally recognized educational body.

(36) Registrant - Any person who has been lawfully issued a certificate or license.

(37) Relative - Parent, spouse, former spouse, siblings, children, cousins, in-laws (present and former), aunts, uncles, grandparents, grandchildren, step-children, employees, or anyone sharing the same household.

(38) Supervisee - An individual who is engaged in post graduate or graduate, supervised experience under the direction of a supervisor.

~~(39) Supervision - The ongoing, direct clinical review, for the purpose of training or teaching, by an approved supervisor who monitors the performance of a person's supervised interaction with a client and provides regular documented face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised. Supervision may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation.~~

(39) Supervision - Ongoing, direct clinical oversight for the purpose of training or teaching. Supervision may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation.

(a) Supervision shall be by an approved supervisor.

(b) An approved supervisor shall monitor the performance of an applicant's interaction with a client and provide regular documented face-to-face or live video conferencing (with prior board approval based on hardship), consultation, guidance, and instructions with respect to the clinical skills and competencies of the applicant.

(Rule 0450-01-.01, continued)

(c) Individual supervision is supervision as defined by models developed by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) for individual (one supervisor to supervisee) or triadic supervision (one supervisor to two supervisees).

(d) Group supervision is supervision by one supervisor of a minimum of three (3) and a maximum of eight (8) supervisees. Of the 150 hours collected, no more than fifty (50) hours may be group supervision.

(40) Use a title or description of - To hold oneself out to the public as having a particular status by means of stating on signs, mailboxes, address plates, stationery, announcements, business cards or other instruments of professional identification.

(41) Written evidence - Includes, but is not limited to, verification from supervisors or other professional colleagues familiar with the applicant's work.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-22-102, 63-22-104, 63-22-117 and 63-22-120.* ***Administrative History:*** *Original rule filed October 9, 1986; effective November 23, 1986. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Amendment filed April 16, 1996; effective June 30, 1996. Amendment filed June 18, 1996; effective September 4, 1996. Amendment filed December 13, 2000; effective February 26, 2001. Amendment filed November 21, 2001; effective February 4, 2002. Amendment filed April 30, 2002; effective July 14, 2002. Amendment filed August 16, 2002; effective October 30, 2002. Amendment filed October 30, 2002; effective January 13, 2003. Amendment filed July 21, 2004; effective October 4, 2004. Amendment filed April 17, 2007; effective July 1, 2007. Amendment filed November 26, 2008; effective February 9, 2009.*

0450-01-.02 SCOPE OF PRACTICE.

(1) The following shall be considered necessary when addressing the scope of practice for professional counselors:

(a) Assisting an individual, through the counseling relationship, in a manner intended to facilitate normal human growth and development, using a combination of mental health and human development principles, methods and techniques, to achieve mental, emotional, physical, social, moral, educational, spiritual and/or career development and adjustment through the lifespan.

(b) Rendering or offering to render to individuals, groups, organizations, or the general public any service involving the application of principles, techniques, methods or procedures of the counseling profession, including appraisal activities, counseling, consulting and referral activities. Nothing in this section shall be construed to permit the treatment of any mental, emotional or adjustment disorder other than marital problems, parent-child problems, child and adolescent antisocial behavior, adult antisocial behavior, other specified family circumstances, other interpersonal problems, phase of life problems, other life circumstance problems, occupational problems, and uncomplicated bereavement.

(c) Selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, achievements, or interests, which are used to understand, measure or facilitate such individual's normal human growth and development, but shall not include the use of projective techniques in the assessment of personality, nor the use of psychological or clinical tests designed to identify or classify abnormal or pathological human behavior, nor the use of individually administered intelligence tests. Consistent with each counselor's formal education and training, licensed or certified

(Rule 0450-01-.03, continued)

(4) These rules shall not apply to any Christian Science practitioner or to any priest, rabbi, or minister of the gospel of any religious denomination when performing counseling services as part of his pastoral or professional duties, or to any person who is licensed to practice medicine, when providing counseling services as part of his professional practice.

(5) No other person shall hold himself out to the public by a title or description of services incorporating the words "certified professional counselor" (CPC) or "licensed professional counselor" (LPC), and he shall not state or imply that he is certified or licensed. Nothing in this rule shall prohibit a person from stating or using the educational degrees which he has obtained.

(6) Use of Titles -

(a) Any person who possesses a valid, unsuspended and unrevoked certificate issued by the Board has the right to use the title "Certified Professional Counselor" and to practice professional counseling, as defined in Rule 0450-01-.01.

(b) Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the title "Licensed Professional Counselor" and to practice professional counseling, as defined in T.C.A. § 63-22-150.

(c) Any person licensed by the Board to whom this rule applies must use the titles authorized by this rule whenever he or she is "advertising" [as that term is defined in rule 0450-01-.01 (2)] or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the professional counselor to disciplinary action pursuant to T.C.A. §§ 63-22-110 (b) (4) and 63-22-117 (a) (1).

(7) These provisions do not apply to counselors working in a community/human services agency nor to professional counselors whose work is directly being supervised by an approved supervisor while obtaining the required years of work experience.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-22-102, 63-22-110, 63-22-117, and 63-22-150.* ***Administrative History:*** *Original rule filed October 9, 1986; effective November 23, 1986. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Amendment filed April 10, 2002; effective June 24, 2002. Amendment filed April 17, 2007; effective July 1, 2007. Amendment filed November 26, 2008; effective February 9, 2009.*

0450-01-.04 QUALIFICATIONS FOR LICENSURE.

(1) Professional Counselor by Examination. To be eligible to submit an application, a candidate must show completion of the following qualifications:

~~(1) Professional Counselor by Examination. Prior to submitting an application each of the following qualifications must be met by a candidate for professional counselor by examination.~~

(a) Be at least 18 years of age.

(b) Must provide evidence that he is highly regarded in moral character and professional ethics (rule 0450-01-.05).

(c) Education. The educational requirements must be completed prior to the date of application.

(Rule 0450-01-.04, continued)

1. Sixty (60) graduate semester hours, based upon a program of studies with a major in counseling, completed from an institution accredited by the Southern Association of Colleges and Schools, the Counsel for Accreditation of Counseling and Related Educational Programs, or a comparable accrediting body.

2. The graduate coursework should include, but is not limited to, core areas of (one course may satisfy study in more than one of the study areas):

(i) Theories of human behavior, learning and personality;

(ii) Abnormal behavior;

(iii) Theories of counseling and psychotherapy;

(iv) Evaluation and appraisal procedures;

(v) Group dynamics, theories and techniques;

(vi) Counseling techniques;

(vii) Multicultural counseling;

(viii) Ethics;

(ix) Research;

(x) Clinical practicum or internship (pursuant to T.C.A. § 63-22-104)

~~2. The graduate coursework should include, but is not limited to, core areas of (one course may satisfy study in more than one of the study areas):~~

~~Theories of human behavior, learning and personality~~
~~Abnormal behavior~~
~~Theories of counseling and psychotherapy~~
~~Evaluation and appraisal procedures~~
~~Group dynamics, theories and techniques~~
~~Counseling techniques~~
~~Ethics~~
~~Research~~
~~Clinical practicum or internship (pursuant to T.C.A. § 63-22-104)~~

(d) A minimum of two (2) years of supervised post master professional experience consisting of not less than ten (10) hours per week and fifty (50) contact hours of supervision per year as defined by Rule 0450-01-.10 (1).

(e) Pass the examination pursuant to rule 0450-01-.08.

(f) Until receipt of a license to practice as a Professional Counselor, an applicant will be required to practice under supervision, pursuant to Rule 0450-01-.10.

(2) Upgrading from Certified Professional Counselor Status to Licensed Professional Counselor Status

(a) Individuals certified on July 1, 1991, as professional counselors may upgrade from certification to licensure by any of the following methods:

(Rule 0450-01-.04, continued)

1. Providing a copy of his current CPC renewal certificate and verification to the board's satisfaction, that he has had five years work experience, pursuant to rule 0450-01-.14, as a certified professional counselor.

2. Providing a copy of his current CPC renewal certificate and evidence that he has been certified by the NBCC.

3. Providing a copy of his current CPC renewal certificate and complying with the requirements pursuant to rule 0450-01-.04(1).

(b) Upgrading from Certified Associate Professional Counselor Status to Licensed Professional Counselor Status

1. Any person certified as an Associate Counselor on July 1, 1991, shall be deemed to be a Certified Professional Counselor, but only for the purpose of upgrading to Licensed Professional Counselor.

2. For the purpose of upgrading to Licensed Professional Counselor from Certified Associate Counselor, the board will accept a passing score on the PES examination, which was previously required for Associate Professional Counselors, as fulfilling the requirement of 0450-01-.08.

(3) Licensed Professional Counselor by Reciprocity. Individuals seeking licensure by reciprocity must meet the following qualifications:

(a) Hold a current professional counselor license from another state;

(b) Meet licensure requirements pursuant to Rule 0450-01-.04(1)(a) through (d); and

(c) Pass all the examinations required pursuant to Rule 0450-01-.08.

(4) Professional Counselor with Mental Health Services Provider designation.

(a) Prior to submitting an application, each of the following qualifications must be met by a candidate for professional counselor with Mental Health Services Provider designation:

1. Be at least 18 years of age.

2. Must provide evidence that he is highly regarded in moral character and professional ethics (Rule 0450-01-.05).

3. Meet the following educational requirements prior to the date of application:

(i) Sixty (60) graduate semester hours, based upon a program of studies with a major in counseling, completed from an institution accredited by the Southern Association of Colleges and Schools, the Counsel for Accreditation of Counseling and Related Educational Programs, or a comparable accrediting body;

(ii) The graduate coursework should include, but is not limited to, the following core areas (one course may satisfy study in more than one of the study areas):

(I) Theories of human behavior, learning and personality

(II) Abnormal behavior and psychopathology

(III) Theories of counseling and psychotherapy

(IV) Evaluation and appraisal procedures

(V) Group dynamics, theories and techniques

(VI) Counseling techniques

(VII) Multicultural counseling

(VIII) Ethics

(IX) Research

(X) Use of the DSM

(XI) Treatment and treatment planning

(XII) Clinical practicum or internship (pursuant to T.C.A. § 63-22-104);
~~(I) Theories of human behavior, learning and personality~~

~~(II) Abnormal behavior and psychopathology~~

~~(III) Theories of counseling and psychotherapy~~

~~(IV) Evaluation and appraisal procedures~~

~~(V) Group dynamics, theories and techniques~~

~~(VI) Counseling techniques~~

~~(VII) Ethics~~

~~(VIII) Research~~

~~(IX) Use of the DSM~~

~~(X) Treatment and treatment planning~~

~~(XI) Clinical practicum or internship (pursuant to T.C.A. § 63-22-104);~~

4. Meet the following requirements for post-masters professional experience:

~~(i) Until July 1, 2009, complete 1000 hours of post-masters professional experience, including 100 hours of supervised experience obtained pursuant to Rule 0450-1-.10(5).~~

(i) Complete three thousand (3000) hours of supervised post-masters professional experience, including one hundred and fifty (150) contact hours of supervision obtained pursuant to Rule 0450-01-.10(6).

~~(ii) As of July 1, 2009, complete three thousand (3000) hours of supervised post-masters professional experience, including one hundred and fifty (150) contact hours of supervision obtained pursuant to Rule 0450-01-.10(5).~~

(Rule 0450-01-.04, continued)

(I) One thousand and five hundred (1500) of the three thousand (3000) hours of supervised post-masters professional experience shall be face-to-face client contact hours.

(II) One thousand and five hundred (1500) of the three thousand (3000) hours of supervised post-masters professional experience shall be clinically-related activities;

5. Pass the examination pursuant to Rule 0450-01-.08.

(b) For the purpose of mental health service provider designation pursuant to T.C.A. § 63-22-150, "has completed a minimum of nine (9) graduate semester hours of coursework specifically related to diagnosis, treatment, appraisal and assessment of mental disorders" will be interpreted to mean passing nine (9) semester hours, either during the course of a graduate degree or as post-graduate work, in courses which include diagnosis, treatment and treatment planning, appraisal and assessment of mental disorders, psychopathology, and the use of the DSM, were the entire focus of the course or comprised a substantial portion of the course work.

~~(c) Until June 30, 1997, the Board will designate as mental health service provider any professional counselor holding licensure in Tennessee as of July 1, 1995, provided such person submits an application according to the following procedure for such designation to the Board by June 30, 1997.~~

~~1. Each applicant for designation as a mental health service provider must complete an application which specifies those mental health services, such as diagnosis, treatment, appraisal and assessment of mental disorders, which the applicant has provided to the public for a minimum of two (2) years prior to the application. This may include teaching courses in the above indicated areas for a minimum of three (3) years in a graduate program of an institution of higher education which is accredited by a regional or national accrediting agency such as listed in Rule 0450-01-.04(1)(c)1.~~

~~2. All applicants must be qualified by a combination of education, training and experience to have delivered such services as diagnosing, treating, appraisal and assessment and must indicate the nature of the education, training and experience being offered for consideration.~~

~~3. The applicant must be able to demonstrate evidence of having provided mental health services within the bounds of ethics, standards, law and the rules and regulations in effect at the time of provision of these health services. This evidence shall consist of an affidavit of two (2) licensed professional counselors, licensed clinical social workers, licensed psychologists with designation as health service provider, or licensed psychiatrists, each of whom attest that the applicant has been engaged for two (2) years in the provision of mental health services and appears qualified to provide such services.~~

~~4. If the applicant is claiming mental health services experience which was provided in another state, the applicant must submit the affidavits of two (2) licensed professional counselors, licensed clinical social workers, licensed psychologists with designation as health services provider, or licensed psychiatrists in that state which attest the applicant has been engaged for two (2) years in the provision of mental health services and is qualified to provide such services.~~

~~5. All affidavits must be received directly by the Board from the attesting person and must include the following information:~~

(Rule 0450-01-.04, continued)

~~(i) specification of the types of mental health services provided,~~

~~(ii) the setting in which they were provided, including the duration in that setting,~~

~~(iii) the nature of the relationship between the attesting individual submitting the affidavit and the applicant, and~~

~~(iv) the manner in which the attesting individual submitting the affidavit acquired the personal knowledge of the mental health services which the applicant is claiming as qualifying.~~

~~6. All applicants must provide documentation of such education and training which supports their eligibility of the Board's designation as mental health service provider. Acceptable documentation for training and education consists of transcripts, certificates of attendance for relevant workshops/seminars, brochures, programs, agendas and cancelled checks or receipts indicating attendance.~~

(5) Licensed Professional Counselor with Mental Health Service Provider designation, by reciprocity. Individuals seeking licensure by reciprocity as Licensed Professional Counselors with Mental Health Service Provider designation must meet the following qualifications.

(a) Hold a current professional counselor license with a Mental Health Provider designation, or its equivalent, from another state.

(b) Meet licensure requirements pursuant to Rules 0450-01-.04(4)(a)1. through 4. and 0450-01-.04(4)(b).

(c) Pass all the examinations required pursuant to Rule 0450-01-.08.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-22-102, 63-22-104, 63-22-107, 63-22-116, 63-22-120, and Public Chapter 318, Acts of 1995.* ***Administrative History:*** *Original rule filed October 9, 1986; effective November 23, 1986. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Amendment filed October 18, 1995; effective January 1, 1996. Amendment filed April 16, 1996; effective June 30, 1996. Amendment filed June 18, 1996; effective September 4, 1996. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed September 4, 2003 was effective November 18, 2003. However; Stay of effective date filed by the Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists on November 7, 2003; new effective date January 17, 2004. Amendment filed November 26, 2008; effective February 9, 2009.*

0450-01-.05 PROCEDURES FOR LICENSURE. To become licensed as a professional counselor in Tennessee a person must comply with the following procedures and requirements.

(1) Professional Counselor by Examination

(a) An application shall be requested from the Board's administrative office or shall be downloaded from the Internet.

(b) An applicant shall respond truthfully and completely to every question or request for information contained in the form, and submit it along with all documentation and fees required by the form and this rule to the board's administrative office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation

(Rule 0450-01-.07, continued)

0450-01-.07 APPLICATION REVIEW, APPROVAL, DENIAL, INTERVIEWS.

(1) An application shall be requested from the Board's administrative office or shall be downloaded from the Internet. The submitted application shall be accompanied by the nonrefundable application fee pursuant to rule 0450-01-.06.

(2) Applications for licensure will be accepted throughout the year and files which are completed on or before the 30th day prior to the meeting will ordinarily be processed at the next board meeting scheduled for the purpose of reviewing files.

(3) Initial review of all applications to determine whether or not the application file is complete may be delegated to the board's administrator. Initial approval or denial must then be made by at least one member of the board or its designated consultant after review by that person. Any such initial approval or denial must be ratified or reversed by the board.

(4) If an application is incomplete when received in the Board's administrative office, a deficiency letter will be sent to the applicant notifying him/her of the deficiency. The requested information must be received in the Board's administrative office before a licensure decision will be made. Under no circumstances shall licensure be granted to any applicant whose application the board has determined to be incomplete.

(5) If a completed application has been denied and ratified as such by the board, the action shall become final and a notification of the denial shall be sent by the board's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure and such notification shall contain all the specific statutory or rule authorities for the denial.

(6) If an applicant believes that a denial was in error, they may request in writing to appear before the Board not less than thirty (30) days before the next regularly scheduled meeting of the Board.

~~(5) If a completed application has been denied and ratified as such by the board, the action shall become final and the following shall occur:~~

~~(a) A notification of the denial shall be sent by the board's administrative office by certified mail return receipt requested. Specific reasons for denial will be stated, such as incomplete information, unofficial records, examination failure, or other matters judged insufficient for licensure and such notification shall contain all the specific statutory or rule authorities for the denial.~~

~~(b) The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial and the procedure necessary to accomplish that action.~~

~~(c) An applicant has a right to a contested case hearing only if the licensure denial was based on subjective or discretionary criteria.~~

~~(d) An applicant may be granted a contested case hearing if licensure denial is based on an objective, clearly defined criteria only if after review and attempted resolution by the board's administrative staff, the licensure application can not be approved and the reasons for continued denial present a genuine issue of fact and/or law which is appropriate for appeal. Such request must be made in writing to the board within 30 days of the receipt of the notice from the board.~~

(Rule 0450-01-.07, continued)

(67) If the board finds it has erred in the issuance of a license, the board will give written notice by certified mail of its intent to revoke the license. The notice will allow the applicant the opportunity to meet the requirements of licensure within 30 days from date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke the license, the applicant shall have the right to proceed according to rule 0450-01-.07(5).

(78) Whenever requirements for licensure are not completed within six (6) months from the date of the initial review of application and credentials, written notification will be mailed to the applicant and the application file will be closed. An applicant whose file has been closed shall subsequently be considered for licensure only upon the filing of a new application and payment of all appropriate fees.

(89) Abandonment of Application - An application shall be deemed abandoned and closed if the application has not been completed by the applicant within six (6) months after it was initially reviewed.

(a) The above action must be ratified by the Board.

(b) An application submitted subsequent to the abandonment of a prior application shall be treated as a new application.

(910) If an applicant requests one entrance for licensure and after Board review, wishes to change that application to a different type of entrance, a new application, with supporting documents and an additional application fee must be submitted, i.e., reciprocity to examination.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-22-102, 63-22-104, 63-22-107, 63-22-110, 63-22-116, and 63-22-120.* ***Administrative History:*** *Original rule filed October 9, 1986; effective November 23, 1986. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Amendment filed January 31, 2000; effective April 15, 2000. Amendment filed July 31, 2000; effective October 14, 2000. Amendment filed July 16, 2003; effective September 29, 2003. Amendment filed September 4, 2003 was effective November 18, 2003. However; Stay of effective date filed by the Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists on November 7, 2003; new effective date January 17, 2004. Amendment filed October 6, 2004; effective December 20, 2004.*

0450-01-.08 EXAMINATIONS. Prior to submitting an application to the Board for consideration for licensure, individuals shall pass the examinations required by this rule.

(1) The Board adopts as its licensure examination for professional counselors the following examinations or their successor examinations given by the National Board for Certified Counselors (NBCC):

(a) The National Counselor Examination; and

~~(b) The Tennessee jurisprudence examination concerning Tennessee's professional counselor statutes and regulations which is administered by the NBCC; and~~

(b) The Tennessee jurisprudence examination concerning Tennessee's professional counselor statutes and regulations and professional ethics based on the ACA Code of Ethics, which is administered by the NBCC.

(c) If applying for licensure as a professional counselor with Mental Health Service Provider designation, the National Clinical Mental Health Counseling Examination.

(2) Admission to, application for, and fees to sit for the examinations are governed by and must be submitted directly to NBCC.

(Rule 0450-01-.08, continued)

(3) The applicant may receive additional information concerning NBCC examinations and NBCC administered examinations by writing to NBCC, 3 Terrace Way, Suite D, Greensboro, NC 27403-3660.

(4) Passing scores on NBCC examinations and NBCC administered examinations are determined by NBCC. Such passing scores as certified by the Board are adopted by the Board as constituting successful completion of the examinations.

(5) Certification of passing the examinations must be submitted directly to the Board from NBCC in conjunction with the applicant's filing an application for licensure with this Board. It is the applicant's responsibility to initiate the submission of the exam scores to the Board.

(6) If an applicant neglects, fails, or refuses to take an examination or fails to pass the examination for a license under these rules within twelve (12) months after being deemed eligible to sit by the Board, the application for licensure will be denied. However, such an applicant may thereafter make a new application accompanied by the required fee. The applicant shall meet any requirements in effect at the time of the new application.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-22-102, 63-22-104, and 63-22-107.* ***Administrative History:*** *Original rule filed October 9, 1986; effective November 23, 1986. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Amendment filed June 18, 1996; effective September 4, 1996. Amendment filed September 4, 2003 was effective November 18, 2003. However; Stay of effective date filed by the Board for Professional Counselors, Marital and Family Therapists, and Clinical Pastoral Therapists on November 7, 2003; new effective date January 17, 2004.*

0450-01-.09 RENEWAL OF CERTIFICATE OR LICENSE.

(1) Renewal Application

(a) The due date for certificate and license renewal is the last day of the month in which a licensee's birthdate falls pursuant to the Division of Health Related Board's biennial birthdate renewal system as contained as the expiration date on renewal certificates.

(b) Methods of Renewal

1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennesseeanytime.org

2. Paper Renewals - For licensees or certificate holders who have not renewed their license or certificate online via the Internet, a renewal application form will be mailed to each licensee and certificate holder to the last address provided to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.

(c) A certificate or license issued pursuant to these rules is renewable by the expiration date indicated on the certificate or license. To be eligible for renewal, an individual must submit to the Division of Health Related Boards on or before the expiration date all of the following:

1. A completed and signed renewal application form.

2. The renewal and state regulatory fees as provided in rule 0450-01-.06.

(a) The due date for certificate and license renewal is the last day of the month in which a licensee's birthdate falls pursuant to the Division of Health Related Board's biennial birthdate renewal system as contained as the expiration date on renewal certificates.

(b) Methods of Renewal

1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

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2. Paper Renewals - For licensees or certificate holders who have not renewed their license or certificate online via the Internet, a renewal application form will be mailed to each licensee and certificate holder to the last address provided to the Board. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.

(c) A certificate or license issued pursuant to these rules is renewable by the expiration date indicated on the certificate or license. To be eligible for renewal, an individual must submit to the Division of Health Related Boards on or before the expiration date all of the following:

1. A completed and signed renewal application form.

2. The renewal and state regulatory fees as provided in rule 0450-01-.06.

(d) Licensees or certificate holders who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses or certificates processed pursuant to rule 1200-10-1-.10.

(2) Reinstatement of an Expired Certificate or License

(a) Certificates or licenses that have expired may be reinstated upon meeting the following conditions:

1. Payment of all past due renewal fees;

2. Payment of the late renewal fee provided in Rule 0450-01-.06; and

3. Submission of evidence of completion of continuing education requirements pursuant to Rule 0450-01-.12.

(b) Renewal issuance decisions pursuant to this rule may be made administratively or upon review by any board member or the board's designee.

(c) Anyone submitting a signed renewal form or letter which is found to be untrue may be subject to disciplinary action as provided in rule 0450-01-.15.

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-22-102, 63-22-108, 63-22-110, and 63-22-111.* ***Administrative History:*** *Original rule filed October 9, 1986; effective November 23, 1986. Repeal and new rule filed April 29, 1992; effective June 13, 1992. Amendment filed June 18, 1996; effective September 4, 1996. Amendment filed April 30, 2002; effective July 14, 2002.*

0450-01-.10 SUPERVISION - POST-MASTERS.

(Rule 0450-01-.10, continued)

(1) Professional Counselor's Supervision. A supervisor providing supervision on or after January 31, 2013 must comply with the following requirements:

(a) Experience - Supervisors must have been licensed at least five (5) years as Licensed Professional Counselor, Licensed Professional Counselor with Mental Health Service Provider, Licensed Marital and Family Therapist, Licensed Clinical Pastoral Therapist, Licensed Psychologist with Health Service Provider designation, Licensed Senior Psychological Examiner, Licensed Psychiatrist, or Licensed Clinical Social Worker.

(b) Supervisors for applicants pursuing designation as Mental Health Service Provider shall be currently Licensed Professional Counselors with Mental Health Service Provider designation or equivalent, Licensed Marital and Family Therapists, Licensed Clinical Pastoral Therapists, Licensed Clinical Social Workers, Licensed Psychiatrists, Licensed Senior Psychological Examiners, or Licensed Psychologists with Health Service Provider designation, who have been licensed at least five (5) years and who are in good standing with their respective licensing boards and professional associations. A Licensed Professional Counselor without Mental Health Service Provider designation shall not supervise an applicant working toward the Mental Health Service Provider designation.

(c) For the purpose of mental health service provider designation, of the hundred and fifty (150) contact hours of supervision required, seventy-five (75) shall be conducted by a supervisor with LPC/MHSP designation.

(d) Ethics – Supervisors shall comply with Section F of the current code of ethics adopted by the American Counseling Association, except to the extent that it conflicts with the laws of the State of Tennessee or the rules of the Board. If the code of ethics conflicts with state law or rules, the state law or rules govern the matter. Violation of the code of ethics or state law or rules may subject a licensee or certificate holder to disciplinary action. Supervisors may also reference the Association for Counselor Education and Supervision (ACES) *Ethical Guidelines for Counseling Supervisors.*

(e) Training – Supervisors shall provide documentation of the successful completion of one or more of the following:

1. A passing grade at an accredited college or university in an academic course specific to supervision of counselors

2. Supervision certification by one, or more, of the following professional associations:

(i) AAMFT – Approved Supervisor;

(ii) AAPC – Approved Supervisor;

(iii) NBCC – Approved Clinical Supervisor; or

(iv) Any other organization designated by the Board to provide supervisor qualification verification

3. Documentation of twelve (12) contact hours related to counseling supervision and other related supervision topics. Contact hours must be

(Rule 0450-01-.10, continued)

provided by an approved professional association or approved by a counseling related credentialing organization (e.g., NBCC).

(f) Continuing Education Units - Three (3) clock hours of the ten (10) clock hour requirement shall, every two (2) years, pertain to counseling supervision or related supervision topics.

(2) All supervisors providing supervision starting before January 31, 2013 for Licensed Professional Counselors or Licensed Professional Counselors with Mental Health Service Provider candidates will be approved to continue providing supervision to those individuals according to the requirements of the former Rule 0450-01-.10. Supervisors providing supervision starting on or after January 31, 2013 must comply with the above requirements. All supervisors shall comply with subparagraphs (1)(d) and (1)(f) regardless of the date they start providing supervision.

~~(1) Professional Counselor's Supervision. Supervision required by this rule shall be a professional experience which is supervised by a currently Licensed Professional Counselor, Licensed Professional Counselor with Mental Health Service Provider designation, licensed marital and family therapist, licensed clinical social worker, licensed psychologist with health service provider designation, licensed senior psychological examiner, or licensed psychiatrist, pursuant to rule 0450-01-.01, who has been licensed at least five (5) years and who is providing ongoing, direct clinical review for the purpose of training or teaching and who monitors the performance of a person's supervised interaction with a client and provides regular, documented, face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised. Supervision may include, without being limited to, the review of case presentations, audio tapes, video tapes, and direct observation.~~

(23) Approved supervisors - The applicant shall be responsible for submitting evidence at the time the application is submitted that the supervisor meets the rules of the board for eligibility.

(34) Conflict of Interest Supervision - Supervision provided by the applicant's parent, spouse, former spouse, siblings, children, cousins, in-laws, (present or former), aunts, uncles, grandparents, grandchildren, step-children, employees, or anyone sharing the same household shall not be acceptable toward fulfillment of licensure requirements. For the purposes of this rule, a supervisor shall not be considered an employee of the applicant, if the only compensation received by the supervisor consists of payment for actual supervisory hours.

(45) Upon completion of the post-masters supervision requirement, pursuant to 0450-01-.04, the applicant must continue in supervision until a receipt of a license to practice as a Professional Counselor. Such post-supervision may be less intense and/or less frequent than the post-masters supervision experience, depending on the supervisors judgment.

(6) For the purpose of mental health service provider designation pursuant to T.C.A. § 63-22-150, one hundred and fifty (150) contact hours of supervision, of which no more than fifty (50) hours may be in a group setting, is required for licensure as a professional counselor with mental health service provider designation.

(a) The post-masters supervised experience must consist of a minimum of three thousand (3000) hours of direct clinical experience which is completed under supervision and which is completed no sooner than two (2) years nor more than four (4) years following the beginning of supervised clinical practice.

1. One thousand and five hundred (1500) of the three thousand (3000) hours of supervised post-masters professional experience shall be face-to-face client contact hours.

2. One thousand and five hundred (1500) of the three thousand (3000) hours of supervised post-masters professional experience shall be clinically-related activities.

(b) The ratio of supervision time to direct client contact should be sufficient to ensure adequate learning. The minimum requirements are one hour per week of direct, individual, formal contact with a qualified individual who is responsible for the clinical education, development and guidance of the supervisee. Excluded are classwork, practicum experience, or other course-related experiences taken in pursuit of the required 60 semester hour master's degree.

(c) The supervision must be for the direct provision of mental health services by the applicant to individuals or groups of clients. An applicant's own personal growth experience, i.e., personal therapy or encounter-type groups, is not acceptable. Supervision of others is not acceptable.

~~(5)~~6) ~~For the purpose of mental health service provider designation pursuant to T.C.A. § 63-22-150 and until July 1, 2009, 100 contact hours of post-masters supervised experience, of which no more than 40 hours may be in a group setting, is required for licensure as a professional counselor with mental health service provider designation. As of July 1, 2009 and for the purpose of mental health service provider designation pursuant to T.C.A. § 63-22-150, one hundred and fifty (150) contact hours of supervision, of which no more than fifty (50) hours may be in a group setting, is required for licensure as a professional counselor with mental health service provider designation.~~

~~(a) Until July 1, 2009, the post-masters supervised experience must consist of a minimum of 1000 hours of direct clinical experience which is completed under supervision and which is completed no sooner than two (2) years nor more than four (4) years following the beginning of supervised clinical practice.~~

~~(b) As of July 1, 2009, the post-masters supervised experience must consist of a minimum of three thousand (3000) hours of direct clinical experience which is completed under supervision and which is completed no sooner than two (2) years nor more than four (4) years following the beginning of supervised clinical practice. A clinical setting for the post-masters supervised experience which is exclusively in a private practice and/or which focuses exclusively on only one (1) aspect of professional counseling (i.e. counseling of children) is not acceptable for meeting the requirements of this rule.~~

~~1. One thousand and five hundred (1500) of the three thousand (3000) hours of supervised post-masters professional experience shall be face-to-face client contact hours.~~

~~2. One thousand and five hundred (1500) of the three thousand (3000) hours of supervised post-masters professional experience shall be clinically-related activities.~~

~~(c) The ratio of supervision time to direct client contact should be sufficient to ensure adequate learning. The minimum requirements is one hour per week of direct, individual, formal contact with a qualified individual who is responsible for the clinical, education development and guidance of the supervisee. Excluded are classwork, practicum experience, or other course-related experiences taken in pursuit of the required 60 semester hour master's degree.~~

~~(d) The supervision must be for the direct provision of mental health services by the applicant to individuals or groups of clients. An applicant's own personal growth~~

(Rule 0450-01-.10, continued)

~~experience, i.e., personal therapy or encounter-type groups, is not acceptable. Supervision of others is not acceptable.~~

~~(e) Supervisors for applicants pursuing designation as mental health service provider may be currently Licensed Professional Counselors with Mental Health Service Provider designation, licensed marital and family therapists, licensed clinical social workers, licensed psychiatrists, licensed senior psychological examiners, or licensed psychologists with health service provider designation, who have been licensed at least five (5) years and who are in good standing with their respective licensing boards and professional associations.~~

Authority: *T.C.A. §§4-5-202, 4-5-204, 63-22-102 63-22-104, 63-22-107, 63-22-117, 63-22-120, and Public Chapter 318, Acts of 1995.* ***Administrative History:*** *Original rule filed April 29, 1992; effective June 13, 1992. Amendment filed June 10, 1994; effective October 28, 1994. Amendment filed October 18, 1995; effective January 1, 1996. Amendment filed April 16, 1996; effective June 30, 1996. Amendment filed August 16, 2002; effective October 30, 2002. Amendment filed October 30, 2002; effective January 13, 2003. Amendment filed July 21, 2004; effective October 4, 2004. Amendment filed November 26, 2008; effective February 9, 2009.*

0450-01-.11 RETIREMENT AND REACTIVATION OF CERTIFICATE OR LICENSE.

(1) Once a certified professional counselor or associate counselor obtains the status of licensed professional counselor, his certification will be automatically administratively retired by the board office.

(2) A person who holds a current certificate or license and does not plan to practice in Tennessee and who does not intend to use the title "certified professional counselor" or "licensed professional counselor" may apply to convert an active certificate or license to inactive ("retired") status. An individual who holds a retired certificate or license will not be required to pay the renewal fee.

(3) A person who holds an active certificate or license may apply for retired status in the following manner:

(a) Obtain from, complete and submit to the board's administrative office an affidavit of retirement form.

(b) Submit any documentation which may be required to the board's administrative office.

(4) Certification or licensure holders whose certificate or license has been retired may reenter active status by doing the following:

(a) Submit a written request to the board's administrative office for certification or licensure reactivation;

(b) Pay the licensure or certificate renewal fee and state regulatory fee as provided in rule 0450-01-.06 and if retirement was pursuant to rule 0450-01-.09, and reactivation was requested prior to the expiration of one year from the date of retirement, the board may require payment of the late renewal fee, past due renewal fees, and state regulatory fees as provided in rule 0450-01-.06; and

(c) Comply with the continuing education provisions of rule 0450-01-.12 applicable to reactivation of retired license or certificate.

(5) Certification or licensure reactivation applications shall be treated as certification or licensure applications and review and decisions shall be governed by rule 0450-01-.05.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Environment and Conservation
DIVISION:	Air Pollution Control
SUBJECT:	Nitrogen Oxides; Clean Air Mercury Rule
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-201-101 et seq.
EFFECTIVE DATES:	January 8, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal

STAFF RULE ABSTRACT:

1. Chapter 1200-03-27 *Nitrogen Oxides* is being amended by deleting Rule 1200-03-27-.06 *NOx Budget Trading Program for State Implementation Plans*. This rule was added to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts A through I. EPA ceased to administer this program on January 1, 2009.

2. Chapter 1200-03-37 *Clean Air Mercury Rule* is being repealed. This chapter was added to meet the EPA requirement for Tennessee to establish standards of performance for certain existing stationary sources pursuant to Section 111(d) of the Clean Air Act. These requirements were vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097).

Public Hearing Comments

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

Comment: A comment was received on the proposed removal of Rule 1200-03-27-.06 (NO_X Budget Trading Program for State Implementation Plans). During the public comment period, U. S. EPA's Region 4 office discussed this rule change with the Division of Air Pollution Control. EPA stated that Tennessee may remove this rule, but the State must continue to meet its obligations under the NO_X SIP Call (40 CFR 51.121).

Response: Tennessee agrees that the State must continue to meet the requirements of the NO_X SIP Call (40 CFR 51.121). Tennessee is currently meeting these requirements by implementation and enforcement of the Clean Air Interstate Rule (CAIR) NO_X Ozone Season Trading Program (TAPCR 1200-03-27-.11, 40 CFR 96 Subparts AAAA through IIII, and 40 CFR 97 Subparts AAAA through IIII). Tennessee will continue to implement the requirements of the CAIR NO_X Ozone Season Trading Program until a CAIR replacement rule becomes effective. Upon final replacement of the CAIR Rule, Tennessee will meet its NO_X SIP Call obligations through the Transport Rule (40 CFR 97 Subpart BBBBB or a subsequent replacement) for electricity generating units (EGUs). For non-EGU boilers and combustion turbines, Tennessee will meet its NO_X SIP Call obligations by adoption of a SIP revision that addresses emissions from these sources.

There were no comments received for the proposed repeal of Rule 1200-03-37.

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

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

The rule changes included in this document apply to electricity generating units and large boilers and combustion turbines, and the rule changes are projected to have no impact on small businesses. The businesses subject to this rule are listed below:

DuPont Old Hickory
Packaging Corporation of America
Tate & Lyle, Loudon
Bowater Newsprint-Calhoun Operation
Cargill Corn Milling
Eastman Chemical Company
The Valero Refining Company - Tennessee, LLC
TVA

(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:

No small business is impacted.

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

No impact.

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

None.

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

Rule 1200-03-27-.06 NO_X Budget Trading Program for State Implementation Plans was originally adopted to meet the EPA requirement for Tennessee to revise its State Implementation Plan pursuant to 40 CFR 96 Subparts A through I. EPA ceased to administer this program on January 1, 2009.

Chapter 1200-03-37 Clean Air Mercury Rule was mandated pursuant to 40 CFR 60 Subpart HHHH (Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units). The Federal rule was vacated by the United States Court of Appeals for the District of Columbia Circuit on February 8, 2008 (case #05-1097) and has been removed from the Code of Federal Regulations.

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

Not Applicable.

Impact on Local Governments

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

These rule changes are projected to have no impact on local governments.

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For Department of State Use Only

Sequence Number: 10-12-12
Rule ID(s): 5321
File Date: 10/10/12
Effective Date: 1/8/13

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment & Conservation
Division:	Air Pollution Control
Contact Person:	Travis Blake
Address:	9th Floor, L&C Annex 401 Church Street Nashville, TN 37243-1531
Phone:	(615) 532-0617
Email:	travis.blake@tn.gov

Revision Type (check all that apply):

X Amendment
___ 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**
1200-03-27	Nitrogen Oxides
Rule Number	**Rule Title**
1200-03-27-.06	NO_X Budget Trading Program for State Implementation Plans

Chapter Number	**Chapter Title**
1200-03-37	Clean Air Mercury Rule
Rule Number	**Rule Title**
1200-03-37-.01	Clean Air Mercury Rule (40 CFR 60)

(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)

Amendments

Chapter 1200-03-27
Nitrogen Oxides

Chapter 1200-03-27 Nitrogen Oxides is amended by deleting Rule 1200-03-27-.06 NO_X Budget Trading Program for State Implementation Plans so that as amended the rule shall read:

1200-03-27-.06 Reserved ~~NOx Budget Trading Program for State Implementation Plans (40 CFR 96).~~

~~(1) The provisions of 40 CFR Part 96 concerning the NOx Trading Budget Program are hereby adopted by reference with the following revisions:~~

~~(a) The provisions of Sec. 96.4(a)(1) as adopted for Tennessee are revised to read as follows:~~

~~With the exception of a unit under Sec. 96.4(a)(2) that prior to September 22, 2001 was allocated NOx allowances as an industrial boiler, this allocation to be submitted to the EPA to be included in the state implementation plan, any unit that any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25MWe and sells any amount of electricity during a control period; or~~

~~(b) The provisions of Sec. 96.2 concerning the terms "NOx allowance" and "NOx Budget emissions limitation" as adopted for Tennessee are revised to read as follows:~~

~~NOx allowance means a limited authorization by the Administrator under the NOx Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter, except as provided under Sec. 96.54(f). No provision of the NOx Budget Trading Program, the NOx Budget permit application, the NOx Budget permit, or an exemption under Sec. 96.4(b) or Sec. 96.5 and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization, which does not constitute a property right. For purposes of all sections of this part except Sec. 96.41, Sec. 96.42, or Sec. 96.88, ``NOx allowance'' also includes an authorization to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter by the permitting authority or the Administrator in accordance with a State NOx Budget Trading Program established, and approved and administered by the Administrator, pursuant to the Federal regulation referred to in the definition of "NOx Budget Trading Program" in Sec. 96.2.~~

~~NOx Budget emissions limitation means, for a NOx Budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under Sec. 96.54 (a), (b), (e), and (f) adjusted to account for excess emissions for a prior control period under Sec. 96.54 (d) or to account for withdrawal from the NOx Budget Program, or for a change in regulatory status, for a NOx Budget opt-in source under Sec. 96.86 or Sec. 96.87.~~

~~(c) The provisions of Sec. 96.5(c)(2) as adopted for Tennessee are revised to read as follows:~~

~~The Administrator will allocate NOx allowances under subpart E of this part 96 to a unit exempt under this section. For each control period for which the unit is allocated one or more NOx allowances, the owners and operators of the unit shall specify a general account, in which the Administrator will record such NOx allowances.~~

~~(d) The provisions of Sec. 96.6(c)(1) as adopted for Tennessee are revised to read as follows:~~

~~The owners and operators of each NOx Budget source and each NOx Budget unit at the source shall hold NOx allowances available for compliance deductions under Sec. 96.54(a), (b), (e), or (f) as of the NOx allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NOx emissions for the~~

control period from the unit, as determined in accordance with subpart H of this part 96, plus any amount necessary to account for actual heat input under Sec. 96.42(e) for the control period or to account for excess emissions for a prior control period under Sec. 96.54(d) or to account for withdrawal from the NOx Budget Trading Program, or a change in regulatory status, of a NOx Budget opt-in unit under Sec. 96.86 or Sec. 96.87.

(e) The provisions of Sec. 96.23(a) as adopted for Tennessee are revised to read as follows:

Each NOx Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete NOx Budget permit application under Sec. 96.22.

(f) The provisions of Sec. 96.40 as adopted for Tennessee are revised to read as follows:

Sec. 96.40 State trading program budget.

The State trading program budget allocated by the permitting authority under Sec. 96.42 for a control period will equal the total number of tons of NOx emissions apportioned to the NOx Budget units under Sec. 96.4 in the State for the control period. The state trading program budget to be allocated to units under Sec. 96.4(a)(1) is 25814 tons/season, as specified for electricity generating units in the state in the EPA's final published budgets for states under the EPA's NOx SIP call. The budget to be allocated to units under Sec. 96.4(a)(2) is 5666 tons/season, the total of budgets for non-EGU units subject to this rule 1200-03-27-.06 and included in the EPA's inventory for the NOx SIP call. The portion of the state trading program budget allocated to units under Sec. 96.4(a)(2) shall be as set forth in the state implementation plan. The nitrogen oxides allowance (NOx allowance) allocated under Sec. 96.4(a)(2) must be subjected to a public hearing and submitted to the EPA for approval as a revision to the state implementation plan. The permitting authority may allocate additional allowances to NOx Budget units that have been generated through NOx emission reductions from industrial, mobile, and area source sectors that are permanent, enforceable, quantifiable, and surplus as determined by and approved by the Administrator and the permitting authority.

(g) The provisions of Sec. 96.41 as adopted for Tennessee are revised to read as follows:

Sec. 96.41 Timing requirements for NOx allowance allocations.

1. The NOx allowance allocations for units that receive allocations under parts (h)2 and 3 of this paragraph for the control periods in 2004 through 2018 are as specified in Sec. 96.42.

2. By April 1, 2016, and April 1st of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for the control period in the year that is three years after the year of the applicable deadline for submission under this subparagraph. If the permitting authority fails to submit to the Administrator the NOx allowance allocations in accordance with this subparagraph, the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.

3. By April 1, 2005 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for any NOx allowances remaining in the applicable allocation set-aside for the prior control period.

(h) The provisions of Sec. 96.42 as adopted for Tennessee are revised to read as follows:

Sec. 96.42 NOx allowance allocations.

1. (i) The heat input (in mmBtu) used for calculating NOx allowance allocations for each NOx Budget unit under Sec. 96.4 will be:

(I) For a NOx allowance allocation under Sec. 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under Sec. 96.4(a)(1) or for the control period in 1995 if the unit is under Sec. 96.4(a)(2); and

(II) For a NOx allowance allocation under Sec. 96.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NOx allocation is being calculated.

(ii) The unit's total heat input for the control period in each year specified under subpart (i) of this part will be determined in accordance with the requirements for a continuous emission monitoring system if the NOx Budget unit was otherwise subject to the requirements for a continuous emission monitoring system for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements for a continuous emission monitoring system for the year.

2. For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under subpart 1(i) of this subparagraph, a total number of NOx allowances equal to 95.7 percent, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40 in accordance with the following procedures:

(i) The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under part 1 of this subparagraph, rounded to the nearest whole NOx allowance as appropriate.

(ii) If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(1) in the State for a control period under subpart (i) of this part does not equal 95.7 percent of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under this subpart (i) so that the total number of NOx allowances allocated equals 95.7 percent of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95.7 percent of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units divided by the total number of NOx allowances allocated under this subpart (i), and rounding to the nearest whole NOx allowance as appropriate.

3. For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(2) in the State that commenced operation before May 1st of the period used to calculate heat input a NOx allowance in the state implementation plan to be submitted to EPA for approval.

4. For each control period under Sec. 96.41, the permitting authority will allocate NOx allowances to NOx Budget units under Sec. 96.4 in the State that commenced operation, or are projected to commence operation, on or after May 1 of the period used to calculate heat input under subpart 1(i) of this subparagraph, in accordance with the following procedures:

(i) The permitting authority will establish separate allocation set-aside for units under Sec. 96.4 (a)(1) and units under Sec. 96.4 (a)(2). For units under Sec. 96.4(a)(1) the allocation set-aside will be allocated NOx allowances equal to 4.3 percent of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40, rounded to the nearest whole NOx allowance as appropriate. For units under Sec. 96.4(a)(2), the allocation set-aside

for new source growth will be the NOx allowances remaining in the state trading program budget for units under Sec. 96.4(a)(2) after allocations are set for all NOx budget units under Sec. 96.40. For units under Sec. 96.4(a)(2) the allocation set-aside will also be established in the state implementation plan.

(ii) The NOx authorized account representative of a NOx Budget unit may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NOx allowances, starting with the control period during which the NOx Budget unit commenced, or is projected to commence, operation. The NOx allowance allocation request must be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NOx Budget unit.

(iii) In a NOx allowance allocation request under subpart (ii) of this part, the NOx authorized account representative for units under Sec. 96.4(a)(1) may request for a control period a NOx allowance in accordance with the following:

(I) For NOx Budget units that commenced operation after May 1, 1996, and before January 1, 2001, an allowance that does not exceed any of the following three limits: 0.15 lb/mmBtu; the allowable NOx emissions under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan. NOx allowances granted under this provision may be transferred at the request of the NOx authorized account representative to NOx Budget units which are owned by the same entity as the NOx Budget unit for which the allocation is made and are within the state.

(II) For NOx Budget units that commence operation after January 1, 2001, an allowance that does not exceed any of the following three limits: the product of the unit's maximum design heat input (in mmBtu/hr), the number of hours remaining in the control period starting with the first day of the control period on which the unit operated or is projected to operate, and 0.013 lb/mmBtu; the allowable NOx emission under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan. No allocation shall be made to any unit that commences operation after January 1, 2001, with an emission rate greater than 0.013 lb/mmBtu.

(iv) In a NOx allowance allocation request under subpart (ii) of this part, the NOx authorized account representative for units under Sec. 96.4(a)(2) may request for a control period a NOx allowance in an amount that does not exceed any of the three following limits: 0.15 lb/mmBtu; the allowable NOx emissions under any state or federal construction or operating permit; and any provision in or that has been submitted to the EPA for amendment to the state implementation plan.

(v) The permitting authority will review, and allocate NOx allowances pursuant to, each NOx allowance allocation request under subpart (ii) of this part in the order that a complete construction permit application is received by the permitting authority.

(I) Upon receipt of the NOx allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under Sec. 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of subparts (ii) and (iii) of this part and, for units under Sec. 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of subparts (ii) and (iii) of this part.

(II) If the applicable allocation set-aside has an amount of NOx allowances not less than the number requested (as adjusted under item (I) above), the

permitting authority will allocate the amount of the NOx allowances requested (as adjusted under item (i)) to the NOx Budget unit.

(III) If the applicable allocation set-aside has a smaller amount of NOx allowances than the number requested (as adjusted under subpart (i) above), the permitting authority will deny in part the request and allocate only the remaining number of NOx allowances in the allocation set-aside to the NOx Budget unit.

(IV) Once an applicable allocation set-aside has been depleted of all NOx allowances, the permitting authority will deny, and will not allocate any NOx allowances pursuant to, any NOx allowance allocation request under which NOx allowances have not already been allocated.

(vi) Within 60 days of receipt of a NOx allowance allocation request, the permitting authority will take appropriate action under subpart (v) of this part and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated to the NOx Budget unit.

5. For each NOx Budget unit that is allocated NOx allowances under part 4 of this subparagraph for a control period, the Administrator will deduct NOx allowances under Sec. 96.54(b) or (e) to account for the actual emissions from the unit during the control period. After making this deduction for compliance for the control period for all such units that are allocated NOx allowances under part 4, the Administrator will notify the permitting authority of the NOx allowances that were not deducted for compliance, these allowances then to be treated as additions, or reversions, for this control period to the allocation set-aside for the control period. Following this notification, the permitting authority will allocate any NOx allowances remaining in the allocation set-asides for the control period to the NOx Budget units in the State using the following formula and rounding to the nearest whole NOx allowance as appropriate:

Unit's share of NOx allowances remaining in allocation set-aside = (Total NOx allowances remaining in allocation set-aside) x (Unit's NOx allowance allocation) ÷ (State trading program budget excluding allocation set-aside)

where:

"Total NOx allowances remaining in allocation set-aside" is the total number of NOx allowances remaining in the allocation set-aside for the unit type for the control period to which the allocation set-aside applies. Unit type is as described under Sec. 96.4(a)(1) and (2);

"Unit's NOx allowance allocation" is the number of NOx allowances allocated under part 2 or 3 of this subparagraph to the unit for the control period to which the allocation set-aside applies; and

"State trading program budget excluding allocation set-aside" is the State trading program budget apportioned to the unit type under Sec. 96.40 for the control period to which the allocation set-aside applies minus the allocation set-aside. Unit type is as described under Sec. 96.4(a)(1) and (2).

(i) The provisions of Sec. 96.53 as adopted for Tennessee are revised to read as follows:

Sec. 96.53 Recordation of NOx allowance allocations.

1. The Administrator will record the NOx allowances for 2004 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for

2004 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).

2. By May 1, 2002, the Administrator will record the NOx allowances for 2005 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.4(b)(4)(ii) or Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2005 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).

3. By May 1, 2003, the Administrator will record the NOx allowances for 2006 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2006 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).

4. By May 1, 2004, the Administrator will record the NOx allowances for 2007 for a NOx Budget unit allocated under subpart E of this part 96 in the unit's compliance account, except for NOx allowances under Sec. 96.5(c)(2), which will be recorded in the general account specified by the owners and operators of the unit. The Administrator will record NOx allowances for 2007 for a NOx Budget opt-in unit in the unit's compliance account as allocated under Sec. 96.88(a).

5. Each year starting with 2005, after the Administrator has made all deductions from a NOx Budget unit's compliance account and the overdraft account pursuant to Sec. 96.54 (except deductions pursuant to Sec. 96.54(d)(2)), the Administrator will record:

(i) NOx allowances, in the compliance account, as allocated to the unit under subpart E of this part 96 for the third year after the year of the control period for which such deductions were or could have been made;

(ii) NOx allowances, in the general account specified by the owners and operators of the unit, as allocated under Sec. 96.5(c)(2) for the third year after the year of the control period for which such deductions are or could have been made; and

(iii) NOx allowances, in the compliance account, as allocated to the unit under Sec. 96.88(a).

6. Serial numbers for allocated NOx allowances. When allocating NOx allowances to a NOx Budget unit and recording them in an account, the Administrator will assign each NOx allowance a unique identification number that will include digits identifying the year for which the NOx allowance is allocated.

(j) The provisions of Sec. 96.54 as adopted for Tennessee are revised to read as follows:

Sec. 96.54 Compliance.

1. NOx allowance transfer deadline. The NOx allowances are available to be deducted for compliance with a unit's NOx Budget emissions limitation for a control period in a given year only if the NOx allowances:

(i) Were allocated for a control period in a prior year or the same year; and

(ii) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recordation under Sec. 96.60 by the NOx allowance transfer deadline for that control period.

2. Deductions for compliance.

(i) Following the recordation, in accordance with Sec. 96. 61, of NOx allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under part 1 of this subparagraph to cover the unit's NOx emissions (as determined in accordance with subpart H of this part 96), or to account for actual emissions under Sec. 96.42(e) for the control period:

(I) From the compliance account; and

(II) Only if no more NOx allowances available under part 1 of this subparagraph remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(ii) The Administrator will deduct NOx allowances first under item (i)(I) of this part and then under item (i)(II):

(I) Until the number of NOx allowances deducted for the control period equals the number of tons of NOx emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined; or

(II) Until no more NOx allowances available under subparagraph (a) of this paragraph remain in the respective account.

3. (i) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under part 2, 4, or 5 of this subparagraph. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.

(ii) First-in, first-out. The Administrator will deduct NOx allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NOx allowances by serial number under subpart (ii) of this part, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:

(I) Those NOx allowances that were allocated for the control period to the unit under subpart E or I of this part 96;

(II) Those NOx allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part 96, in order of their date of recordation;

(III) Those NOx allowances that were allocated for a prior control period to the unit under subpart E or I of this part 96; and

(IV) Those NOx allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part 96, in order of their date of recordation.

4. Deductions for excess emissions.

(i) After making the deductions for compliance under part 2 of this subparagraph, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NOx allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.

(ii) If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.

(iii) Any allowance deduction required under this subparagraph shall not affect the liability of the owners and operators of the NOx Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:

(I) For purposes of determining the number of days of violation, if a NOx Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.

(II) Each ton of excess emissions is a separate violation.

5. Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part 96:

(i) The NOx authorized account representative of the units may identify the percentage of NOx allowances to be deducted from each such unit's compliance account to cover the unit's share of NOx emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.

(ii) Notwithstanding item 2(ii)(I) of this subparagraph, the Administrator will deduct NOx allowances for each such unit until the number of NOx allowances deducted equals the unit's identified percentage (under subpart 5(i) of this subparagraph) of the number of tons of NOx emissions, as determined in accordance with subpart H of this part 96, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit.

6. The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to part 2, 4, or 5 of this subparagraph.

(k) The provisions of Sec. 96.55 as adopted for Tennessee are revised to read as follows:

Sec. 96.55 Banking.

1. NOx allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(i) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NOx allowance is deducted or transferred under Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part 96, or subpart I of this part 96.

(ii) The Administrator will designate, as a "banked" NOx allowance, any NOx allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to Sec. 96.54 (except deductions pursuant to Sec. 96.54(d)(2)) and that was allocated for that control period or a control period in a prior year.

2. Each year starting in 2005, after the Administrator has completed the designation of banked NOx allowances under subpart 1(ii) of this subparagraph and before May 1 of the year, the Administrator will determine the extent to which banked NOx allowances may be used for compliance in the control period for the current year, as follows:

(i) The Administrator will determine the total number of banked NOx allowances held in compliance accounts, overdraft accounts, or general accounts.

(ii) If the total number of banked NOx allowances determined, under subpart (i) of this part, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked NOx allowance may be deducted for compliance in accordance with Sec. 96.54.

(iii) If the total number of banked NOx allowances determined, under subpart (i), to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked allowance may be deducted for compliance in accordance with Sec. 96.54, except as follows:

(I) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located and divided by the total number of banked NOx allowances determined, under subpart (i), to be held in compliance accounts, overdraft accounts, or general accounts.

(II) The Administrator will multiply that ratio by the number of banked NOx allowances in each compliance account or overdraft account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with Sec. 96.54. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with Sec. 96.54, except that, if such NOx allowances are used to make a deduction, two such NOx allowances must be deducted for each deduction of one NOx allowance required under Sec. 96.54.

3. Any NOx Budget unit may reduce its NOx emission rate in the 2001, 2002, or 2003 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NOx allowances in 2004 to the unit in accordance with the following requirements.

(i) Each NOx Budget unit for which the owner or operator requests any early reduction credits under subpart (iv) of this part shall monitor NOx emissions in accordance with subpart H of this part. Each budget unit for which early reduction credits are requested must have monitoring data for at least one control period prior to the control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during any control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.

(ii) NOx emission rate and heat input under subparts (iii) through (v) below shall be determined in accordance with subpart H of this part 96.

(iii) Each NOx Budget unit for which the owner or operator requests any early reduction credits under subpart (iv) below shall reduce its NOx emission rate, for each control period for which early reduction credits are requested as follows:

(I) For EGUs, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NOx emission rate in the 2000 control period, this emission rate for the 2000 control period having been established through monitoring in accordance with subpart H of this part 96.

(II) For non-EGUs, to less than 95 percent of the unit's NOx emission rate in the 2000, 2001, or 2002 control period, that control period being the earliest one for which monitoring data acceptable to the Administrator and the Technical Secretary establishes the NOx emission rate for that unit. For example, emission rate reductions achieved in the 2003 control period would be as compared to the 2000 control period if the NOx emission rate for the 2000 control period had been accepted by the Administrator and the Technical Secretary as having been established.

(iv) The NOx authorized account representative of a NOx Budget unit that meets the requirements of subparts (i) and (iii) of this part may submit to the permitting authority a request for early reduction credits for the unit based on NOx emission rate reductions made by the unit in the control period for 2001, 2002, and/or 2003 in accordance with subpart (iii) of this part.

(I) In the early reduction credit request, the NOx authorized account representative for EGUs may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the acid deposition control requirement for the unit type and the unit's NOx emission rate for such control period in lb/mmBtu, divided by 2000 lb/ton, and rounded to the nearest ton. For non-EGUs, the NOx authorized account representative may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between the unit's emission rate prior to the NOx emission rate reduction in lb/mmBtu and the unit's NOx emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton; the difference must reflect only reductions additional to prior existing requirements.

(II) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NOx emission rate reductions on which the request is based are made or such later date approved by the permitting authority.

(v) The permitting authority will allocate NOx allowances, to NOx Budget units meeting the requirements of subparts (i) and (iii) of this part and covered by early reduction requests meeting the requirements of item (iv)(I) of this part, in accordance with the following procedures:

(I) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of subparts (i) and (iii) and item (iv)(II) of this part are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of subparts (ii) and (iv) of this part.

(II) If the State's compliance supplement pool of 10565 tons/season has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 (as adjusted under item (v)(I) of this part), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each

~~early reduction credit requested (as adjusted under item (v)(I)). If the State's compliance supplement pool, after deduction of the early reduction credits for the 2001 control period, has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2002 (as adjusted under item (v)(I)), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under item (v)(I)). The same procedure will be followed for early reduction credit requests from the 2003 control period as from the 2002 control period.~~

~~(III) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for any control period (as adjusted under item (v)(I) of this part), the permitting authority will allocate NOx allowances for that control period to each NOx Budget unit covered by such accepted requests according to the following formula:~~

~~Unit's allocated early reduction credits = [(Unit's adjusted early reduction credits)/(Total adjusted early reduction credits requested by all units)] x (Available NOx allowances from the State's compliance supplement pool)~~

~~where:~~

~~"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for the control period in accepted early reduction credit requests, as adjusted under item (v)(I).~~

~~"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for the control period in accepted early reduction credit requests, as adjusted under item (v)(I).~~

~~"Available NOx allowances from the State's compliance supplement pool" is the number of NOx allowances in the State's compliance supplement pool with appropriate deductions made for any early reduction credits previously allocated.~~

~~(vi) By May 1, 2004, the permitting authority will submit to the Administrator the allocations of NOx allowances determined under subpart (v) of this part. The Administrator will record such allocations to the extent that they are consistent with the requirements of subparts (i) through (v) of this part.~~

~~(vii) NOx allowances recorded under subpart (vi) of this part may be deducted for compliance under Sec. 96.54 for the control periods in 2004 or 2005. Notwithstanding part 1 of this subparagraph, the Administrator will deduct as retired any NOx allowance that is recorded under subpart (vi) and is not deducted for compliance in accordance with Sec. 96.54 for the control period in 2004 or 2005.~~

~~(viii) NOx allowances recorded under subpart (vi) are treated as banked allowances in 2005 for the purposes of parts 1 and 2 of this subparagraph.~~

~~4. One thousand NOx tons of the State's compliance supplement pool is set aside to be allocated to units under Sec. 96.4(a)(2). If this specified amount of the compliance supplement pool is not all or in part allocated to units under Sec. 96.4(a)(2), then qualifying units under Sec. 96.4(a)(1) may be allocated these NOx tons.~~

~~5. The permitting authority may issue some or all of the compliance supplement pool to sources that demonstrate a need for an extension beyond the May 31, 2004 compliance deadline according to the following procedures:~~

(i) The permitting authority shall initiate the issuance process by the later date of September 30, 2002, or after the State issues credit according to the procedures in part 3 of this subparagraph.

(ii) The permitting authority shall complete the issuance process by no later than May 31, 2004.

(iii) The State shall issue credit to a source only if the source complies with all applicable requirements referred to in the definition of "NOx Budget Trading Program" in sec. 96.2.

(vi) The State shall ensure the public an opportunity, through a public hearing process, to comment on the appropriateness of allocation compliance supplement pool credits under this paragraph.

(l) The provisions of Sec. 96.70(b)(1) as adopted for Tennessee are revised to read as follows:

NOx Budget units for which the owner or operator intends to apply for early reduction credits under part (k)3 of this paragraph must comply with the requirements of this subpart by May 1, 2000, for credits to be earned from the 2001 control period; by May 1, 2001, for credits from the 2002 control period; and May 1, 2002, for credits from the 2003 control period.

(m) The provisions of Sec. 96.70(c) as adopted for Tennessee are revised to read as follows:

Reporting data prior to initial certification. The owner or operator of a NOx Budget unit under paragraph (b)(3), (b)(4), (b)(5), or (b)(6) of this section shall determine, record and report NOx mass emissions, heat input rate, and any other values required to determine NOx mass emissions (e.g., NOx emission rate and heat input rate, or NOx concentration and stack flow rate) in accordance with the provisions for reporting data prior to initial certification of the mass emission provisions for a continuous emission monitoring system, from the date and hour that the unit starts operating until the date and hour on which the continuous emission monitoring system, excepted optional SO_2 emission data protocol for gas-fired and oil-fired units and NOx emission estimation protocol for gas-fired peaking units and oil-fired peaking units under provisions for a continuous emission monitoring system, or low mass emission excepted monitoring methodology referred to in Sec. 96.71(b), is provisionally certified.

(n) The provisions of Sec. 96.71(b)(2) as adopted for Tennessee are revised to read as follows:

Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that may significantly affect the ability of the system to accurately measure or record NOx mass emissions or heat input or to meet the continuous emission monitoring system QA and QC requirements, the owner or operator shall recertify the monitoring system according to the recertification approval process provisions for a continuous emission monitor system. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify the continuous emission monitoring system according to the recertification approval process provisions mentioned above. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or complete replacement of an existing continuous emission monitoring system.

(o) The provisions of the opening and Sec. (1) of Sec. 96.71 (b)(3)(v)(A) as adopted for Tennessee are revised to read as follows:

The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data specified under the disapproval provisions of the certification and recertification approval processes, the disapproval of certification application provisions for low mass emission units using excepted methodology referred to in Sec. 96.71(b), and the consequences of audits provisions of the QA and QC requirements for a continuous emission

~~monitoring system and continuing until the date and hour that the continuous emission monitoring system or component thereof can be adjusted, repaired, or replaced and certified tests successfully completed:~~

~~1. For units that the owner or operator intends to monitor or monitors for NOx emission rate and heat input rate or intends to determine or determines NOx mass emissions using the low mass emission excepted methodology specified in Sec. 96.71(b)(3)(ii), the maximum potential NOx emission rate and the maximum potential hourly heat input of the unit; and~~

~~(p) The provisions of Sec. 96.71(c) as adopted for Tennessee are revised to read as follows:~~

~~Initial certification and recertification procedures for low mass emission units using the excepted methodologies referred to in Sec. 96.71(b). The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology and not subject to an Acid Rain emissions limitation shall meet the applicable general operating requirements for a continuous emission monitoring system and the applicable requirements for low mass emission units using the excepted methodologies referred to in Sec. 96.71(b). The owner or operator of such a unit shall also meet the applicable certification and recertification procedures of paragraph (b) of this section, except that the excepted methodology shall be deemed provisionally certified for use under the NOx Budget Trading Program as of the following dates:~~

~~1. For a unit that does not have monitoring equipment initially certified or recertified for the NOx Budget Trading Program as of the date on which the NOx authorized account representative submits the certification application for low mass emissions excepted methodology, starting on the date of such submission until the completion of the period for the Administrator's review.~~

~~2. For a unit that has monitoring equipment initially certified or recertified for the NOx Budget Trading Program as of the date on which the NOx authorized account representative submits the certification application for low mass emissions excepted methodology for the unit and that reports data on an annual basis under Sec. 96.74(d), starting January 1 of the year after the year of such submission until the completion of the period for the Administrator's review.~~

~~3. For a unit that has monitoring equipment initially certified or recertified for the NOx Budget Trading Program as of the date on which the NOx Authorized Account Representative submits the certification application under for low mass emissions excepted methodology for the unit and that reports on a control season basis under Sec. 96.74(d), starting May 1 of the control period after the year of such submission until the completion of the period for the Administrator's review.~~

~~(q) The provisions of Sec. 96.74(d)(1)(ii) as adopted for Tennessee are revised to read as follows:~~

~~For a unit that commences operation on or before May 1, 2003 and that is not subject to paragraph (d)(1)(i) of this section, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or, if the certification tests are not completed by May 1, 2003, the calendar quarter covering May 1, 2003 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2003; or~~

~~(r) The provisions of Sec. 96.74(d)(2)(ii) as adopted for Tennessee are revised to read as follows:~~

~~Submit quarterly reports covering the period May 1 through September 30 of each year and including the hourly data and results of QA tests required under the annual and ozone season monitoring and reporting requirements for a continuous emission monitoring system. The NOx authorized account representative shall submit such quarterly reports, beginning with:~~

~~1. For a unit for which the owner or operator intends to apply or applies for early reduction credits, the calendar quarter that includes the date of initial provisional certification under~~

Sec. 96.71(b)(3)(iii) or Sec. 96.71(c). Data shall be recorded and reported from the date and hour corresponding to the date and hour of provisional certification; or

2. For a unit that commences operation on or before May 31, 2004, and that is not subject to paragraph (d)(2)(i) of this section, the calendar quarter covering May 1 through June 30, 2003. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or the first hour of May 1, 2003; or

3. For a unit that commences operation after May 1, 2003 and during a control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commences operation; or

4. For a unit that commences operation after May 1, 2003 and not during a control period, the calendar quarter covering the first control period after the unit commences operation. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of initial provisional certification under Sec. 96.71(b)(3)(iii) or Sec. 96.71(c) or the first hour of May 1 of the first control period after the unit commences operation.

(s) The provisions of Sec. 96.85(a) as adopted for Tennessee are revised to read as follows:

Each NOx Budget opt-in permit will contain all elements required for a complete NOx Budget opt-in permit application under Sec. 96.22.

(t) For the purpose of this rule, the provisions of part 96 and the Federal regulation referred to in the definition of "NOx Budget Trading Program" in Sec. 96.2 that refer to the year 2002 are amended to refer to year 2003, those that refer to year 2003 are amended to refer to year 2004, and those that refer to year 2004 to are amended to refer to year 2005. For example, the requirement in Sec. 96.70(b)(2) for units that commence operation before January 1, 2002, to comply with Subpart H by May 1, 2002, is amended by this paragraph to specify that units that commence operation before January 1, 2003, must comply by May 1, 2003. Also for the purpose of this rule, the provisions of Part 96 and the Federal regulation referred to in the definition of "NOx Budget Trading Program" in Sec. 96.2 that refer to the specific date May 1, 2003, are amended to refer to the date May 31, 2004. For example, the specification in Sec. 96.6(c)(3) that a unit be subject to requirements starting on May 1, 2003, is amended by this paragraph to specify that the unit is subject starting on May 31, 2004, instead.

(u) The citations in this rule 1200-03-27-.06, including in part 96 in this rule's paragraph (2), to sections within part 96 that are amended by paragraph (1) of this rule are to be taken as citations to those sections as amended by this paragraph.

(2) PART 96--NOx Budget Trading Program for State Implementation Plans

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Subpart A--NOx Budget Trading Program General Provisions

Sec. 96.1 Purpose.

This part establishes general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NOx Budget Trading Program for State implementation plans as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. The owner or operator of a unit, or any other person, shall comply with requirements of this part as a matter of federal law only to the extent a State that has jurisdiction over the unit incorporates by reference provisions of this part, or otherwise adopts such requirements of this part, and requires compliance, the State submits to the Administrator a State implementation plan including such adoption and such compliance requirement, and the Administrator approves the portion of the State implementation plan including such adoption and such compliance requirement. To the extent a State adopts requirements of this part, including at a minimum the requirements of subpart A (except for Sec. 96.4(b)), subparts B through D, subpart F (except for Sec. 96.55(c)), and subparts G and H of this part, the State authorizes the Administrator to assist the State in implementing the NOx Budget Trading Program by carrying out the functions set forth for the Administrator in such requirements.

Sec. 96.2 Definitions.

The terms used in this part shall have the meanings set forth in this section as follows:

Account certificate of representation means the completed and signed submission required by subpart B of this part for certifying the designation of a NOx authorized account representative for a NOx Budget source or a group of identified NOx Budget sources who is authorized to represent the owners and operators of such source or sources and of the NOx Budget units at such source or sources with regard to matters under the NOx Budget Trading Program.

Account number means the identification number given by the Administrator to each NOx Allowance Tracking System account.

Acid Rain emissions limitation means, as defined in Sec. 72.2 of this chapter, a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program under title IV of the CAA.

Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.

Allocate or allocation means the determination by the permitting authority or the Administrator of the number of NOx allowances to be initially credited to a NOx Budget unit or an allocation set-aside.

Automated data acquisition and handling system or DAHS means that component of the CEMS, or other emissions monitoring system approved for use under subpart H of this part, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required by subpart H of this part.

Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.

~~CAA means the CAA, 42 U.S.C. 7401, et seq., as amended by Pub. L. No. 101-549 (November 15, 1990).~~

~~Combined cycle system means a system comprised of one or more combustion turbines, heat recovery steam generators, and steam turbines configured to improve overall efficiency of electricity generation or steam production.~~

~~Combustion turbine means an enclosed fossil or other fuel-fired device that is comprised of a compressor, a combustor, and a turbine, and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine.~~

~~Commence commercial operation means, with regard to a unit that serves a generator, to have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation. Except as provided in Sec. 96.5, for a unit that is a NOx Budget unit under Sec. 96.4 on the date the unit commences commercial operation, such date shall remain the unit's date of commencement of commercial operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Sec. 96.5 or subpart I of this part, for a unit that is not a NOx Budget unit under Sec. 96.4 on the date the unit commences commercial operation, the date the unit becomes a NOx Budget unit under Sec. 96.4 shall be the unit's date of commencement of commercial operation.~~

~~Commence operation means to have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber. Except as provided in Sec. 96.5, for a unit that is a NOx Budget unit under Sec. 96.4 on the date of commencement of operation, such date shall remain the unit's date of commencement of operation even if the unit is subsequently modified, reconstructed, or repowered. Except as provided in Sec. 96.5 or subpart I of this part, for a unit that is not a NOx Budget unit under Sec. 96.4 on the date of commencement of operation, the date the unit becomes a NOx Budget unit under Sec. 96.4 shall be the unit's date of commencement of operation.~~

~~Common stack means a single flue through which emissions from two or more units are exhausted.~~

~~Compliance account means a NOx Allowance Tracking System account, established by the Administrator for a NOx Budget unit under subpart F of this part, in which the NOx allowance allocations for the unit are initially recorded and in which are held NOx allowances available for use by the unit for a control period for the purpose of meeting the unit's NOx Budget emissions limitation.~~

~~Compliance certification means a submission to the permitting authority or the Administrator, as appropriate, that is required under subpart D of this part to report a NOx Budget source's or a NOx Budget unit's compliance or noncompliance with this part and that is signed by the NOx authorized account representative in accordance with subpart B of this part.~~

~~Continuous emission monitoring system or CEMS means the equipment required under subpart H of this part to sample, analyze, measure, and provide, by readings taken at least once every 15 minutes of the measured parameters, a permanent record of nitrogen oxides emissions, expressed in tons per hour for nitrogen oxides. The following systems are component parts included, consistent with part 75 of this chapter, in a continuous emission monitoring system:~~

~~Flow monitor;~~

~~Nitrogen oxides pollutant concentration monitors;~~

~~Diluent gas monitor (oxygen or carbon dioxide) when such monitoring is required by subpart H of this part;~~

~~A continuous moisture monitor when such monitoring is required by subpart H of this part; and~~

~~An automated data acquisition and handling system.~~

~~Control period means the period beginning May 1 of a year and ending on September 30 of the same year, inclusive.~~

~~Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the NOx authorized account representative and as determined by the Administrator in accordance with subpart H of this part.~~

~~Energy Information Administration means the Energy Information Administration of the United States Department of Energy.~~

~~Excess emissions means any tonnage of nitrogen oxides emitted by a NOx Budget unit during a control period that exceeds the NOx Budget emissions limitation for the unit. Fossil fuel means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material.~~

~~Fossil fuel-fired means, with regard to a unit:~~

~~The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel actually combusted comprises more than 50 percent of the annual heat input on a Btu basis during any year starting in 1995 or, if a unit had no heat input starting in 1995, during the last year of operation of the unit prior to 1995; or~~

~~The combustion of fossil fuel, alone or in combination with any other fuel, where fossil fuel is projected to comprise more than 50 percent of the annual heat input on a Btu basis during any year; provided that the unit shall be ``fossil fuel-fired'' as of the date, during such year, on which the unit begins combusting fossil fuel.~~

~~General account means a NOx Allowance Tracking System account, established under subpart F of this part, that is not a compliance account or an overdraft account.~~

~~Generator means a device that produces electricity.~~

~~Heat input means the product (in mmBtu/time) of the gross calorific value of the fuel (in Btu/lb) and the fuel feed rate into a combustion device (in mass of fuel/time), as measured, recorded, and reported to the Administrator by the NOx authorized account representative and as determined by the Administrator in accordance with subpart H of this part, and does not include the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.~~

~~Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy from any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:~~

~~For the life of the unit;~~

~~For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~

~~For a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.~~

~~Maximum design heat input means the ability of a unit to combust a stated maximum amount of fuel per hour on a steady state basis, as determined by the physical design and physical characteristics of the unit.~~

~~Maximum potential hourly heat input means an hourly heat input used for reporting purposes when a unit lacks certified monitors to report heat input. If the unit intends to use appendix D of part 75 of this chapter to report heat input, this value should be calculated, in accordance with part 75 of this chapter, using the maximum fuel flow rate and the maximum gross calorific value. If the unit intends~~

~~to use a flow monitor and a diluent gas monitor, this value should be reported, in accordance with part 75 of this chapter, using the maximum potential flow rate and either the maximum carbon dioxide concentration (in percent CO2) or the minimum oxygen concentration (in percent O2).~~

~~Maximum potential NOx emission rate means the emission rate of nitrogen oxides (in lb/mmBtu) calculated in accordance with section 3 of appendix F of part 75 of this chapter, using the maximum potential nitrogen oxides concentration as defined in section 2 of appendix A of part 75 of this chapter, and either the maximum oxygen concentration (in percent O2) or the minimum carbon dioxide concentration (in percent CO2), under all operating conditions of the unit except for unit start up, shutdown, and upsets.~~

~~Maximum rated hourly heat input means a unit-specific maximum hourly heat input (mmBtu) which is the higher of the manufacturer's maximum rated hourly heat input or the highest observed hourly heat input.~~

~~Monitoring system means any monitoring system that meets the requirements of subpart H of this part, including a continuous emissions monitoring system, an excepted monitoring system, or an alternative monitoring system.~~

~~Most stringent State or Federal NOx emissions limitation means, with regard to a NOx Budget opt-in source, the lowest NOx emissions limitation (in terms of lb/mmBtu) that is applicable to the unit under State or Federal law, regardless of the averaging period to which the emissions limitation applies.~~

~~Nameplate capacity means the maximum electrical generating output (in MWe) that a generator can sustain over a specified period of time when not restricted by seasonal or other deratings as measured in accordance with the United States Department of Energy standards.~~

~~Non-title V permit means a federally enforceable permit administered by the permitting authority pursuant to the CAA and regulatory authority under the CAA, other than title V of the CAA and part 70 or 71 of this chapter.~~

~~NOx allowance means an authorization by the permitting authority or the Administrator under the NOx Budget Trading Program to emit up to one ton of nitrogen oxides during the control period of the specified year or of any year thereafter.~~

~~NOx allowance deduction or deduct NOx allowances means the permanent withdrawal of NOx allowances by the Administrator from a NOx Allowance Tracking System compliance account or overdraft account to account for the number of tons of NOx emissions from a NOx Budget unit for a control period, determined in accordance with subpart H of this part, or for any other allowance surrender obligation under this part.~~

~~NOx allowances held or hold NOx allowances means the NOx allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with subparts F and G of this part, in a NOx Allowance Tracking System account.~~

~~NOx Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of NOx allowances under the NOx Budget Trading Program.~~

~~NOx Allowance Tracking System account means an account in the NOx Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of NOx allowances.~~

~~NOx allowance transfer deadline means midnight of November 30 or, if November 30 is not a business day, midnight of the first business day thereafter and is the deadline by which NOx allowances may be submitted for recordation in a NOx Budget unit's compliance account, or the overdraft account of the source where the unit is located, in order to meet the unit's NOx Budget emissions limitation for the control period immediately preceding such deadline.~~

~~NOx authorized account representative means, for a NOx Budget source or NOx Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all NOx~~

~~Budget units at the source, in accordance with subpart B of this part, to represent and legally bind each owner and operator in matters pertaining to the NOx Budget Trading Program or, for a general account, the natural person who is authorized, in accordance with subpart F of this part, to transfer or otherwise dispose of NOx allowances held in the general account.~~

~~NOx Budget emissions limitation means, for a NOx Budget unit, the tonnage equivalent of the NOx allowances available for compliance deduction for the unit and for a control period under Sec. 96.54(a) and (b), adjusted by any deductions of such NOx allowances to account for actual utilization under Sec. 96.42(e) for the control period or to account for excess emissions for a prior control period under Sec. 96.54(d) or to account for withdrawal from the NOx Budget Program, or for a change in regulatory status, for a NOx Budget opt-in source under Sec. 96.86 or Sec. 96.87.~~

~~NOx Budget opt-in permit means a NOx Budget permit covering a NOx Budget opt-in source.~~

~~NOx Budget opt-in source means a unit that has been elected to become a NOx Budget unit under the NOx Budget Trading Program and whose NOx Budget opt-in permit has been issued and is in effect under subpart I of this part.~~

~~NOx Budget permit means the legally binding and federally enforceable written document, or portion of such document, issued by the permitting authority under this part, including any permit revisions, specifying the NOx Budget Trading Program requirements applicable to a NOx Budget source, to each NOx Budget unit at the NOx Budget source, and to the owners and operators and the NOx authorized account representative of the NOx Budget source and each NOx Budget unit.~~

~~NOx Budget source means a source that includes one or more NOx Budget units.~~

~~NOx Budget Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program established in accordance with this part and pursuant to Sec. 51.121 of this chapter, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor.~~

~~NOx Budget unit means a unit that is subject to the NOx Budget Trading Program emissions limitation under Sec. 96.4 or Sec. 96.80.~~

~~Operating means, with regard to a unit under Secs. 96.22(d)(2) and 96.80, having documented heat input for more than 876 hours in the 6 months immediately preceding the submission of an application for an initial NOx Budget permit under Sec. 96.83(a).~~

~~Operator means any person who operates, controls, or supervises a NOx Budget unit, a NOx Budget source, or unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

~~Opt-in means to be elected to become a NOx Budget unit under the NOx Budget Trading Program through a final, effective NOx Budget opt-in permit under subpart I of this part.~~

~~Overdraft account means the NOx Allowance Tracking System account, established by the Administrator under subpart F of this part, for each NOx Budget source where there are two or more NOx Budget units.~~

~~Owner means any of the following persons:~~

~~(1) Any holder of any portion of the legal or equitable title in a NOx Budget unit or in a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or~~

~~(2) Any holder of a leasehold interest in a NOx Budget unit or in a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or~~

(3) Any purchaser of power from a NOx Budget unit or from a unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn under a life-of-the-unit, firm power contractual arrangement. However, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from NOx Budget unit or the unit for which an application for a NOx Budget opt-in permit under Sec. 96.83 is submitted and not denied or withdrawn; or

(4) With respect to any general account, any person who has an ownership interest with respect to NOx allowances held in the general account and who is subject to the binding agreement for the NOx authorized account representative to represent that person's ownership interest with respect to NOx allowances.

Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the NOx Budget Trading Program in accordance with subpart C of this part.

Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in writing or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.

Recordation, record, or recorded means, with regard to NOx allowances, the movement of NOx allowances by the Administrator from one NOx Allowance Tracking System account to another, for purposes of allocation, transfer, or deduction.

Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in appendix A of part 60 of this chapter.

Serial number means, when referring to NOx allowances, the unique identification number assigned to each NOx allowance by the Administrator, under Sec. 96.53(c).

Source means any governmental, institutional, commercial, or industrial structure, installation, plant, building, or facility that emits or has the potential to emit any regulated air pollutant under the CAA. For purposes of section 502(c) of the CAA, a ``source,'' including a ``source'' with multiple units, shall be considered a single ``facility.''

State means one of the 48 contiguous States and the District of Columbia specified in Sec. 51.121 of this chapter, or any non-federal authority in or including such States or the District of Columbia (including local agencies, and Statewide agencies) or any eligible Indian tribe in an area of such State or the District of Columbia, that adopts a NOx Budget Trading Program pursuant to Sec. 51.121 of this chapter. To the extent a State incorporates by reference the provisions of this part, the term ``State'' shall mean the incorporating State. The term ``State'' shall have its conventional meaning where such meaning is clear from the context.

State trading program budget means the total number of NOx tons apportioned to all NOx Budget units in a given State, in accordance with the NOx Budget Trading Program, for use in a given control period.

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery.

Compliance with any ``submission,'' ``service,'' or ``mailing'' deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the CAA and part 70 or part 71 of this chapter. Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the CAA and part 70 or 71 of this chapter.

Ton or tonnage means any ``short ton'' (i.e., 2,000 pounds). For the purpose of determining compliance with the NOx Budget emissions limitation, total tons for a control period shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions rates) in accordance with subpart H of this part, with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed to equal zero tons.

Unit means a fossil fuel-fired stationary boiler, combustion turbine, or combined cycle system.

Unit load means the total (i.e., gross) output of a unit in any control period (or other specified time period) produced by combusting a given heat input of fuel, expressed in terms of:

(1) The total electrical generation (MWe) produced by the unit, including generation for use within the plant; or

(2) In the case of a unit that uses heat input for purposes other than electrical generation, the total steam pressure (psia) produced by the unit, including steam for use by the unit.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means any hour (or fraction of an hour) during which a unit combusts any fuel.

Utilization means the heat input (expressed in mmBtu/time) for a unit. The unit's total heat input for the control period in each year will be determined in accordance with part 75 of this chapter if the NOx Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the Administrator for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.

Sec. 96.3 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

Btu--British thermal unit.
hr--hour.
Kwh--kilowatt hour.
lb--pounds.
mmBtu--million Btu.
MWe--megawatt electrical.
ton--2000 pounds.
CO2--carbon dioxide.
NOx--nitrogen oxides.
O2--oxygen.

Sec. 96.4 Applicability.

(a) The following units in a State shall be NOx Budget units, and any source that includes one or more such units shall be a NOx Budget source, subject to the requirements of this part:

(1) Any unit that, any time on or after January 1, 1995, serves a generator with a nameplate capacity greater than 25 MWe and sells any amount of electricity; or

(2) Any unit that is not a unit under paragraph (a)(1) of this section and that has a maximum design heat input greater than 250 mmBtu/hr.

(b) Notwithstanding paragraph (a) of this section, a unit under paragraph (a) of this section shall be subject only to the requirements of this paragraph (b) if the unit has a federally enforceable permit that meets the requirements of paragraph (b)(1) of this section and restricts the unit to burning only natural gas or fuel oil during a control period in 2003 or later and each control period thereafter and restricts the unit's operating hours during each such control period to the number of hours (determined in accordance with paragraph (b)(1)(ii) and (iii) of this section) that limits the unit's potential NOx mass emissions for the control period to 25 tons or less. Notwithstanding paragraph (a) of this section, starting with the effective date of such federally enforceable permit, the unit shall not be a NOx Budget unit.

(1) For each control period under paragraph (b) of this section, the federally enforceable permit must:

(i) Restrict the unit to burning only natural gas or fuel oil.

(ii) Restrict the unit's operating hours to the number calculated by dividing 25 tons of potential NOx mass emissions by the unit's maximum potential hourly NOx mass emissions.

(iii) Require that the unit's potential NOx mass emissions shall be calculated as follows:

(A) Select the default NOx emission rate in Table 2 of Sec. 75.19 of this chapter that would otherwise be applicable assuming that the unit burns only the type of fuel (i.e., only natural gas or only fuel oil) that has the highest default NOx emission factor of any type of fuel that the unit is allowed to burn under the fuel use restriction in paragraph (b)(1)(i) of this section; and

(B) Multiply the default NOx emission rate under paragraph (b)(1)(iii)(A) of this section by the unit's maximum rated hourly heat input. The owner or operator of the unit may petition the permitting authority to use a lower value for the unit's maximum rated hourly heat input than the value as defined under Sec. 96.2. The permitting authority may approve such lower value if the owner or operator demonstrates that the maximum hourly heat input specified by the manufacturer or the highest observed hourly heat input, or both, are not representative, and that such lower value is representative, of the unit's current capabilities because modifications have been made to the unit, limiting its capacity permanently.

(iv) Require that the owner or operator of the unit shall retain at the source that includes the unit, for 5 years, records demonstrating that the operating hours restriction, the fuel use restriction, and the other requirements of the permit related to these restrictions were met.

(v) Require that the owner or operator of the unit shall report the unit's hours of operation (treating any partial hour of operation as a whole hour of operation) during each control period to the permitting authority by November 1 of each year for which the unit is subject to the federally enforceable permit.

(2) The permitting authority that issues the federally enforceable permit with the fuel use restriction under paragraph (b)(1)(i) and the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section will notify the Administrator in writing of each unit under paragraph (a) of this section whose federally enforceable permit issued by the permitting authority includes such restrictions. The permitting authority will also notify the

Administrator in writing of each unit under paragraph (a) of this section whose federally enforceable permit issued by the permitting authority is revised to remove any such restriction, whose federally enforceable permit issued by the permitting authority includes any such restriction that is no longer applicable, or which does not comply with any such restriction.

(3) If, for any control period under paragraph (b) of this section, the fuel use restriction under paragraph (b)(1)(i) of this section or the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section is removed from the unit's federally enforceable permit or otherwise becomes no longer applicable or if, for any such control period, the unit does not comply with the fuel use restriction under paragraph (b)(1)(i) of this section or the operating hours restriction under paragraphs (b)(1)(ii) and (iii) of this section, the unit shall be a NOx Budget unit, subject to the requirements of this part. Such unit shall be treated as commencing operation and, for a unit under paragraph (a)(1) of this section, commencing commercial operation on September 30 of the control period for which the fuel use restriction or the operating hours restriction is no longer applicable or during which the unit does not comply with the fuel use restriction or the operating hours restriction.

Sec. 96.5 Retired unit exemption.

(a) This section applies to any NOx Budget unit, other than a NOx Budget opt-in source, that is permanently retired.

(b) (1) Any NOx Budget unit, other than a NOx Budget opt-in source, that is permanently retired shall be exempt from the NOx Budget Trading Program, except for the provisions of this section, Secs. 96.2, 96.3, 96.4, 96.7 and subparts E, F, and G of this part.

(2) The exemption under paragraph (b)(1) of this section shall become effective the day on which the unit is permanently retired. Within 30 days of permanent retirement, the NOx authorized account representative (authorized in accordance with subpart B of this part) shall submit a statement to the permitting authority otherwise responsible for administering any NOx Budget permit for the unit. A copy of the statement shall be submitted to the Administrator. The statement shall state (in a format prescribed by the permitting authority) that the unit is permanently retired and will comply with the requirements of paragraph (c) of this section. After receipt of the notice under paragraph (b)(2) of this section, the permitting authority will amend any permit covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (b)(1) and (c) of this section.

(c) Special provisions.

(1) A unit exempt under this section shall not emit any nitrogen oxides, starting on the date that the exemption takes effect. The owners and operators of the unit will be allocated allowances in accordance with subpart E of this part.

(2) (i) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the NOx authorized account representative of the source submits a complete NOx Budget permit application under Sec. 96.22 for the unit not less than 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(ii) A unit exempt under this section and located at a source that is required, or but for this exemption would be required, to have a non-title V permit shall not resume operation unless the NOx authorized account representative of the source submits a complete NOx Budget permit application under Sec. 96.22 for the unit not less

than 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) prior to the later of May 1, 2003 or the date on which the unit is to first resume operation.

(3) The owners and operators and, to the extent applicable, the NOx authorized account representative of a unit exempt under this section shall comply with the requirements of the NOx Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(4) A unit that is exempt under this section is not eligible to be a NOx Budget opt-in source under subpart I of this part.

(5) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time prior to the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(6) Loss of exemption.

(i) On the earlier of the following dates, a unit exempt under paragraph (b) of this section shall lose its exemption:

(A) The date on which the NOx authorized account representative submits a NOx Budget permit application under paragraph (c)(2) of this section; or

(B) The date on which the NOx authorized account representative is required under paragraph (c)(2) of this section to submit a NOx Budget permit application.

(ii) For the purpose of applying monitoring requirements under subpart H of this part, a unit that loses its exemption under this section shall be treated as a unit that commences operation or commercial operation on the first date on which the unit resumes operation.

Sec. 96.6 Standard requirements.

(a) Permit Requirements.

(1) The NOx authorized account representative of each NOx Budget source required to have a federally enforceable permit and each NOx Budget unit required to have a federally enforceable permit at the source shall:

(i) Submit to the permitting authority a complete NOx Budget permit application under Sec. 96.22 in accordance with the deadlines specified in Sec. 96.21(b) and (c);

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a NOx Budget permit application and issue or deny a NOx Budget permit.

(2) The owners and operators of each NOx Budget source required to have a federally enforceable permit and each NOx Budget unit required to have a federally enforceable permit at the source shall have a NOx Budget permit issued by the permitting authority and operate the unit in compliance with such NOx Budget permit.

(3) The owners and operators of a NOx Budget source that is not otherwise required to have a federally enforceable permit are not required to submit a NOx Budget permit

~~application, and to have a NOx Budget permit, under subpart C of this part for such NOx Budget source.~~

~~(b) Monitoring requirements.~~

~~(1) The owners and operators and, to the extent applicable, the NOx authorized account representative of each NOx Budget source and each NOx Budget unit at the source shall comply with the monitoring requirements of subpart H of this part.~~

~~(2) The emissions measurements recorded and reported in accordance with subpart H of this part shall be used to determine compliance by the unit with the NOx Budget emissions limitation under paragraph (c) of this section.~~

~~(c) Nitrogen oxides requirements.~~

~~(1) The owners and operators of each NOx Budget source and each NOx Budget unit at the source shall hold NOx allowances available for compliance deductions under Sec. 96.54, as of the NOx allowance transfer deadline, in the unit's compliance account and the source's overdraft account in an amount not less than the total NOx emissions for the control period from the unit, as determined in accordance with subpart H of this part, plus any amount necessary to account for actual utilization under Sec. 96.42(e) for the control period.~~

~~(2) Each ton of nitrogen oxides emitted in excess of the NOx Budget emissions limitation shall constitute a separate violation of this part, the CAA, and applicable State law.~~

~~(3) A NOx Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of May 1, 2003 or the date on which the unit commences operation.~~

~~(4) NOx allowances shall be held in, deducted from, or transferred among NOx Allowance Tracking System accounts in accordance with subparts E, F, G, and I of this part.~~

~~(5) A NOx allowance shall not be deducted, in order to comply with the requirements under paragraph (c)(1) of this section, for a control period in a year prior to the year for which the NOx allowance was allocated.~~

~~(6) A NOx allowance allocated by the permitting authority or the Administrator under the NOx Budget Trading Program is a limited authorization to emit one ton of nitrogen oxides in accordance with the NOx Budget Trading Program. No provision of the NOx Budget Trading Program, the NOx Budget permit application, the NOx Budget permit, or an exemption under Sec. 96.5 and no provision of law shall be construed to limit the authority of the United States or the State to terminate or limit such authorization.~~

~~(7) A NOx allowance allocated by the permitting authority or the Administrator under the NOx Budget Trading Program does not constitute a property right.~~

~~(8) Upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of a NOx allowance to or from a NOx Budget unit's compliance account or the overdraft account of the source where the unit is located is deemed to amend automatically, and become a part of, any NOx Budget permit of the NOx Budget unit by operation of law without any further review.~~

~~(d) Excess emissions requirements.~~

~~(1) The owners and operators of a NOx Budget unit that has excess emissions in any control period shall:~~

~~(i) Surrender the NOx allowances required for deduction under Sec. 96.54(d)(1); and~~

(ii) Pay any fine, penalty, or assessment or comply with any other remedy imposed under Sec. 96.54(d)(3).

(e) Recordkeeping and Reporting requirements.

(1) Unless otherwise provided, the owners and operators of the NOx Budget source and each NOx Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time prior to the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The account certificate of representation for the NOx authorized account representative for the source and each NOx Budget unit at the source and all documents that demonstrate the truth of the statements in the account certificate of representation, in accordance with Sec. 96.13; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new account certificate of representation changing the NOx authorized account representative.

(ii) All emissions monitoring information, in accordance with subpart H of this part; provided that to the extent that subpart H of this part provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the NOx Budget Trading Program.

(iv) Copies of all documents used to complete a NOx Budget permit application and any other submission under the NOx Budget Trading Program or to demonstrate compliance with the requirements of the NOx Budget Trading Program.

(2) The NOx authorized account representative of a NOx Budget source and each NOx Budget unit at the source shall submit the reports and compliance certifications required under the NOx Budget Trading Program, including those under subparts D, H, or I of this part.

(f) Liability.

(1) Any person who knowingly violates any requirement or prohibition of the NOx Budget Trading Program, a NOx Budget permit, or an exemption under Sec. 96.5 shall be subject to enforcement pursuant to applicable State or Federal law.

(2) Any person who knowingly makes a false material statement in any record, submission, or report under the NOx Budget Trading Program shall be subject to criminal enforcement pursuant to the applicable State or Federal law.

(3) No permit revision shall excuse any violation of the requirements of the NOx Budget Trading Program that occurs prior to the date that the revision takes effect.

(4) Each NOx Budget source and each NOx Budget unit shall meet the requirements of the NOx Budget Trading Program.

(5) Any provision of the NOx Budget Trading Program that applies to a NOx Budget source (including a provision applicable to the NOx authorized account representative of a NOx Budget source) shall also apply to the owners and operators of such source and of the NOx Budget units at the source.

(6) Any provision of the NOx Budget Trading Program that applies to a NOx Budget unit (including a provision applicable to the NOx authorized account representative of a NOx budget unit) shall also apply to the owners and operators of such unit. Except with regard to the requirements applicable to units with a common stack under subpart H of this part,

the owners and operators and the NOx authorized account representative of one NOx Budget unit shall not be liable for any violation by any other NOx Budget unit of which they are not owners or operators or the NOx authorized account representative and that is located at a source of which they are not owners or operators or the NOx authorized account representative.

(g) Effect on other authorities. No provision of the NOx Budget Trading Program, a NOx Budget permit application, a NOx Budget permit, or an exemption under Sec. 96.5 shall be construed as exempting or excluding the owners and operators and, to the extent applicable, the NOx authorized account representative of a NOx Budget source or NOx Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a federally enforceable permit, or the CAA.

Sec. 96.7 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the NOx Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the NOx Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the NOx Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

Subpart B--NOx Authorized Account Representative for NOx Budget Sources

Sec. 96.10 Authorization and responsibilities of the NOx authorized account representative.

(a) Except as provided under Sec. 96.11, each NOx Budget source, including all NOx Budget units at the source, shall have one and only one NOx authorized account representative, with regard to all matters under the NOx Budget Trading Program concerning the source or any NOx Budget unit at the source.

(b) The NOx authorized account representative of the NOx Budget source shall be selected by an agreement binding on the owners and operators of the source and all NOx Budget units at the source.

(c) Upon receipt by the Administrator of a complete account certificate of representation under Sec. 96.13, the NOx authorized account representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the NOx Budget source represented and each NOx Budget unit at the source in all matters pertaining to the NOx Budget Trading Program, not withstanding any agreement between the NOx authorized account representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the NOx authorized account representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No NOx Budget permit shall be issued, and no NOx Allowance Tracking System account shall be established for a NOx Budget unit at a source, until the Administrator has received a complete account certificate of representation under Sec. 96.13 for a NOx authorized account representative of the source and the NOx Budget units at the source.

(e) (1) Each submission under the NOx Budget Trading Program shall be submitted, signed, and certified by the NOx authorized account representative for each NOx Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the NOx authorized account representative: ``I am

authorized to make this submission on behalf of the owners and operators of the NOx Budget sources or NOx Budget units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a NOx Budget source or a NOx Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

Sec. 96.11 Alternate NOx authorized account representative.

(a) An account certificate of representation may designate one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.

(b) Upon receipt by the Administrator of a complete account certificate of representation under Sec. 96.13, any representation, action, inaction, or submission by the alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.

(c) Except in this section and Secs. 96.10(a), 96.12, 96.13, and 96.51, whenever the term ``NOx authorized account representative'' is used in this part, the term shall be construed to include the alternate NOx authorized account representative.

Sec. 96.12 Changing the NOx authorized account representative and the alternate NOx authorized account representative; changes in the owners and operators.

(a) Changing the NOx authorized account representative. The NOx authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under Sec. 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.

(b) Changing the alternate NOx authorized account representative. The alternate NOx authorized account representative may be changed at any time upon receipt by the Administrator of a superseding complete account certificate of representation under Sec. 96.13. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the Administrator receives the superseding account certificate of representation shall be binding on the new alternate NOx authorized account representative and the owners and operators of the NOx Budget source and the NOx Budget units at the source.

(c) Changes in the owners and operators.

(1) In the event a new owner or operator of a NOx Budget source or a NOx Budget unit is not included in the list of owners and operators submitted in the account certificate of representation, such new owner or operator shall be deemed to be subject to and bound

by the account certificate of representation, the representations, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders, actions, and inactions of the permitting authority or the Administrator, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a NOx Budget source or a NOx Budget unit, including the addition of a new owner or operator, the NOx authorized account representative or alternate NOx authorized account representative shall submit a revision to the account certificate of representation amending the list of owners and operators to include the change.

Sec. 96.13 Account certificate of representation.

(a) A complete account certificate of representation for a NOx authorized account representative or an alternate NOx authorized account representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the NOx Budget source and each NOx Budget unit at the source for which the account certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative.

(3) A list of the owners and operators of the NOx Budget source and of each NOx Budget unit at the source.

(4) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: ``I certify that I was selected as the NOx authorized account representative or alternate NOx authorized account representative, as applicable, by an agreement binding on the owners and operators of the NOx Budget source and each NOx Budget unit at the source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx Budget Trading Program on behalf of the owners and operators of the NOx Budget source and of each NOx Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the permitting authority, the Administrator, or a court regarding the source or unit.''

(5) The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

Sec. 96.14 Objections concerning the NOx authorized account representative.

(a) Once a complete account certificate of representation under Sec. 96.13 has been submitted and received, the permitting authority and the Administrator will rely on the account certificate of representation unless and until a superseding complete account certificate of representation under Sec. 96.13 is received by the Administrator.

(b) Except as provided in Sec. 96.12(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOx authorized account representative

shall affect any representation, action, inaction, or submission of the NOx authorized account representative or the finality of any decision or order by the permitting authority or the Administrator under the NOx Budget Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any NOx authorized account representative, including private legal disputes concerning the proceeds of NOx allowance transfers.

Subpart C--Permits

Sec. 96.20 General NOx Budget trading program permit requirements.

(a) For each NOx Budget source required to have a federally enforceable permit, such permit shall include a NOx Budget permit administered by the permitting authority.

(1) For NOx Budget sources required to have a title V operating permit, the NOx Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such title V operating permits regulations shall include, but are not limited to, those provisions addressing operating permit applications, operating permit application shield, operating permit duration, operating permit shield, operating permit issuance, operating permit revision and reopening, public participation, State review, and review by the Administrator.

(2) For NOx Budget sources required to have a non-title V permit, the NOx Budget portion of the non-title V permit shall be administered in accordance with the permitting authority's regulations promulgated to administer non-title V permits, except as provided otherwise by this subpart or subpart I of this part. The applicable provisions of such non-title V permits regulations may include, but are not limited to, provisions addressing permit applications, permit application shield, permit duration, permit shield, permit issuance, permit revision and reopening, public participation, State review, and review by the Administrator.

(b) Each NOx Budget permit (including a draft or proposed NOx Budget permit, if applicable) shall contain all applicable NOx Budget Trading Program requirements and shall be a complete and segregable portion of the permit under paragraph (a) of this section.

Sec. 96.21 Submission of NOx Budget permit applications.

(a) Duty to apply. The NOx authorized account representative of any NOx Budget source required to have a federally enforceable permit shall submit to the permitting authority a complete NOx Budget permit application under Sec. 96.22 by the applicable deadline in paragraph (b) of this section.

(b) (1) For NOx Budget sources required to have a title V operating permit:

(i) For any source, with one or more NOx Budget units under Sec. 96.4 that commence operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NOx Budget unit under Sec. 96.4 that commences operation on or after January 1, 2000, the NOx authorized account representative

shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's title V operating permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.

(2) For NOx Budget sources required to have a non-title V permit:

(i) For any source, with one or more NOx Budget units under Sec. 96.4 that commence operation before January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget units to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before May 1, 2003.

(ii) For any source, with any NOx Budget unit under Sec. 96.4 that commences operation on or after January 1, 2000, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 covering such NOx Budget unit to the permitting authority at least 18 months (or such lesser time provided under the permitting authority's non-title V permits regulations for final action on a permit application) before the later of May 1, 2003 or the date on which the NOx Budget unit commences operation.

(c) Duty to reapply.

(1) For a NOx Budget source required to have a title V operating permit, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 for the NOx Budget source covering the NOx Budget units at the source in accordance with the permitting authority's title V operating permits regulations addressing operating permit renewal.

(2) For a NOx Budget source required to have a non-title V permit, the NOx authorized account representative shall submit a complete NOx Budget permit application under Sec. 96.22 for the NOx Budget source covering the NOx Budget units at the source in accordance with the permitting authority's non-title V permits regulations addressing permit renewal.

Sec. 96.22 Information requirements for NOx Budget permit applications.

A complete NOx Budget permit application shall include the following elements concerning the NOx Budget source for which the application is submitted, in a format prescribed by the permitting authority:

(a) Identification of the NOx Budget source, including plant name and the ORIS (Office of Regulatory Information Systems) or facility code assigned to the source by the Energy Information Administration, if applicable;

(b) Identification of each NOx Budget unit at the NOx Budget source and whether it is a NOx budget unit under Sec. 96.4 or under subpart I of this part;

(c) The standard requirements under Sec. 96.6; and

(d) For each NOx Budget opt-in unit at the NOx Budget source, the following certification statements by the NOx authorized account representative:

(1) ``I certify that each unit for which this permit application is submitted under subpart I of this part is not a NOx Budget unit under 40 CFR 96.4 and is not covered by a retired unit exemption under 40 CFR 96.5 that is in effect.''

(2) If the application is for an initial NOx Budget opt-in permit, ``I certify that each unit for which this permit application is submitted under subpart I is currently operating, as that term is defined under 40 CFR 96.2.''

Sec. 96.23 NOx Budget permit contents.

(a) Each NOx Budget permit (including any draft or proposed NOx Budget permit, if applicable) will contain, in a format prescribed by the permitting authority, all elements required for a complete NOx Budget permit application under Sec. 96.22 as approved or adjusted by the permitting authority.

(b) Each NOx Budget permit is deemed to incorporate automatically the definitions of terms under Sec. 96.2 and, upon recordation by the Administrator under subparts F, G, or I of this part, every allocation, transfer, or deduction of a NOx allowance to or from the compliance accounts of the NOx Budget units covered by the permit or the overdraft account of the NOx Budget source covered by the permit.

Sec. 96.24 Effective date of initial NOx Budget permit.

The initial NOx Budget permit covering a NOx Budget unit for which a complete NOx Budget permit application is timely submitted under Sec. 96.21(b) shall become effective by the later of:

(a) May 1, 2003;

(b) May 1 of the year in which the NOx Budget unit commences operation, if the unit commences operation on or before May 1 of that year;

(c) The date on which the NOx Budget unit commences operation, if the unit commences operation during a control period; or

(d) May 1 of the year following the year in which the NOx Budget unit commences operation, if the unit commences operation on or after October 1 of the year.

Sec. 96.25 NOx Budget permit revisions.

(a) For a NOx Budget source with a title V operating permit, except as provided in Sec. 96.23(b), the permitting authority will revise the NOx Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.

(b) For a NOx Budget source with a non-title V permit, except as provided in Sec. 96.23(b), the permitting authority will revise the NOx Budget permit, as necessary, in accordance with the permitting authority's non-title V permits regulations addressing permit revisions.

Subpart D--Compliance Certification

Sec. 96.30 Compliance certification report.

(a) Applicability and deadline. For each control period in which one or more NOx Budget units at a source are subject to the NOx Budget emissions limitation, the NOx authorized account representative of the source shall submit to the permitting authority and the Administrator by November 30 of that year, a compliance certification report for each source covering all such units.

(b) Contents of report. The NOx authorized account representative shall include in the compliance certification report under paragraph (a) of this section the following elements, in a format prescribed by the Administrator, concerning each unit at the source and subject to the NOx Budget emissions limitation for the control period covered by the report:

(1) Identification of each NOx Budget unit;

(2) At the NOx authorized account representative's option, the serial numbers of the NOx allowances that are to be deducted from each unit's compliance account under Sec. 96.54 for the control period;

(3) At the NOx authorized account representative's option, for units sharing a common stack and having NOx emissions that are not monitored separately or apportioned in accordance with subpart H of this part, the percentage of allowances that is to be deducted from each unit's compliance account under Sec. 96.54(e); and

(4) The compliance certification under paragraph (c) of this section.

(c) Compliance certification. In the compliance certification report under paragraph (a) of this section, the NOx authorized account representative shall certify, based on reasonable inquiry of those persons with primary responsibility for operating the source and the NOx Budget units at the source in compliance with the NOx Budget Trading Program, whether each NOx Budget unit for which the compliance certification is submitted was operated during the calendar year covered by the report in compliance with the requirements of the NOx Budget Trading Program applicable to the unit, including:

(1) Whether the unit was operated in compliance with the NOx Budget emissions limitation;

(2) Whether the monitoring plan that governs the unit has been maintained to reflect the actual operation and monitoring of the unit, and contains all information necessary to attribute NOx emissions to the unit, in accordance with subpart H of this part;

(3) Whether all the NOx emissions from the unit, or a group of units (including the unit) using a common stack, were monitored or accounted for through the missing data procedures and reported in the quarterly monitoring reports, including whether conditional data were reported in the quarterly reports in accordance with subpart H of this part. If conditional data were reported, the owner or operator shall indicate whether the status of all conditional data has been resolved and all necessary quarterly report resubmissions has been made;

(4) Whether the facts that form the basis for certification under subpart H of this part of each monitor at the unit or a group of units (including the unit) using a common stack, or for using an excepted monitoring method or alternative monitoring method approved under subpart H of this part, if any, has changed; and

(5) If a change is required to be reported under paragraph (c)(4) of this section, specify the nature of the change, the reason for the change, when the change occurred, and how the unit's compliance status was determined subsequent to the change, including what method was used to determine emissions when a change mandated the need for monitor recertification.

Sec. 96.31 Permitting authority's and Administrator's action on compliance certifications.

(a) The permitting authority or the Administrator may review and conduct independent audits concerning any compliance certification or any other submission under the NOx Budget Trading Program and make appropriate adjustments of the information in the compliance certifications or other submissions.

(b) The Administrator may deduct NOx allowances from or transfer NOx allowances to a unit's compliance account or a source's overdraft account based on the information in the compliance certifications or other submissions, as adjusted under paragraph (a) of this section.

Subpart E--NOx Allowance Allocations

~~Sec. 96.40 State trading program budget.~~

~~The State trading program budget allocated by the permitting authority under Sec. 96.42 for a control period will equal the total number of tons of NOx emissions apportioned to the NOx Budget units under Sec. 96.4 in the State for the control period, as determined by the applicable, approved State implementation plan.~~

~~Sec. 96.41 Timing requirements for NOx allowance allocations.~~

~~(a) By September 30, 1999, the permitting authority will submit to the Administrator the NOx allowance allocations, for the control periods in 2003, 2004, and 2005.~~

~~(b) By April 1, 2003 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for the control periods in 2018 through 2032. If the permitting authority fails to submit to the Administrator the NOx allowance allocations in accordance with this paragraph (b), the Administrator will allocate, for the applicable control period, the same number of NOx allowances as were allocated for the preceding control period.~~

~~(c) By April 1, 2004 and April 1 of each year thereafter, the permitting authority will submit to the Administrator the NOx allowance allocations, in accordance with Sec. 96.42, for any NOx allowances remaining in the allocation set-aside for the prior control period.~~

~~Sec. 96.42 NOx allowance allocations.~~

~~(a) (1) The heat input (in mmBtu) used for calculating NOx allowance allocations for each NOx Budget unit under Sec. 96.4 will be:~~

~~(i) For a NOx allowance allocation under Sec. 96.41(a), the average of the two highest amounts of the unit's heat input for the control periods in 1995, 1996, and 1997 if the unit is under Sec. 96.4(a)(1) or the control period in 1995 if the unit is under Sec. 96.4(a)(2); and~~

~~(ii) For a NOx allowance allocation under Sec. 96.41(b), the unit's heat input for the control period in the year that is four years before the year for which the NOx allocation is being calculated.~~

~~(2) The unit's total heat input for the control period in each year specified under paragraph (a)(1) of this section will be determined in accordance with part 75 of this chapter if the NOx Budget unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit if the unit was not otherwise subject to the requirements of part 75 of this chapter for the year.~~

~~(b) For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(1) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NOx allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40 in accordance with the following procedures:~~

~~(1) The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(1) in an amount equaling 0.15 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NOx allowance as appropriate.~~

~~(2) If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(1) in the State for a control period under paragraph (b)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons~~

~~of NOx emissions in the State trading program budget apportioned to electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under paragraph (b)(1) of this section so that the total number of NOx allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to electric generating units divided by the total number of NOx allowances allocated under paragraph (b)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.~~

~~(c) For each control period under Sec. 96.41, the permitting authority will allocate to all NOx Budget units under Sec. 96.4(a)(2) in the State that commenced operation before May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, a total number of NOx allowances equal to 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to non-electric generating units under Sec. 96.40 in accordance with the following procedures:~~

~~(1) The permitting authority will allocate NOx allowances to each NOx Budget unit under Sec. 96.4(a)(2) in an amount equaling 0.17 lb/mmBtu multiplied by the heat input determined under paragraph (a) of this section, rounded to the nearest whole NOx allowance as appropriate.~~

~~(2) If the initial total number of NOx allowances allocated to all NOx Budget units under Sec. 96.4(a)(2) in the State for a control period under paragraph (c)(1) of this section does not equal 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units, the permitting authority will adjust the total number of NOx allowances allocated to all such NOx Budget units for the control period under paragraph (c)(1) of this section so that the total number of NOx allowances allocated equals 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units. This adjustment will be made by: multiplying each unit's allocation by 95 percent in 2003, 2004, and 2005, or 98 percent thereafter, of the number of tons of NOx emissions in the State trading program budget apportioned to non-electric generating units divided by the total number of NOx allowances allocated under paragraph (c)(1) of this section, and rounding to the nearest whole NOx allowance as appropriate.~~

~~(d) For each control period under Sec. 96.41, the permitting authority will allocate NOx allowances to NOx Budget units under Sec. 96.4 in the State that commenced operation, or is projected to commence operation, on or after May 1 of the period used to calculate heat input under paragraph (a)(1) of this section, in accordance with the following procedures:~~

~~(1) The permitting authority will establish one allocation set-aside for each control period. Each allocation set-aside will be allocated NOx allowances equal to 5 percent in 2003, 2004, and 2005, or 2 percent thereafter, of the tons of NOx emissions in the State trading program budget apportioned to electric generating units under Sec. 96.40, rounded to the nearest whole NOx allowance as appropriate.~~

~~(2) The NOx authorized account representative of a NOx Budget unit under paragraph (d) of this section may submit to the permitting authority a request, in writing or in a format specified by the permitting authority, to be allocated NOx allowances starting with the control period during which the NOx Budget unit commenced, or is projected to commence, operation and ending with the control period preceding the control period for which it will receive an allocation under paragraph (b) or (c) of this section. The NOx allowance allocation request must be submitted prior to May 1 of the first control period for which the NOx allowance allocation is requested and after the date on which the permitting authority issues a permit to construct the NOx Budget unit.~~

(3) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under Sec. 96.4(a)(1) may request for a control period NOx allowances in an amount that does not exceed 0.15 lb/mmBtu multiplied by the NOx Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(4) In a NOx allowance allocation request under paragraph (d)(2) of this section, the NOx authorized account representative for units under Sec. 96.4(a)(2) may request for a control period NOx allowances in an amount that does not exceed 0.17 lb/mmBtu multiplied by the NOx Budget unit's maximum design heat input (in mmBtu/hr) multiplied by the number of hours remaining in the control period starting with the first day in the control period on which the unit operated or is projected to operate.

(5) The permitting authority will review, and allocate NOx allowances pursuant to, each NOx allowance allocation request under paragraph (d)(2) of this section in the order that the request is received by the permitting authority.

(i) Upon receipt of the NOx allowance allocation request, the permitting authority will determine whether, and will make any necessary adjustments to the request to ensure that, for units under Sec. 96.4(a)(1), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (3) of this section and, for units under Sec. 96.4(a)(2), the control period and the number of allowances specified are consistent with the requirements of paragraphs (d)(2) and (4) of this section.

(ii) If the allocation set-aside for the control period for which NOx allowances are requested has an amount of NOx allowances not less than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will allocate the amount of the NOx allowances requested (as adjusted under paragraph (d)(5)(i) of this section) to the NOx Budget unit.

(iii) If the allocation set-aside for the control period for which NOx allowances are requested has a smaller amount of NOx allowances than the number requested (as adjusted under paragraph (d)(5)(i) of this section), the permitting authority will deny in part the request and allocate only the remaining number of NOx allowances in the allocation set-aside to the NOx Budget unit.

(iv) Once an allocation set-aside for a control period has been depleted of all NOx allowances, the permitting authority will deny, and will not allocate any NOx allowances pursuant to, any NOx allowance allocation request under which NOx allowances have not already been allocated for the control period.

(6) Within 60 days of receipt of a NOx allowance allocation request, the permitting authority will take appropriate action under paragraph (d)(5) of this section and notify the NOx authorized account representative that submitted the request and the Administrator of the number of NOx allowances (if any) allocated for the control period to the NOx Budget unit.

(e) For a NOx Budget unit that is allocated NOx allowances under paragraph (d) of this section for a control period, the Administrator will deduct NOx allowances under Sec. 96.54(b) or (e) to account for the actual utilization of the unit during the control period. The Administrator will calculate the number of NOx allowances to be deducted to account for the unit's actual utilization using the following formulas and rounding to the nearest whole NOx allowance as appropriate, provided that the number of NOx allowances to be deducted shall be zero if the number calculated is less than zero:

NOx allowances deducted for actual utilization for units under Sec. 96.4(a)(1) = (Unit's NOx allowances allocated for control period)-(Unit's actual control period utilization x 0.15 lb/mmBtu); and

~~NOx allowances deducted for actual utilization for units under Sec. 96.4(a)(2) = (Unit's NOx allowances allocated for control period)-(Unit's actual control period utilization x 0.17 lb/mmBtu)~~

~~Where:~~

~~"Unit's NOx allowances allocated for control period" is the number of NOx allowances allocated to the unit for the control period under paragraph (d) of this section; and~~

~~"Unit's actual control period utilization" is the utilization (in mmBtu), as defined in Sec. 96.2, of the unit during the control period.~~

~~(f) After making the deductions for compliance under Sec. 96.54(b) or (e) for a control period, the Administrator will notify the permitting authority whether any NOx allowances remain in the allocation set-aside for the control period. The permitting authority will allocate any such NOx allowances to the NOx Budget units in the State using the following formula and rounding to the nearest whole NOx allowance as appropriate:~~

~~Unit's share of NOx allowances remaining in allocation set-aside = Total NOx allowances remaining in allocation set-aside x (Unit's NOx allowance allocation <divide> (State trading program budget excluding allocation set-aside)~~

~~Where:~~

~~"Total NOx allowances remaining in allocation set-aside" is the total number of NOx allowances remaining in the allocation set-aside for the control period to which the allocation set-aside applies;~~

~~"Unit's NOx allowance allocation" is the number of NOx allowances allocated under paragraph (b) or (c) of this section to the unit for the control period to which the allocation set-aside applies; and~~

~~"State trading program budget excluding allocation set-aside" is the State trading program budget under Sec. 96.40 for the control period to which the allocation set-aside applies multiplied by 95 percent if the control period is in 2003, 2004, or 2005 or 98 percent if the control period is in any year thereafter, rounded to the nearest whole NOx allowance as appropriate.~~

~~Subpart F--NOx Allowance Tracking System~~

~~Sec. 96.50 NOx Allowance Tracking System accounts.~~

~~(a) Nature and function of compliance accounts and overdraft accounts. Consistent with Sec. 96.51(a), the Administrator will establish one compliance account for each NOx Budget unit and one overdraft account for each source with one or more NOx Budget units. Allocations of NOx allowances pursuant to subpart E of this part or Sec. 96.88 and deductions or transfers of NOx allowances pursuant to Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part, or subpart I of this part will be recorded in the compliance accounts or overdraft accounts in accordance with this subpart.~~

~~(b) Nature and function of general accounts. Consistent with Sec. 96.51(b), the Administrator will establish, upon request, a general account for any person. Transfers of allowances pursuant to subpart G of this part will be recorded in the general account in accordance with this subpart.~~

~~Sec. 96.51 Establishment of accounts.~~

~~(a) Compliance accounts and overdraft accounts. Upon receipt of a complete account certificate of representation under Sec. 96.13, the Administrator will establish:~~

~~(1) A compliance account for each NOx Budget unit for which the account certificate of representation was submitted; and~~

(2) An overdraft account for each source for which the account certificate of representation was submitted and that has two or more NOx Budget units.

(b) General accounts.

(1) Any person may apply to open a general account for the purpose of holding and transferring allowances. A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(i) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the NOx authorized account representative and any alternate NOx authorized account representative;

(ii) At the option of the NOx authorized account representative, organization name and type of organization;

(iii) A list of all persons subject to a binding agreement for the NOx authorized account representative or any alternate NOx authorized account representative to represent their ownership interest with respect to the allowances held in the general account;

(iv) The following certification statement by the NOx authorized account representative and any alternate NOx authorized account representative: ``I certify that I was selected as the NOx authorized account representative or the NOx alternate authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the NOx Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account.''

(v) The signature of the NOx authorized account representative and any alternate NOx authorized account representative and the dates signed.

(vi) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the account certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(i) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(ii) The NOx authorized account representative and any alternate NOx authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to NOx allowances held in the general account in all matters pertaining to the NOx Budget Trading Program, not withstanding any agreement between the NOx authorized account representative or any alternate NOx authorized account representative and such person. Any such person shall be bound by any order or decision issued to the NOx authorized account representative or any alternate NOx authorized account representative by the Administrator or a court regarding the general account.

(iii) Each submission concerning the general account shall be submitted, signed, and certified by the NOx authorized account representative or any alternate NOx

~~authorized account representative for the persons having an ownership interest with respect to NOx allowances held in the general account. Each such submission shall include the following certification statement by the NOx authorized account representative or any alternate NOx authorized account representative any: ``I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the NOx allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.''~~

~~(iv) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(iii) of this section.~~

~~(3) (i) An application for a general account may designate one and only one NOx authorized account representative and one and only one alternate NOx authorized account representative who may act on behalf of the NOx authorized account representative. The agreement by which the alternate NOx authorized account representative is selected shall include a procedure for authorizing the alternate NOx authorized account representative to act in lieu of the NOx authorized account representative.~~

~~(ii) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section, any representation, action, inaction, or submission by any alternate NOx authorized account representative shall be deemed to be a representation, action, inaction, or submission by the NOx authorized account representative.~~

~~(4) (i) The NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.~~

~~(ii) The alternate NOx authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate NOx authorized account representative prior to the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate NOx authorized account representative and the persons with an ownership interest with respect to the allowances in the general account.~~

~~(iii) (A) In the event a new person having an ownership interest with respect to NOx allowances in the general account is not included in the list of such persons in the account certificate of representation, such new person shall be deemed to be subject to and bound by the account certificate of representation, the representation, actions, inactions, and submissions of the NOx authorized account representative and any alternate NOx authorized account representative of the source or unit, and the decisions, orders,~~

~~actions, and inactions of the Administrator, as if the new person were included in such list.~~

~~(B) Within 30 days following any change in the persons having an ownership interest with respect to NOx allowances in the general account, including the addition of persons, the NOx authorized account representative or any alternate NOx authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the NOx allowances in the general account to include the change.~~

~~(5) (i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.~~

~~(ii) Except as provided in paragraph (b)(4) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative for a general account shall affect any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative or the finality of any decision or order by the Administrator under the NOx Budget Trading Program.~~

~~(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the NOx authorized account representative or any alternate NOx authorized account representative for a general account, including private legal disputes concerning the proceeds of NOx allowance transfers.~~

~~(c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.~~

~~Sec. 96.52 NOx Allowance Tracking System responsibilities of NOx authorized account representative.~~

~~(a) Following the establishment of a NOx Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of NOx allowances in the account, shall be made only by the NOx authorized account representative for the account.~~

~~(b) Authorized account representative identification. The Administrator will assign a unique identifying number to each NOx authorized account representative.~~

~~Sec. 96.53 Recordation of NOx allowance allocations.~~

~~(a) The Administrator will record the NOx allowances for 2003 in the NOx Budget units' compliance accounts and the allocation set-asides, as allocated under subpart E of this part. The Administrator will also record the NOx allowances allocated under Sec. 96.88(a)(1) for each NOx Budget opt-in source in its compliance account.~~

~~(b) Each year, after the Administrator has made all deductions from a NOx Budget unit's compliance account and the overdraft account pursuant to Sec. 96.54, the Administrator will record NOx allowances, as allocated to the unit under subpart E of this part or under Sec. 96.88(a)(2), in the compliance account for the year after the last year for which allowances were previously allocated to the compliance account. Each year, the Administrator will also record NOx allowances, as allocated under subpart E of this part, in the allocation set-aside for~~

the year after the last year for which allowances were previously allocated to an allocation set-aside.

(c) Serial numbers for allocated NOx allowances. When allocating NOx allowances to and recording them in an account, the Administrator will assign each NOx allowance a unique identification number that will include digits identifying the year for which the NOx allowance is allocated.

Sec. 96.54 Compliance.

(a) NOx allowance transfer deadline. The NOx allowances are available to be deducted for compliance with a unit's NOx Budget emissions limitation for a control period in a given year only if the NOx allowances:

(1) Were allocated for a control period in a prior year or the same year; and

(2) Are held in the unit's compliance account, or the overdraft account of the source where the unit is located, as of the NOx allowance transfer deadline for that control period or are transferred into the compliance account or overdraft account by a NOx allowance transfer correctly submitted for recordation under Sec. 96.60 by the NOx allowance transfer deadline for that control period.

(b) Deductions for compliance.

(1) Following the recordation, in accordance with Sec. 96.61, of NOx allowance transfers submitted for recordation in the unit's compliance account or the overdraft account of the source where the unit is located by the NOx allowance transfer deadline for a control period, the Administrator will deduct NOx allowances available under paragraph (a) of this section to cover the unit's NOx emissions (as determined in accordance with subpart H of this part), or to account for actual utilization under Sec. 96.42(e), for the control period:

(i) From the compliance account; and

(ii) Only if no more NOx allowances available under paragraph (a) of this section remain in the compliance account, from the overdraft account. In deducting allowances for units at the source from the overdraft account, the Administrator will begin with the unit having the compliance account with the lowest NOx Allowance Tracking System account number and end with the unit having the compliance account with the highest NOx Allowance Tracking System account number (with account numbers sorted beginning with the left-most character and ending with the right-most character and the letter characters assigned values in alphabetical order and less than all numeric characters).

(2) The Administrator will deduct NOx allowances first under paragraph (b)(1)(i) of this section and then under paragraph (b)(1)(ii) of this section:

(i) Until the number of NOx allowances deducted for the control period equals the number of tons of NOx emissions, determined in accordance with subpart H of this part, from the unit for the control period for which compliance is being determined, plus the number of NOx allowances required for deduction to account for actual utilization under Sec. 96.42(e) for the control period; or

(ii) Until no more NOx allowances available under paragraph (a) of this section remain in the respective account.

(c) (1) Identification of NOx allowances by serial number. The NOx authorized account representative for each compliance account may identify by serial number the NOx allowances to be deducted from the unit's compliance account under paragraph (b), (d),

~~or (e) of this section. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.~~

~~(2) First-in, first-out. The Administrator will deduct NOx allowances for a control period from the compliance account, in the absence of an identification or in the case of a partial identification of NOx allowances by serial number under paragraph (c)(1) of this section, or the overdraft account on a first-in, first-out (FIFO) accounting basis in the following order:~~

~~(i) Those NOx allowances that were allocated for the control period to the unit under subpart E or I of this part;~~

~~(ii) Those NOx allowances that were allocated for the control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation;~~

~~(iii) Those NOx allowances that were allocated for a prior control period to the unit under subpart E or I of this part; and~~

~~(iv) Those NOx allowances that were allocated for a prior control period to any unit and transferred and recorded in the account pursuant to subpart G of this part, in order of their date of recordation.~~

~~(d) Deductions for excess emissions.~~

~~(1) After making the deductions for compliance under paragraph (b) of this section, the Administrator will deduct from the unit's compliance account or the overdraft account of the source where the unit is located a number of NOx allowances, allocated for a control period after the control period in which the unit has excess emissions, equal to three times the number of the unit's excess emissions.~~

~~(2) If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.~~

~~(3) Any allowance deduction required under paragraph (d) of this section shall not affect the liability of the owners and operators of the NOx Budget unit for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the CAA or applicable State law. The following guidelines will be followed in assessing fines, penalties or other obligations:~~

~~(i) For purposes of determining the number of days of violation, if a NOx Budget unit has excess emissions for a control period, each day in the control period (153 days) constitutes a day in violation unless the owners and operators of the unit demonstrate that a lesser number of days should be considered.~~

~~(ii) Each ton of excess emissions is a separate violation.~~

~~(e) Deductions for units sharing a common stack. In the case of units sharing a common stack and having emissions that are not separately monitored or apportioned in accordance with subpart H of this part:~~

~~(1) The NOx authorized account representative of the units may identify the percentage of NOx allowances to be deducted from each such unit's compliance account to cover the unit's share of NOx emissions from the common stack for a control period. Such identification shall be made in the compliance certification report submitted in accordance with Sec. 96.30.~~

(2) Notwithstanding paragraph (b)(2)(i) of this section, the Administrator will deduct NOx allowances for each such unit until the number of NOx allowances deducted equals the unit's identified percentage (under paragraph (e)(1) of this section) of the number of tons of NOx emissions, as determined in accordance with subpart H of this part, from the common stack for the control period for which compliance is being determined or, if no percentage is identified, an equal percentage for each such unit, plus the number of allowances required for deduction to account for actual utilization under Sec. 96.42(e) for the control period.

(f) The Administrator will record in the appropriate compliance account or overdraft account all deductions from such an account pursuant to paragraphs (b), (d), or (e) of this section.

Sec. 96.55 Banking.

(a) NOx allowances may be banked for future use or transfer in a compliance account, an overdraft account, or a general account, as follows:

(1) Any NOx allowance that is held in a compliance account, an overdraft account, or a general account will remain in such account unless and until the NOx allowance is deducted or transferred under Sec. 96.31, Sec. 96.54, Sec. 96.56, subpart G of this part, or subpart I of this part.

(2) The Administrator will designate, as a ``banked'' NOx allowance, any NOx allowance that remains in a compliance account, an overdraft account, or a general account after the Administrator has made all deductions for a given control period from the compliance account or overdraft account pursuant to Sec. 96.54.

(b) Each year starting in 2004, after the Administrator has completed the designation of banked NOx allowances under paragraph (a)(2) of this section and before May 1 of the year, the Administrator will determine the extent to which banked NOx allowances may be used for compliance in the control period for the current year, as follows:

(1) The Administrator will determine the total number of banked NOx allowances held in compliance accounts, overdraft accounts, or general accounts.

(2) If the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts is less than or equal to 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked NOx allowance may be deducted for compliance in accordance with Sec. 96.54.

(3) If the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts exceeds 10% of the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located, any banked allowance may be deducted for compliance in accordance with Sec. 96.54, except as follows:

(i) The Administrator will determine the following ratio: 0.10 multiplied by the sum of the State trading program budgets for the control period for the States in which NOx Budget units are located and divided by the total number of banked NOx allowances determined, under paragraph (b)(1) of this section, to be held in compliance accounts, overdraft accounts, or general accounts.

(ii) The Administrator will multiply the number of banked NOx allowances in each compliance account or overdraft account. The resulting product is the number of banked NOx allowances in the account that may be deducted for compliance in accordance with Sec. 96.54. Any banked NOx allowances in excess of the resulting product may be deducted for compliance in accordance with Sec. 96.54, except that, if such NOx allowances are used to make a deduction, two such NOx

allowances must be deducted for each deduction of one NOx allowance required under Sec. 96.54.

(c) Any NOx Budget unit may reduce its NOx emission rate in the 2001 or 2002 control period, the owner or operator of the unit may request early reduction credits, and the permitting authority may allocate NOx allowances in 2003 to the unit in accordance with the following requirements.

(1) Each NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall monitor NOx emissions in accordance with subpart H of this part starting in the 2000 control period and for each control period for which such early reduction credits are requested. The unit's monitoring system availability shall be not less than 90 percent during the 2000 control period, and the unit must be in compliance with any applicable State or Federal emissions or emissions-related requirements.

(2) NOx emission rate and heat input under paragraphs (c)(3) through (5) of this section shall be determined in accordance with subpart H of this part.

(3) Each NOx Budget unit for which the owner or operator requests any early reduction credits under paragraph (c)(4) of this section shall reduce its NOx emission rate, for each control period for which early reduction credits are requested, to less than both 0.25 lb/mmBtu and 80 percent of the unit's NOx emission rate in the 2000 control period.

(4) The NOx authorized account representative of a NOx Budget unit that meets the requirements of paragraphs (c)(1)and (3) of this section may submit to the permitting authority a request for early reduction credits for the unit based on NOx emission rate reductions made by the unit in the control period for 2001 or 2002 in accordance with paragraph (c)(3) of this section.

(i) In the early reduction credit request, the NOx authorized account may request early reduction credits for such control period in an amount equal to the unit's heat input for such control period multiplied by the difference between 0.25 lb/mmBtu and the unit's NOx emission rate for such control period, divided by 2000 lb/ton, and rounded to the nearest ton.

(ii) The early reduction credit request must be submitted, in a format specified by the permitting authority, by October 31 of the year in which the NOx emission rate reductions on which the request is based are made or such later date approved by the permitting authority.

(5) The permitting authority will allocate NOx allowances, to NOx Budget units meeting the requirements of paragraphs (c)(1) and (3) of this section and covered by early reduction requests meeting the requirements of paragraph (c)(4)(ii) of this section, in accordance with the following procedures:

(i) Upon receipt of each early reduction credit request, the permitting authority will accept the request only if the requirements of paragraphs (c)(1), (c)(3), and (c)(4)(ii) of this section are met and, if the request is accepted, will make any necessary adjustments to the request to ensure that the amount of the early reduction credits requested meets the requirement of paragraphs (c)(2) and (4) of this section.

(ii) If the State's compliance supplement pool has an amount of NOx allowances not less than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate to each NOx Budget unit covered by such accepted requests one allowance for each early reduction credit requested (as adjusted under paragraph (c)(5)(i) of this section).

(iii) If the State's compliance supplement pool has a smaller amount of NOx allowances than the number of early reduction credits in all accepted early reduction credit requests for 2001 and 2002 (as adjusted under paragraph (c)(5)(i) of this section), the permitting authority will allocate NOx allowances to each NOx Budget unit covered by such accepted requests according to the following formula:

Unit's allocated early reduction credits = [(Unit's adjusted early reduction credits) / (Total adjusted early reduction credits requested by all units)] x (Available NOx allowances from the State's compliance supplement pool)

where:

"Unit's adjusted early reduction credits" is the number of early reduction credits for the unit for 2001 and 2002 in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.

"Total adjusted early reduction credits requested by all units" is the number of early reduction credits for all units for 2001 and 2002 in accepted early reduction credit requests, as adjusted under paragraph (c)(5)(i) of this section.

"Available NOx allowances from the State's compliance supplement pool" is the number of NOx allowances in the State's compliance supplement pool and available for early reduction credits for 2001 and 2002.

(6) By May 1, 2003, the permitting authority will submit to the Administrator the allocations of NOx allowances determined under paragraph (c)(5) of this section. The Administrator will record such allocations to the extent that they are consistent with the requirements of paragraphs (c)(1) through (5) of this section.

(7) NOx allowances recorded under paragraph (c)(6) of this section may be deducted for compliance under Sec. 96.54 for the control periods in 2003 or 2004. Notwithstanding paragraph (a) of this section, the Administrator will deduct as retired any NOx allowance that is recorded under paragraph (c)(6) of this section and is not deducted for compliance in accordance with Sec. 96.54 for the control period in 2003 or 2004.

(8) NOx allowances recorded under paragraph (c)(6) of this section are treated as banked allowances in 2004 for the purposes of paragraphs (a) and (b) of this section.

Sec. 96.56 Account error.

The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any NOx Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the NOx authorized account representative for the account.

Sec. 96.57 Closing of general accounts.

(a) The NOx authorized account representative of a general account may instruct the Administrator to close the account by submitting a statement requesting deletion of the account from the NOx Allowance Tracking System and by correctly submitting for recordation under Sec. 96.60 an allowance transfer of all NOx allowances in the account to one or more other NOx Allowance Tracking System accounts.

(b) If a general account shows no activity for a period of a year or more and does not contain any NOx allowances, the Administrator may notify the NOx authorized account representative for the account that the account will be closed and deleted from the NOx Allowance Tracking System following 20 business days after the notice is sent. The account will be closed after the 20-day period unless before the end of the 20-day period the Administrator receives a correctly submitted transfer of NOx allowances into the account under Sec. 96.60 or a statement submitted by the NOx authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Subpart G--NOx Allowance Transfers

Sec. 96.60 Submission of NOx allowance transfers.

The NOx authorized account representatives seeking recordation of a NOx allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the NOx allowance transfer shall include the following elements in a format specified by the Administrator:

(a) The numbers identifying both the transferor and transferee accounts;

(b) A specification by serial number of each NOx allowance to be transferred; and

(c) The printed name and signature of the NOx authorized account representative of the transferor account and the date signed.

Sec. 96.61 EPA recordation.

(a) Within 5 business days of receiving a NOx allowance transfer, except as provided in paragraph (b) of this section, the Administrator will record a NOx allowance transfer by moving each NOx allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under Sec. 96.60;

(2) The transferor account includes each NOx allowance identified by serial number in the transfer; and

(3) The transfer meets all other requirements of this part.

(b) A NOx allowance transfer that is submitted for recordation following the NOx allowance transfer deadline and that includes any NOx allowances allocated for a control period prior to or the same as the control period to which the NOx allowance transfer deadline applies will not be recorded until after completion of the process of recordation of NOx allowance allocations in Sec. 96.53(b).

(c) Where a NOx allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

Sec. 96.62 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a NOx allowance transfer under Sec. 96.61, the Administrator will notify each party to the transfer. Notice will be given to the NOx authorized account representatives of both the transferror and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a NOx allowance transfer that fails to meet the requirements of Sec. 96.61(a), the Administrator will notify the NOx authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a NOx allowance transfer for recordation following notification of non-recordation.

Subpart H--Monitoring and Reporting

Sec. 96.70 General requirements.

The owners and operators, and to the extent applicable, the NOx authorized account representative of a NOx Budget unit, shall comply with the monitoring and reporting requirements as provided in this subpart and in subpart H of part 75 of this chapter. For purposes of complying with such requirements, the definitions in Sec. 96.2 and in Sec. 72.2 of this chapter shall apply, and the terms ``affected unit,'' ``designated representative,'' and ``continuous emission monitoring system'' (or ``CEMS'') in part 75 of this chapter shall be replaced by the terms ``NOx Budget unit,'' ``NOx authorized account representative,'' and ``continuous emission monitoring system'' (or ``CEMS''), respectively, as defined in Sec. 96.2.

(a) Requirements for installation, certification, and data accounting. The owner or operator of each NOx Budget unit must meet the following requirements. These provisions also apply to a unit for which an application for a NOx Budget opt-in permit is submitted and not denied or withdrawn, as provided in subpart I of this part:

(1) Install all monitoring systems required under this subpart for monitoring NOx mass. This includes all systems required to monitor NOx emission rate, NOx concentration, heat input, and flow, in accordance with Secs. 75.72 and 75.76.

(2) Install all monitoring systems for monitoring heat input, if required under Sec. 96.76 for developing NOx allowance allocations.

(3) Successfully complete all certification tests required under Sec. 96.71 and meet all other provisions of this subpart and part 75 of this chapter applicable to the monitoring systems under paragraphs (a)(1) and (2) of this section.

(4) Record, and report data from the monitoring systems under paragraphs (a)(1) and (2) of this section.

(b) Compliance dates. The owner or operator must meet the requirements of paragraphs (a)(1) through (a)(3) of this section on or before the following dates and must record and report data on and after the following dates:

(1) NOx Budget units for which the owner or operator intends to apply for early reduction credits under Sec. 96.55(d) must comply with the requirements of this subpart by May 1, 2000.

(2) Except for NOx Budget units under paragraph (b)(1) of this section, NOx Budget units under Sec. 96.4 that commence operation before January 1, 2002, must comply with the requirements of this subpart by May 1, 2002.

(3) NOx Budget units under Sec. 96.4 that commence operation on or after January 1, 2002 and that report on an annual basis under Sec. 96.74(d) must comply with the requirements of this subpart by the later of the following dates:

(i) May 1, 2002; or

(ii) The earlier of:

(A) 180 days after the date on which the unit commences operation or,

(B) For units under Sec. 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.

(4) NOx Budget units under Sec. 96.4 that commence operation on or after January 1, 2002 and that report on a control season basis under Sec. 96.74(d) must comply with the requirements of this subpart by the later of the following dates:

(i) The earlier of:

(A) 180 days after the date on which the unit commences operation or,

(B) For units under Sec. 96.4(a)(1), 90 days after the date on which the unit commences commercial operation.

(ii) However, if the applicable deadline under paragraph (b)(4)(i) does not occur during a control period, then the next May 1 immediately following the date determined in accordance with paragraph (b)(4)(i) of this section.

(5) For a NOx Budget unit with a new stack or flue for which construction is completed after the applicable deadline under paragraph (b)(1), (b)(2) or (b)(3) of this section or subpart I of this part:

(i) 90 days after the date on which emissions first exit to the atmosphere through the new stack or flue;

(ii) However, if the unit reports on a control season basis under Sec. 96.74(d) and the applicable deadline under paragraph (b)(5)(i) of this section does not occur during the control period, May 1 immediately following the applicable deadline in paragraph (b)(5)(i) of this section.

(6) For a unit for which an application for a NOx Budget opt in permit is submitted and not denied or withdrawn, the compliance dates specified under subpart I of this part.

(c) Reporting data prior to initial certification.

(1) The owner or operator of a NOx Budget unit that misses the certification deadline under paragraph (b)(1) of this section is not eligible to apply for early reduction credits. The owner or operator of the unit becomes subject to the certification deadline under paragraph (b)(2) of this section.

(2) The owner or operator of a NOx Budget under paragraphs (b)(3) or (b)(4) of this section must determine, record and report NOx mass, heat input (if required for purposes of allocations) and any other values required to determine NOx Mass (e.g. NOx emission rate and heat input or NOx concentration and stack flow) using the provisions of Sec. 75.70(g) of this chapter, from the date and hour that the unit starts operating until all required certification tests are successfully completed.

(d) Prohibitions.

(1) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall use any alternative monitoring system, alternative reference method, or any other alternative for the required continuous emission monitoring system without having obtained prior written approval in accordance with Sec. 96.75.

(2) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall operate the unit so as to discharge, or allow to be discharged, NOx emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this subpart and part 75 of this chapter except as provided for in Sec. 75.74 of this chapter.

(3) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording NOx mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this subpart and part 75 of this chapter except as provided for in Sec. 75.74 of this chapter.

(4) No owner or operator of a NOx Budget unit or a non-NOx Budget unit monitored under Sec. 75.72(b)(2)(ii) shall retire or permanently discontinue use of the continuous emission

monitoring system, any component thereof, or any other approved emission monitoring system under this subpart, except under any one of the following circumstances:

(i) During the period that the unit is covered by a retired unit exemption under Sec. 96.5 that is in effect;

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this subpart and part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or

(iii) The NOx authorized account representative submits notification of the date of certification testing of a replacement monitoring system in accordance with Sec. 96.71(b)(2).

Sec. 96.71 Initial certification and recertification procedures

(a) The owner or operator of a NOx Budget unit that is subject to an Acid Rain emissions limitation shall comply with the initial certification and recertification procedures of part 75 of this chapter, except that:

(1) If, prior to January 1, 1998, the Administrator approved a petition under Sec. 75.17(a) or (b) of this chapter for apportioning the NOx emission rate measured in a common stack or a petition under Sec. 75.66 of this chapter for an alternative to a requirement in Sec. 75.17 of this chapter, the NOx authorized account representative shall resubmit the petition to the Administrator under Sec. 96.75(a) to determine if the approval applies under the NOx Budget Trading Program.

(2) For any additional CEMS required under the common stack provisions in Sec. 75.72 of this chapter, or for any NOx concentration CEMS used under the provisions of Sec. 75.71(a)(2) of this chapter, the owner or operator shall meet the requirements of paragraph (b) of this section.

(b) The owner or operator of a NOx Budget unit that is not subject to an Acid Rain emissions limitation shall comply with the following initial certification and recertification procedures, except that the owner or operator of a unit that qualifies to use the low mass emissions excepted monitoring methodology under Sec. 75.19 shall also meet the requirements of paragraph (c) of this section and the owner or operator of a unit that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall also meet the requirements of paragraph (d) of this section. The owner or operator of a NOx Budget unit that is subject to an Acid Rain emissions limitation, but requires additional CEMS under the common stack provisions in Sec. 75.72 of this chapter, or that uses a NOx concentration CEMS under Sec. 75.71(a)(2) of this chapter also shall comply with the following initial certification and recertification procedures.

(1) Requirements for initial certification. The owner or operator shall ensure that each monitoring system required by subpart H of part 75 of this chapter (which includes the automated data acquisition and handling system) successfully completes all of the initial certification testing required under Sec. 75.20 of this chapter. The owner or operator shall ensure that all applicable certification tests are successfully completed by the deadlines specified in Sec. 96.70(b). In addition, whenever the owner or operator installs a monitoring system in order to meet the requirements of this part in a location where no such monitoring system was previously installed, initial certification according to Sec. 75.20 is required.

(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in a certified monitoring system that the Administrator or the permitting authority determines significantly affects the ability of the system to accurately measure or record NOx mass emissions or heat input or to meet the requirements of

~~Sec. 75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system according to Sec. 75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that the Administrator or the permitting authority determines to significantly change the flow or concentration profile, the owner or operator shall recertify the continuous emissions monitoring system according to Sec. 75.20(b) of this chapter. Examples of changes which require recertification include: replacement of the analyzer, change in location or orientation of the sampling probe or site, or changing of flow rate monitor polynomial coefficients.~~

~~(3) Certification approval process for initial certifications and recertification.~~

~~(i) Notification of certification. The NOx authorized account representative shall submit to the permitting authority, the appropriate and EPA Regional Office a written notice of the dates of certification in accordance with Sec. 96.73.~~

~~(ii) Certification application. The NOx authorized account representative shall submit to the permitting authority a certification application for each monitoring system required under subpart H of part 75 of this chapter. A complete certification application shall include the information specified in subpart H of part 75 of this chapter.~~

~~(iii) Except for units using the low mass emission excepted methodology under Sec. 75.19 of this chapter, the provisional certification date for a monitor shall be determined using the procedures set forth in Sec. 75.20(a)(3) of this chapter. A provisionally certified monitor may be used under the NOx Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system or component thereof under paragraph (b)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system or component thereof, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by issuing a notice of disapproval within 120 days of receipt of the complete certification application by the permitting authority.~~

~~(iv) Certification application formal approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (b)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system which meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the NOx Budget Trading Program.~~

~~(A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.~~

~~(B) Incomplete application notice. A certification application will be considered complete when all of the applicable information required to be submitted under paragraph (b)(3)(ii) of this section has been received by the permitting authority. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the NOx authorized account representative must submit the additional information required to complete the certification application. If the NOx authorized account representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (b)(3)(iv)(C) of this section.~~

(C) Disapproval notice. If the certification application shows that any monitoring system or component thereof does not meet the performance requirements of this part, or if the certification application is incomplete and the requirement for disapproval under paragraph (b)(3)(iv)(B) of this section has been met, the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system or component thereof shall not be considered valid quality-assured data beginning with the date and hour of provisional certification. The owner or operator shall follow the procedures for loss of certification in paragraph (b)(3)(v) of this section for each monitoring system or component thereof which is disapproved for initial certification.

(D) Audit decertification. The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with Sec. 96.72(b).

(v) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under paragraph(b)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (b)(3)(iv)(D) of this section, then:

(A) The owner or operator shall substitute the following values, for each hour of unit operation during the period of invalid data beginning with the date and hour of provisional certification and continuing until the time, date, and hour specified under Sec. 75.20(a)(5)(i) of this chapter:

(1) For units using or intending to monitor for NOx emission rate and heat input or for units using the low mass emission excepted methodology under Sec. 75.19 of this chapter, the maximum potential NOx emission rate and the maximum potential hourly heat input of the unit.

(2) For units intending to monitor for NOx mass emissions using a NOx pollutant concentration monitor and a flow monitor, the maximum potential concentration of NOx and the maximum potential flow rate of the unit under section 2.1 of appendix A of part 75 of this chapter;

(B) The NOx authorized account representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (b)(3)(i) and (ii) of this section; and

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(c) Initial certification and recertification procedures for low mass emission units using the excepted methodologies under Sec. 75.19 of this chapter. The owner or operator of a gas-fired or oil-fired unit using the low mass emissions excepted methodology under Sec. 75.19 of this chapter shall meet the applicable general operating requirements of Sec. 75.10 of this chapter, the applicable requirements of Sec. 75.19 of this chapter, and the applicable certification requirements of Sec. 96.71 of this chapter, except that the excepted methodology shall be deemed provisionally certified for use under the NOx Budget Trading Program, as of the following dates:

(1) For units that are reporting on an annual basis under Sec. 96.74(d);

(i) For a unit that has commences operation before its compliance deadline under Sec. 96.71(b), from January 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or

(ii) For a unit that commences operation after its compliance deadline under Sec. 96.71(b), the date of submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for permitting authority review; or

(2) For units that are reporting on a control period basis under Sec. 96.74(b)(3)(ii) of this part:

(i) For a unit that commenced operation before its compliance deadline under Sec. 96.71(b), where the certification application is submitted before May 1, from May 1 of the year of the submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or

(ii) For a unit that commenced operation before its compliance deadline under Sec. 96.71(b), where the certification application is submitted after May 1, from May 1 of the year following submission of the certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority review; or

(iii) For a unit that commences operation after its compliance deadline under Sec. 96.71(b), where the unit commences operation before May 1, from May 1 of the year that the unit commenced operation, until the completion of the period for the permitting authority's review.

(iv) For a unit that has not operated after its compliance deadline under Sec. 96.71(b), where the certification application is submitted after May 1, but before October 1st, from the date of submission of a certification application for approval to use the low mass emissions excepted methodology under Sec. 75.19 of this chapter until the completion of the period for the permitting authority's review.

(d) Certification/recertification procedures for alternative monitoring systems. The NOx authorized account representative representing the owner or operator of each unit applying to monitor using an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall apply for certification to the permitting authority prior to use of the system under the NOx Trading Program. The NOx authorized account representative shall apply for recertification following a replacement, modification or change according to the procedures in paragraph (b) of this section. The owner or operator of an alternative monitoring system shall comply with the notification and application requirements for certification according to the procedures specified in paragraph (b)(3) of this section and Sec. 75.20(f) of this chapter .

Sec. 96.72 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality assurance requirements of appendix B of part 75 of this chapter, data shall be substituted using the applicable procedures in subpart D, appendix D, or appendix E of part 75 of this chapter.

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement under Sec. 96.71 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of

~~the audit, the permitting authority will issue a notice of disapproval of the certification status of such system or component. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the system or component. The data measured and recorded by the system or component shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests. The owner or operator shall follow the initial certification or recertification procedures in Sec. 96.71 for each disapproved system.~~

~~Sec. 96.73 Notifications.~~

~~The NOx authorized account representative for a NOx Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with Sec. 75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.~~

~~Sec. 96.74 Recordkeeping and reporting.~~

~~(a) General provisions.~~

~~(1) The NOx authorized account representative shall comply with all recordkeeping and reporting requirements in this section and with the requirements of Sec. 96.10(e).~~

~~(2) If the NOx authorized account representative for a NOx Budget unit subject to an Acid Rain Emission limitation who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and which includes data and information required under this subpart or subpart H of part 75 of this chapter is not the same person as the designated representative or the alternative designated representative for the unit under part 72 of this chapter, the submission must also be signed by the designated representative or the alternative designated representative.~~

~~(b) Monitoring plans.~~

~~(1) The owner or operator of a unit subject to an Acid Rain emissions limitation shall comply with requirements of Sec. 75.62 of this chapter, except that the monitoring plan shall also include all of the information required by subpart H of part 75 of this chapter.~~

~~(2) The owner or operator of a unit that is not subject to an Acid Rain emissions limitation shall comply with requirements of Sec. 75.62 of this chapter, except that the monitoring plan is only required to include the information required by subpart H of part 75 of this chapter.~~

~~(c) Certification applications. The NOx authorized account representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under Sec. 96.71 including the information required under subpart H of part 75 of this chapter.~~

~~(d) Quarterly reports. The NOx authorized account representative shall submit quarterly reports, as follows:~~

~~(1) If a unit is subject to an Acid Rain emission limitation or if the owner or operator of the NOx budget unit chooses to meet the annual reporting requirements of this subpart H, the NOx authorized account representative shall submit a quarterly report for each calendar quarter beginning with:~~

~~(i) For units that elect to comply with the early reduction credit provisions under Sec. 96.55 of this part, the calendar quarter that includes the date of initial provisional~~

~~certification under Sec. 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or~~

~~(ii) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under Sec. 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be recorded and reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour on May 1, 2002; or~~

~~(iii) For a unit that commences operation after May 1, 2002, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation.~~

~~(2) If a NOx budget unit is not subject to an Acid Rain emission limitation, then the NOx authorized account representative shall either:~~

~~(i) Meet all of the requirements of part 75 related to monitoring and reporting NOx mass emissions during the entire year and meet the reporting deadlines specified in paragraph (d)(1) of this section; or~~

~~(ii) Submit quarterly reports only for the periods from the earlier of May 1 or the date and hour that the owner or operator successfully completes all of the recertification tests required under Sec. 75.74(d)(3) through September 30 of each year in accordance with the provisions of Sec. 75.74(b) of this chapter. The NOx authorized account representative shall submit a quarterly report for each calendar quarter, beginning with:~~

~~(A) For units that elect to comply with the early reduction credit provisions under Sec. 96.55, the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii). Data shall be reported from the date and hour corresponding to the date and hour of provisional certification; or~~

~~(B) For units commencing operation prior to May 1, 2002 that are not required to certify monitors by May 1, 2000 under Sec. 96.70(b)(1), the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii), or if the certification tests are not completed by May 1, 2002, the partial calendar quarter from May 1, 2002 through June 30, 2002. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1, 2002; or~~

~~(C) For units that commence operation after May 1, 2002 during the control period, the calendar quarter in which the unit commences operation. Data shall be reported from the date and hour corresponding to when the unit commenced operation; or~~

~~(D) For units that commence operation after May 1, 2002 and before May 1 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year in which the unit commences operation, May 1 of the year in which the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.~~

~~(E) For units that commence operation after May 1, 2002 and after September 30 of the year in which the unit commences operation, the earlier of the calendar quarter that includes the date of initial provisional certification under~~

~~Sec. 96.71(b)(3)(iii) or, if the certification tests are not completed by May 1 of the year after the unit commences operation, May 1 of the year after the unit commences operation. Data shall be reported from the earlier of the date and hour corresponding to the date and hour of provisional certification or the first hour of May 1 of the year after the unit commences operation.~~

~~(3) The NOx authorized account representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in subpart H of part 75 of this chapter and Sec. 75.64 of this chapter.~~

~~(i) For units subject to an Acid Rain Emissions limitation, quarterly reports shall include all of the data and information required in subpart H of part 75 of this chapter for each NOx Budget unit (or group of units using a common stack) as well as information required in subpart G of part 75 of this chapter.~~

~~(ii) For units not subject to an Acid Rain Emissions limitation, quarterly reports are only required to include all of the data and information required in subpart H of part 75 of this chapter for each NOx Budget unit (or group of units using a common stack).~~

~~(4) Compliance certification. The NOx authorized account representative shall submit to the Administrator a compliance certification in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:~~

~~(i) The monitoring data submitted were recorded in accordance with the applicable requirements of this subpart and part 75 of this chapter, including the quality assurance procedures and specifications; and~~

~~(ii) For a unit with add-on NOx emission controls and for all hours where data are substituted in accordance with Sec. 75.34(a)(1) of this chapter, the add-on emission controls were operating within the range of parameters listed in the monitoring plan and the substitute values do not systematically underestimate NOx emissions; and~~

~~(iii) For a unit that is reporting on a control period basis under Sec. 96.74(d) the NOx emission rate and NOx concentration values substituted for missing data under subpart D of part 75 of this chapter are calculated using only values from a control period and do not systematically underestimate NOx emissions.~~

~~Sec. 96.75 Petitions.~~

~~(a) The NOx authorized account representative of a NOx Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of this subpart.~~

~~(1) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent that the petition is approved by the Administrator, in consultation with the permitting authority.~~

~~(2) Notwithstanding paragraph (a)(1) of this section, if the petition requests approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Sec. 75.72 of this chapter, the petition is governed by paragraph (b) of this section.~~

~~(b) The NOx authorized account representative of a NOx Budget unit that is not subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to any requirement of this subpart.~~

(1) The NOx authorized account representative of a NOx Budget unit that is subject to an Acid Rain emissions limitation may submit a petition under Sec. 75.66 of this chapter to the permitting authority and the Administrator requesting approval to apply an alternative to a requirement concerning any additional CEMS required under the common stack provisions of Sec. 75.72 of this chapter or a NOx concentration CEMS used under 75.71(a)(2) of this chapter.

(2) Application of an alternative to any requirement of this subpart is in accordance with this subpart only to the extent the petition under paragraph (b) of this section is approved by both the permitting authority and the Administrator.

Sec. 96.76 Additional requirements to provide heat input data for allocations purposes.

(a) The owner or operator of a unit that elects to monitor and report NOx Mass emissions using a NOx concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source located in a state developing source allocations based upon heat input.

(b) The owner or operator of a unit that monitors and reports NOx mass emissions using a NOx concentration system and a flow system shall also monitor and report heat input at the unit level using the procedures set forth in part 75 of this chapter for any source that is applying for early reduction credits under Sec. 96.55.

Subpart I--Individual Unit Opt-ins

Sec. 96.80 Applicability.

A unit that is in the State, is not a NOx Budget unit under Sec. 96.4, vents all of its emissions to a stack, and is operating, may qualify, under this subpart, to become a NOx Budget opt-in source. A unit that is a NOx Budget unit, is covered by a retired unit exemption under Sec. 96.5 that is in effect, or is not operating is not eligible to become a NOx Budget opt-in source.

Sec. 96.81 General.

Except otherwise as provided in this part, a NOx Budget opt-in source shall be treated as a NOx Budget unit for purposes of applying subparts A through H of this part.

Sec. 96.82 NOx authorized account representative.

A unit for which an application for a NOx Budget opt-in permit is submitted and not denied or withdrawn, or a NOx Budget opt-in source, located at the same source as one or more NOx Budget units, shall have the same NOx authorized account representative as such NOx Budget units.

Sec. 96.83 Applying for NOx Budget opt-in permit.

(a) Applying for initial NOx Budget opt-in permit. In order to apply for an initial NOx Budget opt-in permit, the NOx authorized account representative of a unit qualified under Sec. 96.80 may submit to the permitting authority at any time, except as provided under Sec. 96.86(g):

(1) A complete NOx Budget permit application under Sec. 96.22;

(2) A monitoring plan submitted in accordance with subpart H of this part; and

(3) A complete account certificate of representation under Sec. 96.13, if no NOx authorized account representative has been previously designated for the unit.

(b) Duty to reapply. The NOx authorized account representative of a NOx Budget opt-in source shall submit a complete NOx Budget permit application under Sec. 96.22 to renew the NOx

Budget opt-in permit in accordance with Sec. 96.21(c) and, if applicable, an updated monitoring plan in accordance with subpart H of this part.

Sec. 96.84 Opt-in process.

The permitting authority will issue or deny a NOx Budget opt-in permit for a unit for which an initial application for a NOx Budget opt-in permit under Sec. 96.83 is submitted, in accordance with Sec. 96.20 and the following:

(a) Interim review of monitoring plan. The permitting authority will determine, on an interim basis, the sufficiency of the monitoring plan accompanying the initial application for a NOx Budget opt-in permit under Sec. 96.83. A monitoring plan is sufficient, for purposes of interim review, if the plan appears to contain information demonstrating that the NOx emissions rate and heat input of the unit are monitored and reported in accordance with subpart H of this part. A determination of sufficiency shall not be construed as acceptance or approval of the unit's monitoring plan.

(b) If the permitting authority determines that the unit's monitoring plan is sufficient under paragraph (a) of this section and after completion of monitoring system certification under subpart H of this part, the NOx emissions rate and the heat input of the unit shall be monitored and reported in accordance with subpart H of this part for one full control period during which monitoring system availability is not less than 90 percent and during which the unit is in full compliance with any applicable State or Federal emissions or emissions-related requirements. Solely for purposes of applying the requirements in the prior sentence, the unit shall be treated as a ``NOx Budget unit'' prior to issuance of a NOx Budget opt-in permit covering the unit.

(c) Based on the information monitored and reported under paragraph (b) of this section, the unit's baseline heat rate shall be calculated as the unit's total heat input (in mmBtu) for the control period and the unit's baseline NOx emissions rate shall be calculated as the unit's total NOx emissions (in lb) for the control period divided by the unit's baseline heat rate.

(d) After calculating the baseline heat input and the baseline NOx emissions rate for the unit under paragraph (c) of this section, the permitting authority will serve a draft NOx Budget opt-in permit on the NOx authorized account representative of the unit.

(e) Confirmation of intention to opt-in. Within 20 days after the issuance of the draft NOx Budget opt-in permit, the NOx authorized account representative of the unit must submit to the permitting authority a confirmation of the intention to opt in the unit or a withdrawal of the application for a NOx Budget opt-in permit under Sec. 96.83. The permitting authority will treat the failure to make a timely submission as a withdrawal of the NOx Budget opt-in permit application.

(f) Issuance of draft NOx Budget opt-in permit. If the NOx authorized account representative confirms the intention to opt-in the unit under paragraph (e) of this section, the permitting authority will issue the draft NOx Budget opt-in permit in accordance with Sec. 96.20.

(g) Notwithstanding paragraphs (a) through (f) of this section, if at any time before issuance of a draft NOx Budget opt-in permit for the unit, the permitting authority determines that the unit does not qualify as a NOx Budget opt-in source under Sec. 96.80, the permitting authority will issue a draft denial of a NOx Budget opt-in permit for the unit in accordance with Sec. 96.20.

(h) Withdrawal of application for NOx Budget opt-in permit. A NOx authorized account representative of a unit may withdraw its application for a NOx Budget opt-in permit under Sec. 96.83 at any time prior to the issuance of the final NOx Budget opt-in permit. Once the application for a NOx Budget opt-in permit is withdrawn, a NOx authorized account representative wanting to reapply must submit a new application for a NOx Budget permit under Sec. 96.83.

(i) Effective date. The effective date of the initial NOx Budget opt-in permit shall be May 1 of the first control period starting after the issuance of the initial NOx Budget opt-in permit by the

permitting authority. The unit shall be a NOx Budget opt-in source and a NOx Budget unit as of the effective date of the initial NOx Budget opt-in permit.

Sec. 96.85 NOx Budget opt-in permit contents.

(a) Each NOx Budget opt-in permit (including any draft or proposed NOx Budget opt-in permit, if applicable) will contain all elements required for a complete NOx Budget opt-in permit application under Sec. 96.22 as approved or adjusted by the permitting authority.

(b) Each NOx Budget opt-in permit is deemed to incorporate automatically the definitions of terms under Sec. 96.2 and, upon recordation by the Administrator under subpart F, G, or I of this part, every allocation, transfer, or deduction of NOx allowances to or from the compliance accounts of each NOx Budget opt-in source covered by the NOx Budget opt-in permit or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located.

Sec. 96.86 Withdrawal from NOx Budget Trading Program.

(a) Requesting withdrawal. To withdraw from the NOx Budget Trading Program, the NOx authorized account representative of a NOx Budget opt-in source shall submit to the permitting authority a request to withdraw effective as of a specified date prior to May 1 or after September 30. The submission shall be made no later than 90 days prior to the requested effective date of withdrawal.

(b) Conditions for withdrawal. Before a NOx Budget opt-in source covered by a request under paragraph (a) of this section may withdraw from the NOx Budget Trading Program and the NOx Budget opt-in permit may be terminated under paragraph (e) of this section, the following conditions must be met:

(1) For the control period immediately before the withdrawal is to be effective, the NOx authorized account representative must submit or must have submitted to the permitting authority an annual compliance certification report in accordance with Sec. 96.30.

(2) If the NOx Budget opt-in source has excess emissions for the control period immediately before the withdrawal is to be effective, the Administrator will deduct or has deducted from the NOx Budget opt-in source's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, the full amount required under Sec. 96.54(d) for the control period.

(3) After the requirements for withdrawal under paragraphs (b)(1) and (2) of this section are met, the Administrator will deduct from the NOx Budget opt-in source's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to that source under Sec. 96.88 for any control period for which the withdrawal is to be effective. The Administrator will close the NOx Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NOx Budget opt-in source. The NOx authorized account representative for the NOx Budget opt-in source shall become the NOx authorized account representative for the general account.

(c) A NOx Budget opt-in source that withdraws from the NOx Budget Trading Program shall comply with all requirements under the NOx Budget Trading Program concerning all years for which such NOx Budget opt-in source was a NOx Budget opt-in source, even if such requirements arise or must be complied with after the withdrawal takes effect.

(d) Notification.

(1) After the requirements for withdrawal under paragraphs (a) and (b) of this section are met (including deduction of the full amount of NOx allowances required), the permitting authority will issue a notification to the NOx authorized account representative of the NOx

Budget opt-in source of the acceptance of the withdrawal of the NOx Budget opt-in source as of a specified effective date that is after such requirements have been met and that is prior to May 1 or after September 30.

(2) If the requirements for withdrawal under paragraphs (a) and (b) of this section are not met, the permitting authority will issue a notification to the NOx authorized account representative of the NOx Budget opt-in source that the NOx Budget opt-in source's request to withdraw is denied. If the NOx Budget opt-in source's request to withdraw is denied, the NOx Budget opt-in source shall remain subject to the requirements for a NOx Budget opt-in source.

(e) Permit amendment. After the permitting authority issues a notification under paragraph (d)(1) of this section that the requirements for withdrawal have been met, the permitting authority will revise the NOx Budget permit covering the NOx Budget opt-in source to terminate the NOx Budget opt-in permit as of the effective date specified under paragraph (d)(1) of this section. A NOx Budget opt-in source shall continue to be a NOx Budget opt-in source until the effective date of the termination.

(f) Reapplication upon failure to meet conditions of withdrawal. If the permitting authority denies the NOx Budget opt-in source's request to withdraw, the NOx authorized account representative may submit another request to withdraw in accordance with paragraphs (a) and (b) of this section.

(g) Ability to return to the NOx Budget Trading Program. Once a NOx Budget opt-in source withdraws from the NOx Budget Trading Program and its NOx Budget opt-in permit is terminated under this section, the NOx authority account representative may not submit another application for a NOx Budget opt-in permit under Sec. 96.83 for the unit prior to the date that is 4 years after the date on which the terminated NOx Budget opt-in permit became effective.

Sec. 96.87 Change in regulatory status.

(a) Notification. When a NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4, the NOx authorized account representative shall notify in writing the permitting authority and the Administrator of such change in the NOx Budget opt-in source's regulatory status, within 30 days of such change.

(b) Permitting authority's and Administrator's action.

(1) (i) When the NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4, the permitting authority will revise the NOx Budget opt-in source's NOx Budget opt-in permit to meet the requirements of a NOx Budget permit under Sec. 96.23 as of an effective date that is the date on which such NOx Budget opt-in source becomes a NOx Budget unit under Sec. 96.4.

(ii) (A) The Administrator will deduct from the compliance account for the NOx Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NOx Budget source where the unit is located, NOx allowances equal in number to and allocated for the same or a prior control period as:

(1) Any NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under Sec. 96.88 for any control period after the last control period during which the unit's NOx Budget opt-in permit was effective; and

(2) If the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the NOx allowances allocated to the NOx Budget unit (as a NOx Budget opt-in source) under Sec. 96.88 for the control period multiplied by the ratio of the

number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.

(B) The NOx authorized account representative shall ensure that the compliance account of the NOx Budget unit under paragraph (b)(1)(i) of this section, or the overdraft account of the NOx Budget source where the unit is located, includes the NOx allowances necessary for completion of the deduction under paragraph (b)(1)(ii)(A) of this section. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.

(iii) (A) For every control period during which the NOx Budget permit revised under paragraph (b)(1)(i) of this section is effective, the NOx Budget unit under paragraph (b)(1)(i) of this section will be treated, solely for purposes of NOx allowance allocations under Sec. 96.42, as a unit that commenced operation on the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section and will be allocated NOx allowances under Sec. 96.42.

(B) Notwithstanding paragraph (b)(1)(iii)(A) of this section, if the effective date of the NOx Budget permit revision under paragraph (b)(1)(i) of this section is during a control period, the following number of NOx allowances will be allocated to the NOx Budget unit under paragraph (b)(1)(i) of this section under Sec. 96.42 for the control period: the number of NOx allowances otherwise allocated to the NOx Budget unit under Sec. 96.42 for the control period multiplied by the ratio of the number of days, in the control period, starting with the effective date of the permit revision under paragraph (b)(1)(i) of this section, divided by the total number of days in the control period.

(2) (i) When the NOx authorized account representative of a NOx Budget opt-in source does not renew its NOx Budget opt-in permit under Sec. 96.83(b), the Administrator will deduct from the NOx Budget opt-in unit's compliance account, or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located, NOx allowances equal in number to and allocated for the same or a prior control period as any NOx allowances allocated to the NOx Budget opt-in source under Sec. 96.88 for any control period after the last control period for which the NOx Budget opt-in permit is effective. The NOx authorized account representative shall ensure that the NOx Budget opt-in source's compliance account or the overdraft account of the NOx Budget source where the NOx Budget opt-in source is located includes the NOx allowances necessary for completion of such deduction. If the compliance account or overdraft account does not contain sufficient NOx allowances, the Administrator will deduct the required number of NOx allowances, regardless of the control period for which they were allocated, whenever NOx allowances are recorded in either account.

(ii) After the deduction under paragraph (b)(2)(i) of this section is completed, the Administrator will close the NOx Budget opt-in source's compliance account. If any NOx allowances remain in the compliance account after completion of such deduction and any deduction under Sec. 96.54, the Administrator will close the NOx Budget opt-in source's compliance account and will establish, and transfer any remaining allowances to, a new general account for the owners and operators of the NOx Budget opt-in source. The NOx authorized account representative for the NOx Budget opt-in source shall become the NOx authorized account representative for the general account.

Sec. 96.88 NOx allowance allocations to opt-in units.

(a) NOx allowance allocation.

(1) By December 31 immediately before the first control period for which the NOx Budget opt-in permit is effective, the permitting authority will allocate NOx allowances to the NOx Budget opt-in source and submit to the Administrator the allocation for the control period in accordance with paragraph (b) of this section.

(2) By no later than December 31, after the first control period for which the NOx Budget opt-in permit is in effect, and December 31 of each year thereafter, the permitting authority will allocate NOx allowances to the NOx Budget opt-in source, and submit to the Administrator allocations for the next control period, in accordance with paragraph (b) of this section.

(b) For each control period for which the NOx Budget opt-in source has an approved NOx Budget opt-in permit, the NOx Budget opt-in source will be allocated NOx allowances in accordance with the following procedures:

(1) The heat input (in mmBtu) used for calculating NOx allowance allocations will be the lesser of:

(i) The NOx Budget opt-in source's baseline heat input determined pursuant to Sec. 96.84(c); or

(ii) The NOx Budget opt-in source's heat input, as determined in accordance with subpart H of this part, for the control period in the year prior to the year of the control period for which the NOx allocations are being calculated.

(2) The permitting authority will allocate NOx allowances to the NOx Budget opt-in source in an amount equaling the heat input (in mmBtu) determined under paragraph (b)(1) of this section multiplied by the lesser of:

(i) The NOx Budget opt-in source's baseline NOx emissions rate (in lb/mmBtu) determined pursuant to Sec. 96.84(c); or

(ii) The most stringent State or Federal NOx emissions limitation applicable to the NOx Budget opt-in source during the control period.

Subpart J--Mobile and Area Sources [Reserved]

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

Repeal

Chapter 1200-03-37
Clean Air Mercury Rule

Chapter 1200-03-37 Clean Air Mercury Rule is repealed.

1200-3-37-.01 Clean Air Mercury Rule (40 CFR 60).

(1) The provisions of 40 CFR Part 60 concerning the Clean Air Mercury Rule are hereby adopted by reference.

PART 60—Standards of Performance for New Stationary Sources

Subpart HHHH—Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units

§60.4101 Purpose

§60.4102 Definitions
§60.4103 Measurements, abbreviations, and acronyms
§60.4104 Applicabilllty
§60.4105 Retired unit exemption
§60.4106 Standard requirements
§60.4107 Computation of time
§60.4108 Appeal procedures
§60.4110 Authorization and Responsibilities of Hg designated representative
§60.4111 Alternate Hg designated representative
§60.4112 Changing Hg designated representative and alternate Hg designated representative; changes in owners and operators
§60.4113 Certificate of representation
§60.4114 Objections concerning Hg designated representative
§60.4120 General Hg budget trading program permit requirements
§60.4121 Submission of Hg budget permit applications
§60.4122 Information requirements for Hg budget permit applications
§60.4123 Hg budget permit contents and item
§60.4124 Hg budget permit revisions
§60.4130 Reserved
§60.4140 State trading budgets
§60.4141 Timing requirements for Hg allowance allocations
§60.4142 Hg allowance allocations
§60.4150 Reserved
§60.4151 Established of accounts
§60.4152 Responsibilities of Hg authorized account representative
§60.4153 Recordation of Hg allowance allocations
§60.4154 Compliance with Hg budget emissions limitation
§60.4155 Banking
§60.4156 Account error
§60.4157 Closing of general accounts
§60.4160 Submission of Hg allowance transfers
§60.4161 EPA recordation
§60.4162 Notification
§60.4170 General requirements
§60.4171 Initial certification and recertification procedures
§60.4172 Out of control periods
§60.4173 Notifications
§60.4174 Recordkeeping and reporting
§60.4175 Petitions
§60.4176 Additional requirements to provide heat input data

Hg Budget Trading Program General Provisions

§ 60.4101 Purpose.

This subpart establishes the model rule comprising general provisions and the designated representative, permitting, allowance, and monitoring provisions for the State mercury (Hg) Budget Trading Program, under section 111 of the Clean Air Act (CAA) and §60.24(h)(6), as a means of reducing national Hg emissions. The owner or operator of a unit or a source shall comply with the requirements of this subpart as a matter of Federal law only if the State with jurisdiction over the unit and the source incorporates by reference this subpart or otherwise adopts the requirements of this subpart in accordance with §60.24(h)(6), the State submits to the Administrator one or more revisions of the State plan that include such adoption, and the Administrator approves such revisions. If the State adopts the requirements of this subpart in accordance with §60.24(h)(6), then the State authorizes the Administrator to assist the State in implementing the Hg Budget Trading Program by carrying out the functions set forth for the Administrator in this subpart.

§ 60.4102 Definitions.

The terms used in this subpart shall have the meanings set forth in this section as follows:

~~Account number means the identification number given by the Administrator to each Hg Allowance Tracking System account.~~

~~Acid rain emissions limitation means a limitation on emissions of sulfur dioxide or nitrogen oxides under the Acid Rain Program.~~

~~Acid Rain Program means a multi-state sulfur dioxide and nitrogen oxides air pollution control and emission reduction program established by the Administrator under title IV of the CAA and parts 72 through 78 of this chapter.~~

~~Administrator means the Administrator of the United States Environmental Protection Agency or the Administrator's duly authorized representative.~~

~~Allocate or allocation means the determination by the permitting authority or the Administrator of the amount of Hg allowances to be initially credited to a Hg Budget unit or a new unit set-aside under §§60.4140 through 60.4142.~~

~~Allowance transfer deadline means, for a control period, midnight of March 1, if it is a business day, or, if March 1 is not a business day, midnight of the first business day thereafter immediately following the control period and is the deadline by which a Hg allowance transfer must be submitted for recordation in a Hg Budget source's compliance account in order to be used to meet the source's Hg Budget emissions limitation for such control period in accordance with §60.4154.~~

~~Alternate Hg designated representative means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source in accordance with §§60.4110 through 60.4114, to act on behalf of the Hg designated representative in matters pertaining to the Hg Budget Trading Program.~~

~~Automated data acquisition and handling system or DAHS means that component of the continuous emission monitoring system (CEMS), or other emissions monitoring system approved for use under §§60.4170 though 60.4176, designed to interpret and convert individual output signals from pollutant concentration monitors, flow monitors, diluent gas monitors, and other component parts of the monitoring system to produce a continuous record of the measured parameters in the measurement units required §§60.4170 through 60.4176.~~

~~Boiler means an enclosed fossil or other fuel-fired combustion device used to produce heat and to transfer heat to recirculating water, steam, or other medium.~~

~~Bottoming-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful thermal energy and at least some of the reject heat from the useful thermal energy application or process is then used for electricity production.~~

~~CAIR NOX Annual Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AA through II of part 96 of this chapter and §51.123 of this chapter, as a means of mitigating interstate transport of fine particulates and nitrogen oxides.~~

~~CAIR NOX Ozone Season Trading Program means a multi-state nitrogen oxides air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAAA through IIII of part 96 of this chapter and §51.123 of this chapter, as a means of mitigating interstate transport of ozone and nitrogen oxides.~~

~~CAIR SO2 Trading Program means a multi-state sulfur dioxide air pollution control and emission reduction program approved and administered by the Administrator in accordance with subparts AAA through III of part 96 of this chapter and §51.124 of this chapter, as a means of mitigating interstate transport of fine particulates and sulfur dioxide.~~

~~Clean Air Act or CAA means the Clean Air Act, 42 U.S.C. 7401, et seq.~~

~~Coal means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004)ϵ[1] (incorporated by reference, see §60.17).~~

~~Coal-derived fuel means any fuel (whether in a solid, liquid, or gaseous state) produced by the mechanical, thermal, or chemical processing of coal.~~

~~Coal-fired means combusting any amount of coal or coal-derived fuel, alone or in combination with any amount of any other fuel, during any year.~~

~~Cogeneration unit means a stationary, coal-fired boiler or stationary, coal-fired combustion turbine:~~

~~(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and~~

~~(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:~~

~~(i) For a topping-cycle cogeneration unit,~~

~~(A) Useful thermal energy not less than 5 percent of total energy output; and~~

~~(B) Useful power that, when added to one-half of useful thermal energy produced, is not less then 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.~~

~~(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.~~

~~Combustion turbine means:~~

~~(1) An enclosed device comprising a compressor, a combustor, and a turbine and in which the flue gas resulting from the combustion of fuel in the combustor passes through the turbine, rotating the turbine; and~~

~~(2) If the enclosed device under paragraph (1) of this definition is combined cycle, any associated heat recovery steam generator and steam turbine.~~

~~Commence commercial operation means, with regard to a unit serving a generator:~~

~~(1) To have begun to produce steam, gas, or other heated medium used to generate electricity for sale or use, including test generation, except as provided in §60.4105.~~

~~(i) For a unit that is a Hg Budget unit under §60.4104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.~~

~~(ii) For a unit that is a Hg Budget unit under §60.4104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.~~

~~(2) Notwithstanding paragraph (1) of this definition and except as provided in §60.4105, for a unit that is not a Hg Budget unit under §60.4104 on the date the unit commences commercial operation as defined in paragraph (1) of this definition, the unit's date for commencement of~~

~~commercial operation shall be the date on which the unit becomes a Hg Budget unit under §60.4104.~~

~~(i) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of commercial operation.~~

~~(ii) For a unit with a date for commencement of commercial operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of commercial operation as defined in paragraph (1) or (2) of this definition as appropriate.~~

~~Commence operation means:~~

~~(1) To have begun any mechanical, chemical, or electronic process, including, with regard to a unit, start-up of a unit's combustion chamber, except as provided in §60.4105.~~

~~(i) For a unit that is a Hg Budget unit under §60.4104 on the date the unit commences operation as defined in paragraph (1) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.~~

~~(ii) For a unit that is a Hg Budget unit under §60.4104 on the date the unit commences operation as defined in paragraph (1) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate.~~

~~(2) Notwithstanding paragraph (1) of this definition and except as provided in §60.4105, for a unit that is not a Hg Budget unit under §60.4104 on the date the unit commences operation as defined in paragraph (1) of this definition, the unit's date for commencement of operation shall be the date on which the unit becomes a Hg Budget unit under §60.4104.~~

~~(i) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that subsequently undergoes a physical change (other than replacement of the unit by a unit at the same source), such date shall remain the unit's date of commencement of operation.~~

~~(ii) For a unit with a date for commencement of operation as defined in paragraph (2) of this definition and that is subsequently replaced by a unit at the same source (e.g., repowered), the replacement unit shall be treated as a separate unit with a separate date for commencement of operation as defined in paragraph (1) or (2) of this definition as appropriate.~~

~~Common stack means a single flue through which emissions from 2 or more units are exhausted.~~

~~Compliance account means a Hg Allowance Tracking System account, established by the Administrator for a Hg Budget source under §§60.4150 through 60.4157, in which any Hg allowance allocations for the Hg Budget units at the source are initially recorded and in which are held any Hg allowances available for use for a control period in order to meet the source's Hg Budget emissions limitation in accordance with §60.4154.~~

~~Continuous emission monitoring system or CEMS means the equipment required under §§60.4170 through 60.4176 to sample, analyze, measure, and provide, by means of readings recorded at least once every 15 minutes (using an automated data acquisition and handling system (DAHS)), a permanent record of Hg emissions, stack gas volumetric flow rate, stack gas moisture content, and oxygen or carbon dioxide concentration (as applicable), in a manner consistent with part 75 of this chapter. The following systems are the principal types of CEMS required under §§60.4170 through 60.4176:~~

(1) A flow monitoring system, consisting of a stack flow rate monitor and an automated data acquisition and handling system and providing a permanent, continuous record of stack gas volumetric flow rate, in units of standard cubic feet per hour (scfh);

(2) A Hg concentration monitoring system, consisting of a Hg pollutant concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of Hg emissions in units of micrograms per dry standard cubic meter (µg/dscm);

(3) A moisture monitoring system, as defined in §75.11(b)(2) of this chapter and providing a permanent, continuous record of the stack gas moisture content, in percent H_2O.

(4) A carbon dioxide monitoring system, consisting of a CO_2 concentration monitor (or an oxygen monitor plus suitable mathematical equations from which the CO_2 concentration is derived) and an automated data acquisition and handling system and providing a permanent, continuous record of CO_2 emissions, in percent CO_2; and

(5) An oxygen monitoring system, consisting of an O_2 concentration monitor and an automated data acquisition and handling system and providing a permanent, continuous record of O_2, in percent O_2.

Control period means the period beginning January 1 of a calendar year and ending on December 31 of the same year, inclusive.

Emissions means air pollutants exhausted from a unit or source into the atmosphere, as measured, recorded, and reported to the Administrator by the Hg designated representative and as determined by the Administrator in accordance with §§60.4170 through 60.4176.

Excess emissions means any ounce of mercury emitted by the Hg Budget units at a Hg Budget source during a control period that exceeds the Hg Budget emissions limitation for the source.

General account means a Hg Allowance Tracking System account, established under §60.4151, that is not a compliance account.

Generator means a device that produces electricity.

Gross electrical output means, with regard to a cogeneration unit, electricity made available for use, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Heat input means, with regard to a specified period of time, the product (in MMBtu/time) of the gross calorific value of the fuel (in Btu/lb) divided by 1,000,000 Btu/MMBtu and multiplied by the fuel feed rate into a combustion device (in lb of fuel/time), as measured, recorded, and reported to the Administrator by the Hg designated representative and determined by the Administrator in accordance with §§60.4170 through 60.4176 and excluding the heat derived from preheated combustion air, recirculated flue gases, or exhaust from other sources.

Heat input rate means the amount of heat input (in MMBtu) divided by unit operating time (in hr) or, with regard to a specific fuel, the amount of heat input attributed to the fuel (in MMBtu) divided by the unit operating time (in hr) during which the unit combusts the fuel.

Hg allowance means a limited authorization issued by the permitting authority or the Administrator under §§60.4140 through 60.4142 to emit one ounce of mercury during a control period of the specified calendar year for which the authorization is allocated or of any calendar year thereafter under the Hg Budget Trading Program. An authorization to emit mercury that is not issued under the provisions of a State plan that adopt the requirements of this subpart and are approved by the Administrator in accordance with §60.24(h)(6) shall not be a "Hg allowance."

~~Hg allowance deduction or deduct Hg allowances means the permanent withdrawal of Hg allowances by the Administrator from a compliance account in order to account for a specified number of ounces of total mercury emissions from all Hg Budget units at a Hg Budget source for a control period, determined in accordance with §§60.4150 though 60.4157 and §§60.4170 through 60.4176, or to account for excess emissions.~~

~~Hg allowances held or hold Hg allowances means the Hg allowances recorded by the Administrator, or submitted to the Administrator for recordation, in accordance with §§60.4150 through 60.4162, in a Hg Allowance Tracking System account.~~

~~Hg Allowance Tracking System means the system by which the Administrator records allocations, deductions, and transfers of Hg allowances under the Hg Budget Trading Program. Such allowances will be allocated, held, deducted, or transferred only as whole allowances.~~

~~Hg Allowance Tracking System account means an account in the Hg Allowance Tracking System established by the Administrator for purposes of recording the allocation, holding, transferring, or deducting of Hg allowances.~~

~~Hg authorized account representative means, with regard to a general account, a responsible natural person who is authorized, in accordance with §60.4152, to transfer and otherwise dispose of Hg allowances held in the general account and, with regard to a compliance account, the Hg designated representative of the source.~~

~~Hg Budget emissions limitation means, for a Hg Budget source, the equivalent in ounces of the Hg allowances available for deduction for the source under §60.4154(a) and (b) for a control period.~~

~~Hg Budget permit means the legally binding and Federally enforceable written document, or portion of such document, issued by the permitting authority under §§60.4120 through 60.4124, including any permit revisions, specifying the Hg Budget Trading Program requirements applicable to a Hg Budget source, to each Hg Budget unit at the source, and to the owners and operators and the Hg designated representative of the source and each such unit.~~

~~Hg Budget source means a source that includes one or more Hg Budget units.~~

~~Hg Budget Trading Program means a multi-state Hg air pollution control and emission reduction program approved and administered by the Administrator in accordance with this subpart and §60.24(h)(6), as a means of reducing national Hg emissions.~~

~~Hg Budget unit means a unit that is subject to the Hg Budget Trading Program under §60.4104.~~

~~Hg designated representative means, for a Hg Budget source and each Hg Budget unit at the source, the natural person who is authorized by the owners and operators of the source and all such units at the source, in accordance with §§60.4110 through 60.4114, to represent and legally bind each owner and operator in matters pertaining to the Hg Budget Trading Program.~~

~~Life-of-the-unit, firm power contractual arrangement means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of nameplate capacity and associated energy generated by any specified unit and pays its proportional amount of such unit's total costs, pursuant to a contract:~~

~~(1) For the life of the unit;~~

~~(2) For a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or~~

~~(3) For a period no less than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or release some portion of the nameplate capacity and associated energy generated by the unit at the end of the period.~~

~~Lignite means coal that is classified as lignite A or B according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004)e1 (incorporated by reference, see §60.17).~~

~~Maximum design heat input means, starting from the initial installation of a unit, the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis as specified by the manufacturer of the unit, or, starting from the completion of any subsequent physical change in the unit resulting in a decrease in the maximum amount of fuel per hour (in Btu/hr) that a unit is capable of combusting on a steady-state basis, such decreased maximum amount as specified by the person conducting the physical change.~~

~~Monitoring system means any monitoring system that meets the requirements of §§60.4170 through 60.4176, including a continuous emissions monitoring system, an alternative monitoring system, or an excepted monitoring system under part 75 of this chapter.~~

~~Nameplate capacity means, starting from the initial installation of a generator, the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings) as specified by the manufacturer of the generator or, starting from the completion of any subsequent physical change in the generator resulting in an increase in the maximum electrical generating output (in MWe) that the generator is capable of producing on a steady-state basis and during continuous operation (when not restricted by seasonal or other deratings), such increased maximum amount as specified by the person conducting the physical change.~~

~~Operator means any person who operates, controls, or supervises a Hg Budget unit or a Hg Budget source and shall include, but not be limited to, any holding company, utility system, or plant manager of such a unit or source.~~

~~Ounce means 2.84×10^{7} micrograms. For the purpose of determining compliance with the Hg Budget emissions limitation, total ounces of mercury emissions for a control period shall be calculated as the sum of all recorded hourly emissions (or the mass equivalent of the recorded hourly emission rates) in accordance with §§60.4170 through 60.4176, but with any remaining fraction of an ounce equal to or greater than 0.50 ounces deemed to equal one ounce and any remaining fraction of an ounce less than 0.50 ounces deemed to equal zero ounces.~~

~~Owner means any of the following persons:~~

~~(1) With regard to a Hg Budget source or a Hg Budget unit at a source, respectively:~~

~~(i) Any holder of any portion of the legal or equitable title in a Hg Budget unit at the source or the Hg Budget unit;~~

~~(ii) Any holder of a leasehold interest in a Hg Budget unit at the source or the Hg Budget unit; or~~

~~(iii) Any purchaser of power from a Hg Budget unit at the source or the Hg Budget unit under a life-of-the-unit, firm power contractual arrangement; provided that, unless expressly provided for in a leasehold agreement, owner shall not include a passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based (either directly or indirectly) on the revenues or income from such Hg Budget unit; or~~

~~(2) With regard to any general account, any person who has an ownership interest with respect to the Hg allowances held in the general account and who is subject to the binding agreement for the Hg authorized account representative to represent the person's ownership interest with respect to Hg allowances.~~

~~Permitting authority means the State air pollution control agency, local agency, other State agency, or other agency authorized by the Administrator to issue or revise permits to meet the requirements of the Hg~~

~~Budget Trading Program in accordance with §§60.4120 through 60.4124 or, if no such agency has been so authorized, the Administrator.~~

~~Potential electrical output capacity means 33 percent of a unit's maximum design heat input, divided by 3,413 Btu/kWh, divided by 1,000 kWh/MWh, and multiplied by 8,760 hr/yr.~~

~~Receive or receipt of means, when referring to the permitting authority or the Administrator, to come into possession of a document, information, or correspondence (whether sent in hard copy or by authorized electronic transmission), as indicated in an official correspondence log, or by a notation made on the document, information, or correspondence, by the permitting authority or the Administrator in the regular course of business.~~

~~Recordation, record, or recorded means, with regard to Hg allowances, the movement of Hg allowances by the Administrator into or between Hg Allowance Tracking System accounts, for purposes of allocation, transfer, or deduction.~~

~~Reference method means any direct test method of sampling and analyzing for an air pollutant as specified in §75.22 of this chapter.~~

~~Repowered means, with regard to a unit, replacement of a coal-fired boiler with one of the following coal-fired technologies at the same source as the coal-fired boiler:~~

~~(1) Atmospheric or pressurized fluidized bed combustion;~~

~~(2) Integrated gasification combined cycle;~~

~~(3) Magnetohydrodynamics;~~

~~(4) Direct and indirect coal-fired turbines;~~

~~(5) Integrated gasification fuel cells; or~~

~~(6) As determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of the technologies under paragraphs (1) through (5) of this definition and any other coal-fired technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of January 1, 2005.~~

~~Serial number means, for a Hg allowance, the unique identification number assigned to each Hg allowance by the Administrator.~~

~~Sequential use of energy means:~~

~~(1) For a topping-cycle cogeneration unit, the use of reject heat from electricity production in a useful thermal energy application or process; or~~

~~(2) For a bottoming-cycle cogeneration unit, the use of reject heat from useful thermal energy application or process in electricity production.~~

~~Source means all buildings, structures, or installations located in one or more contiguous or adjacent properties under common control of the same person or persons. For purposes of section 502(c) of the CAA, a "source," including a "source" with multiple units, shall be considered a single "facility."~~

~~State means:~~

~~(1) For purposes of referring to a governing entity, one of the States in the United States, the District of Columbia, or, if approved for treatment as a State under part 49 of this chapter, the Navajo Nation or Ute Indian Tribe that adopts the Hg Budget Trading Program pursuant to §60.24(h)(6); or~~

(2) For purposes of referring to geographic areas, one of the States in the United States, the District of Columbia, the Navajo Nation Indian country, or the Ute Tribe Indian country.

Subbituminous means coal that is classified as subbituminous A, B, or C, according to the American Society of Testing and Materials (ASTM) Standard Specification for Classification of Coals by Rank D388-77, 90, 91, 95, 98a, or 99 (Reapproved 2004)e1 (incorporated by reference, see §60.17).

Submit or serve means to send or transmit a document, information, or correspondence to the person specified in accordance with the applicable regulation:

(1) In person;

(2) By United States Postal Service; or

(3) By other means of dispatch or transmission and delivery. Compliance with any "submission" or "service" deadline shall be determined by the date of dispatch, transmission, or mailing and not the date of receipt.

Title V operating permit means a permit issued under title V of the CAA and part 70 or part 71 of this chapter.

Title V operating permit regulations means the regulations that the Administrator has approved or issued as meeting the requirements of title V of the CAA and part 70 or 71 of this chapter.

Topping-cycle cogeneration unit means a cogeneration unit in which the energy input to the unit is first used to produce useful power, including electricity, and at least some of the reject heat from the electricity production is then used to provide useful thermal energy.

Total energy input means, with regard to a cogeneration unit, total energy of all forms supplied to the cogeneration unit, excluding energy produced by the cogeneration unit itself.

Total energy output means, with regard to a cogeneration unit, the sum of useful power and useful thermal energy produced by the cogeneration unit.

Unit means a stationary coal-fired boiler or a stationary coal-fired combustion turbine.

Unit operating day means a calendar day in which a unit combusts any fuel.

Unit operating hour or hour of unit operation means an hour in which a unit combusts any fuel.

Useful power means, with regard to a cogeneration unit, electricity or mechanical energy made available for use, excluding any such energy used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls).

Useful thermal energy means, with regard to a cogeneration unit, thermal energy that is:

(1) Made available to an industrial or commercial process (not a power production process), excluding any heat contained in condensate return or makeup water;

(2) Used in a heat application (e.g., space heating or domestic hot water heating); or

(3) Used in a space cooling application (i.e., thermal energy used by an absorption chiller).

Utility power distribution system means the portion of an electricity grid owned or operated by a utility and dedicated to delivering electricity to customers.

§ 60.4103 Measurements, abbreviations, and acronyms.

Measurements, abbreviations, and acronyms used in this part are defined as follows:

~~Btu—British thermal unit.~~
~~CO_2—carbon dioxide.~~
~~H_2O—water.~~
~~Hg—mercury.~~
~~hr—hour.~~
~~kW—kilowatt electrical.~~
~~kWh—kilowatt hour.~~
~~lb—pound.~~
~~MMBtu—million Btu.~~
~~MWe—megawatt electrical.~~
~~MWh—megawatt hour.~~
~~NO_x—nitrogen oxides.~~
~~O_2—oxygen.~~
~~ppm—parts per million.~~
~~scfh—standard cubic feet per hour.~~
~~SO_2—sulfur dioxide.~~
~~yr—year.~~

~~§ 60.4104 Applicability.~~

~~The following units in a State shall be Hg Budget units, and any source that includes one or more such units shall be a Hg Budget source, subject to the requirements of this subpart:~~

~~(a) Except as provided in paragraph (b) of this section, a unit serving at any time, since the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale.~~

~~(b) or a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to paragraph (a) of this section starting on the day on which the unit first no longer qualifies as a cogeneration unit.~~

~~§ 60.4105 Retired unit exemption.~~

~~(a) (1) Any Hg Budget unit that is permanently retired shall be exempt from the Hg Budget Trading Program, except for the provisions of this section, §60.4102, §60.4103, §60.4104, §60.4106(c)(4) through (8), §60.4107, and §§60.4150 through 60.4162.~~

~~(2) The exemption under paragraph (a)(1) of this section shall become effective the day on which the Hg Budget unit is permanently retired. Within 30 days of the unit's permanent retirement, the Hg designated representative shall submit a statement to the permitting authority otherwise responsible for administering any Hg Budget permit for the unit and shall submit a copy of the statement to the Administrator. The statement shall state, in a format prescribed by the permitting authority, that the unit was permanently retired on a specific date and will comply with the requirements of paragraph (b) of this section.~~

~~(3) After receipt of the statement under paragraph (a)(2) of this section, the permitting authority will amend any permit under §§60.4120 through 60.4124 covering the source at which the unit is located to add the provisions and requirements of the exemption under paragraphs (a)(1) and (b) of this section.~~

~~(b) Special provisions.~~

~~(1) A unit exempt under paragraph (a) of this section shall not emit any mercury, starting on the date that the exemption takes effect.~~

(2) The permitting authority will allocate Hg allowances under §§60.4140 through 60.4142 to a unit exempt under paragraph (a) of this section.

(3) For a period of 5 years from the date the records are created, the owners and operators of a unit exempt under paragraph (a) of this section shall retain at the source that includes the unit, records demonstrating that the unit is permanently retired. The 5-year period for keeping records may be extended for cause, at any time before the end of the period, in writing by the permitting authority or the Administrator. The owners and operators bear the burden of proof that the unit is permanently retired.

(4) The owners and operators and, to the extent applicable, the Hg designated representative of a unit exempt under paragraph (a) of this section shall comply with the requirements of the Hg Budget Trading Program concerning all periods for which the exemption is not in effect, even if such requirements arise, or must be complied with, after the exemption takes effect.

(5) A unit exempt under paragraph (a) of this section and located at a source that is required, or but for this exemption would be required, to have a title V operating permit shall not resume operation unless the Hg designated representative of the source submits a complete Hg Budget permit application under §60.4122 for the unit not less than 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the unit resumes operation.

(6) On the earlier of the following dates, a unit exempt under paragraph (a) of this section shall lose its exemption:

(i) The date on which the Hg designated representative submits a Hg Budget permit application for the unit under paragraph (b)(5) of this section;

(ii) The date on which the Hg designated representative is required under paragraph (b)(5) of this section to submit a Hg Budget permit application for the unit; or

(iii) The date on which the unit resumes operation, if the Hg designated representative is not required to submit a Hg Budget permit application for the unit.

(7) For the purpose of applying monitoring, reporting, and recordkeeping requirements under §§60.4170 through 60.4176, a unit that loses its exemption under paragraph (a) of this section shall be treated as a unit that commences operation and commercial operation on the first date on which the unit resumes operation.

§ 60.4106 Standard requirements.

(a) Permit Requirements.

(1) The Hg designated representative of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall:

(i) Submit to the permitting authority a complete Hg Budget permit application under §60.4122 in accordance with the deadlines specified in §60.4121(a) and (b); and

(ii) Submit in a timely manner any supplemental information that the permitting authority determines is necessary in order to review a Hg Budget permit application and issue or deny a Hg Budget permit.

(2) The owners and operators of each Hg Budget source required to have a title V operating permit and each Hg Budget unit required to have a title V operating permit at the source shall have a Hg Budget permit issued by the permitting authority under §§60.4120 through 60.4124 for the source and operate the source and the unit in compliance with such Hg Budget permit.

(3) The owners and operators of a Hg Budget source that is not required to have a title V operating permit and each Hg Budget unit that is not required to have a title V operating permit are not required to submit a Hg Budget permit application, and to have a Hg Budget permit, under §§60.4120 through 60.4124 for such Hg Budget source and such Hg Budget unit.

(b) Monitoring, reporting, and recordkeeping requirements.

(1) The owners and operators, and the Hg designated representative, of each Hg Budget source and each Hg Budget unit at the source shall comply with the monitoring, reporting, and recordkeeping requirements of §§60.4170 through 60.4176.

(2) The emissions measurements recorded and reported in accordance with §§60.4170 through 60.4176 shall be used to determine compliance by each Hg Budget source with the Hg Budget emissions limitation under paragraph (c) of this section.

(c) Mercury emission requirements.

(1) As of the allowance transfer deadline for a control period, the owners and operators of each Hg Budget source and each Hg Budget unit at the source shall hold, in the source's compliance account, Hg allowances available for compliance deductions for the control period under §60.4154(a) in an amount not less than the ounces of total mercury emissions for the control period from all Hg Budget units at the source, as determined in accordance with §§60.4170 through 60.4176.

(2) A Hg Budget unit shall be subject to the requirements under paragraph (c)(1) of this section starting on the later of January 1, 2010 or the deadline for meeting the unit's monitor certification requirements under §60.4170(b)(1) or (2).

(3) A Hg allowance shall not be deducted, for compliance with the requirements under paragraph (c)(1) of this section, for a control period in a calendar year before the year for which the Hg allowance was allocated.

(4) Hg allowances shall be held in, deducted from, or transferred into or among Hg Allowance Tracking System accounts in accordance with §§60.4160 through 60.4162.

(5) A Hg allowance is a limited authorization to emit one ounce of mercury in accordance with the Hg Budget Trading Program. No provision of the Hg Budget Trading Program, the Hg Budget permit application, the Hg Budget permit, or an exemption under §60.4105 and no provision of law shall be construed to limit the authority of the State or the United States to terminate or limit such authorization.

(6) A Hg allowance does not constitute a property right.

(7) Upon recordation by the Administrator under §§60.4150 through 60.4162, every allocation, transfer, or deduction of a Hg allowance to or from a Hg Budget unit's compliance account is incorporated automatically in any Hg Budget permit of the source that includes the Hg Budget unit.

(d) Excess emissions requirements.

(1) If a Hg Budget source emits mercury during any control period in excess of the Hg Budget emissions limitation, then:

(i) The owners and operators of the source and each Hg Budget unit at the source shall surrender the Hg allowances required for deduction under §60.4154(d)(1) and pay any fine, penalty, or assessment or comply with any other remedy imposed, for the same violations, under the Clean Air Act or applicable State law; and

(ii) Each ounce of such excess emissions and each day of such control period shall constitute a separate violation of this subpart, the Clean Air Act, and applicable State law.

(2) [Reserved]

(e) Recordkeeping and reporting requirements.

(1) Unless otherwise provided, the owners and operators of the Hg Budget source and each Hg Budget unit at the source shall keep on site at the source each of the following documents for a period of 5 years from the date the document is created. This period may be extended for cause, at any time before the end of 5 years, in writing by the permitting authority or the Administrator.

(i) The certificate of representation under §60.4113 for the Hg designated representative for the source and each Hg Budget unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation; provided that the certificate and documents shall be retained on site at the source beyond such 5-year period until such documents are superseded because of the submission of a new certificate of representation under §60.4113 changing the Hg designated representative.

(ii) All emissions monitoring information, in accordance with §§60.4170 through 60.4176, provided that to the extent that §§60.4170 through 60.4176 provides for a 3-year period for recordkeeping, the 3-year period shall apply.

(iii) Copies of all reports, compliance certifications, and other submissions and all records made or required under the Hg Budget Trading Program.

(iv) Copies of all documents used to complete a Hg Budget permit application and any other submission under the Hg Budget Trading Program or to demonstrate compliance with the requirements of the Hg Budget Trading Program.

(2) The Hg designated representative of a Hg Budget source and each Hg Budget unit at the source shall submit the reports required under the Hg Budget Trading Program, including those under §§60.4170 through 60.4176.

(f) Liability.

(1) Each Hg Budget source and each Hg Budget unit shall meet the requirements of the Hg Budget Trading Program.

(2) Any provision of the Hg Budget Trading Program that applies to a Hg Budget source or the Hg designated representative of a Hg Budget source shall also apply to the owners and operators of such source and of the Hg Budget units at the source.

(3) Any provision of the Hg Budget Trading Program that applies to a Hg Budget unit or the Hg designated representative of a Hg Budget unit shall also apply to the owners and operators of such unit.

(g) Effect on other authorities. No provision of the Hg Budget Trading Program, a Hg Budget permit application, a Hg Budget permit, or an exemption under §60.4105 shall be construed as exempting or excluding the owners and operators, and the Hg designated representative, of a Hg Budget source or Hg Budget unit from compliance with any other provision of the applicable, approved State implementation plan, a Federally enforceable permit, or the CAA.

§ 60.4107 Computation of time.

(a) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin on the occurrence of an act or event shall begin on the day the act or event occurs.

(b) Unless otherwise stated, any time period scheduled, under the Hg Budget Trading Program, to begin before the occurrence of an act or event shall be computed so that the period ends the day before the act or event occurs.

(c) Unless otherwise stated, if the final day of any time period, under the Hg Budget Trading Program, falls on a weekend or a State or Federal holiday, the time period shall be extended to the next business day.

§ 60.4108 Appeal procedures.

The appeal procedures for decisions of the Administrator under the Hg Budget Trading Program shall be the procedures set forth in part 78 of this chapter. The terms "subpart HHHH of this part," "§60.4141(b)(2) or (c)(2)," "§60.4154," "§60.4156," "§60.4161," "§60.4175," "Hg allowances," "Hg Allowance Tracking System Account," "Hg designated representative," "Hg authorized account representative," and "§60.4106" apply instead of the terms "subparts AA through II of part 96 of this chapter," "§96.141(b)(2) or (c)(2)," "§96.154," "§96.156," "§96.161," "§96.175," "CAIR NO_x allowances," "CAIR NO_x Allowance Tracking System account," "CAIR designated representative," "CAIR authorized account representative," and "§96.106."

Hg Designated Representative for Hg Budget Sources

§ 60.4110 Authorization and Responsibilities of Hg designated representative.

(a) Except as provided under §60.4111, each Hg Budget source, including all Hg Budget units at the source, shall have one and only one Hg designated representative, with regard to all matters under the Hg Budget Trading Program concerning the source or any Hg Budget unit at the source.

(b) The Hg designated representative of the Hg Budget source shall be selected by an agreement binding on the owners and operators of the source and all Hg Budget units at the source and shall act in accordance with the certification statement in §60.4113(a)(4)(iv).

(c) Upon receipt by the Administrator of a complete certificate of representation under §60.4113, the Hg designated representative of the source shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each owner and operator of the Hg Budget source represented and each Hg Budget unit at the source in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg designated representative and such owners and operators. The owners and operators shall be bound by any decision or order issued to the Hg designated representative by the permitting authority, the Administrator, or a court regarding the source or unit.

(d) No Hg Budget permit will be issued, no emissions data reports will be accepted, and no Hg Allowance Tracking System account will be established for a Hg Budget unit at a source, until the Administrator has received a complete certificate of representation under §60.4113 for a Hg designated representative of the source and the Hg Budget units at the source.

(e) (1) Each submission under the Hg Budget Trading Program shall be submitted, signed, and certified by the Hg designated representative for each Hg Budget source on behalf of which the submission is made. Each such submission shall include the following certification statement by the Hg designated representative: "I am authorized to make this submission on behalf of the owners and operators of the source or units for which the submission is made. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(2) The permitting authority and the Administrator will accept or act on a submission made on behalf of owner or operators of a Hg Budget source or a Hg Budget unit only if the submission has been made, signed, and certified in accordance with paragraph (e)(1) of this section.

§ 60.4111 Alternate Hg designated representative.

(a) A certificate of representation under §60.4113 may designate one and only one alternate Hg designated representative, who may act on behalf of the Hg designated representative. The agreement by which the alternate Hg designated representative is selected shall include a procedure for authorizing the alternate Hg designated representative to act in lieu of the Hg designated representative.

(b) Upon receipt by the Administrator of a complete certificate of representation under §60.4113, any representation, action, inaction, or submission by the alternate Hg designated representative shall be deemed to be a representation, action, inaction, or submission by the Hg designated representative.

(c) Except in this section and §§60.4102, 60.4110(a) and (d), 60.4112, 60.4113, 60.4151, and 60.4174, whenever the term "Hg designated representative" is used in this subpart, the term shall be construed to include the Hg designated representative or any alternate Hg designated representative.

§ 60.4112 Changing Hg designated representative and alternate Hg designated representative; changes in owners and operators.

(a) Changing Hg designated representative. The Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §60.4113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(b) Changing alternate Hg designated representative. The alternate Hg designated representative may be changed at any time upon receipt by the Administrator of a superseding complete certificate of representation under §60.4113. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg designated representative before the time and date when the Administrator receives the superseding certificate of representation shall be binding on the new alternate Hg designated representative and the owners and operators of the Hg Budget source and the Hg Budget units at the source.

(c) Changes in owners and operators.

(1) In the event a new owner or operator of a Hg Budget source or a Hg Budget unit is not included in the list of owners and operators in the certificate of representation under §60.4113, such new owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the Hg designated representative and any alternate Hg designated representative of the source or unit, and the decisions and orders of the permitting authority, the Administrator, or a court, as if the new owner or operator were included in such list.

(2) Within 30 days following any change in the owners and operators of a Hg Budget source or a Hg Budget unit, including the addition of a new owner or operator, the Hg designated representative or any alternate Hg designated representative shall submit a revision to the certificate of representation under §60.4113 amending the list of owners and operators to include the change.

§ 60.4113 Certificate of representation.

(a) A complete certificate of representation for a Hg designated representative or an alternate Hg designated representative shall include the following elements in a format prescribed by the Administrator:

(1) Identification of the Hg Budget source, and each Hg Budget unit at the source, for which the certificate of representation is submitted.

(2) The name, address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg designated representative and any alternate Hg designated representative.

(3) A list of the owners and operators of the Hg Budget source and of each Hg Budget unit at the source.

(4) The following certification statements by the Hg designated representative and any alternate Hg designated representative:

(i) "I certify that I was selected as the Hg designated representative or alternate Hg designated representative, as applicable, by an agreement binding on the owners and operators of the source and each Hg Budget unit at the source."

(ii) "I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of the owners and operators of the source and of each Hg Budget unit at the source and that each such owner and operator shall be fully bound by my representations, actions, inactions, or submissions."

(iii) "I certify that the owners and operators of the source and of each Hg Budget unit at the source shall be bound by any order issued to me by the Administrator, the permitting authority, or a court regarding the source or unit."

(iv) "Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, a Hg Budget unit, or where a customer purchases power from a Hg Budget unit under a life-of-the-unit, firm power contractual arrangement, I certify that: I have given a written notice of my selection as the 'Hg designated representative' or 'alternate Hg designated representative,' as applicable, and of the agreement by which I was selected to each owner and operator of the source and of each Hg Budget unit at the source; and Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, except that, if such multiple holders have expressly provided for a different distribution of Hg allowances by contract, Hg allowances and proceeds of transactions involving Hg allowances will be deemed to be held or distributed in accordance with the contract."

(5) The signature of the Hg designated representative and any alternate Hg designated representative and the dates signed.

(b) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the certificate of representation shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

§ 60.4114 Objections concerning Hg designated representative.

(a) Once a complete certificate of representation under §60.4113 has been submitted and received, the permitting authority and the Administrator will rely on the certificate of representation unless and until a superseding complete certificate of representation under §60.4113 is received by the Administrator.

(b) Except as provided in §60.4112(a) or (b), no objection or other communication submitted to the permitting authority or the Administrator concerning the authorization, or any representation, action, inaction, or submission, of the Hg designated representative shall affect any representation, action, inaction, or submission of the Hg designated representative or the finality of any decision or order by the permitting authority or the Administrator under the Hg Budget Trading Program.

(c) Neither the permitting authority nor the Administrator will adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of any Hg designated representative, including private legal disputes concerning the proceeds of Hg allowance transfers.

~~Permits~~

~~§ 60.4120 General Hg budget trading program permit requirements.~~

~~(a) For each Hg Budget source required to have a title V operating permit, such permit shall include a Hg Budget permit administered by the permitting authority for the title V operating permit. The Hg Budget portion of the title V permit shall be administered in accordance with the permitting authority's title V operating permits regulations promulgated under part 70 or 71 of this chapter, except as provided otherwise by this section and §§60.4121 through 60.4124.~~

~~(b) Each Hg Budget permit shall contain, with regard to the Hg Budget source and the Hg Budget units at the source covered by the Hg Budget permit, all applicable Hg Budget Trading Program requirements and shall be a complete and separable portion of the title V operating permit.~~

~~§ 60.4121 Submission of Hg budget permit applications.~~

~~(a) Duty to apply. The Hg designated representative of any Hg Budget source required to have a title V operating permit shall submit to the permitting authority a complete Hg Budget permit application under §60.4122 for the source covering each Hg Budget unit at the source at least 18 months (or such lesser time provided by the permitting authority) before the later of January 1, 2010 or the date on which the Hg Budget unit commences operation.~~

~~(b) Duty to Reapply. For a Hg Budget source required to have a title V operating permit, the Hg designated representative shall submit a complete Hg Budget permit application under §60.4122 for the source covering each Hg Budget unit at the source to renew the Hg Budget permit in accordance with the permitting authority's title V operating permits regulations addressing permit renewal.~~

~~§ 60.4122 Information requirements for Hg budget permit applications.~~

~~A complete Hg Budget permit application shall include the following elements concerning the Hg Budget source for which the application is submitted, in a format prescribed by the permitting authority:~~

~~(a) Identification of the Hg Budget source;~~

~~(b) Identification of each Hg Budget unit at the Hg Budget source; and~~

~~(c) The standard requirements under §60.4106.~~

~~§ 60.4123 Hg budget permit contents and term.~~

~~(a) Each Hg Budget permit will contain, in a format prescribed by the permitting authority, all elements required for a complete Hg Budget permit application under §60.4122.~~

~~(b) Each Hg Budget permit is deemed to incorporate automatically the definitions of terms under §60.4102 and, upon recordation by the Administrator under §§60.4150 through 60.4162, every allocation, transfer, or deduction of a Hg allowance to or from the compliance account of the Hg Budget source covered by the permit.~~

~~(c) The term of the Hg Budget permit will be set by the permitting authority, as necessary to facilitate coordination of the renewal of the Hg Budget permit with issuance, revision, or renewal of the Hg Budget source's title V operating permit.~~

~~§ 60.4124 Hg budget permit revisions.~~

~~Except as provided in §60.4123(b), the permitting authority will revise the Hg Budget permit, as necessary, in accordance with the permitting authority's title V operating permits regulations addressing permit revisions.~~

~~§ 60.4130 [Reserved]~~

~~Hg Allowance Allocations~~

~~§ 60.4140 State trading budgets.~~

~~The State trading budgets for annual allocations of Hg allowances for the control periods in 2010 through 2017 and in 2018 and thereafter are respectively as follows:~~

	~~State trading budget (tons)~~	
~~State~~	~~2010-2017~~	~~2018 and thereafter~~
~~Alaska~~	~~0.005~~	~~0.002~~
~~Alabama~~	~~1.289~~	~~0.509~~
~~Arkansas~~	~~0.516~~	~~0.204~~
~~Arizona~~	~~0.454~~	~~0.179~~
~~California~~	~~0.041~~	~~0.016~~
~~Colorado~~	~~0.706~~	~~0.279~~
~~Connecticut~~	~~0.053~~	~~0.021~~
~~Delaware~~	~~0.072~~	~~0.028~~
~~District of Columbia~~	~~0~~	~~0~~
~~Florida~~	~~1.233~~	~~0.487~~
~~Georgia~~	~~1.227~~	~~0.484~~
~~Hawaii~~	~~0.024~~	~~0.009~~
~~Idaho~~	~~0~~	~~0~~
~~Iowa~~	~~0.727~~	~~0.287~~
~~Illinois~~	~~1.594~~	~~0.629~~
~~Indiana~~	~~2.098~~	~~0.828~~
~~Kansas~~	~~0.723~~	~~0.285~~
~~Kentucky~~	~~1.525~~	~~0.602~~
~~Louisiana~~	~~0.601~~	~~0.237~~
~~Massachusetts~~	~~0.172~~	~~0.068~~
~~Maryland~~	~~0.49~~	~~0.193~~
~~Maine~~	~~0.001~~	~~0.001~~
~~Michigan~~	~~1.303~~	~~0.514~~
~~Minnesota~~	~~0.695~~	~~0.274~~
~~Missouri~~	~~1.393~~	~~0.55~~
~~Mississippi~~	~~0.291~~	~~0.115~~
~~Montana~~	~~0.378~~	~~0.149~~
~~Navajo Nation Indian country~~	~~0.601~~	~~0.237~~
~~North Carolina~~	~~1.133~~	~~0.447~~
~~North Dakota~~	~~1.564~~	~~0.617~~
~~Nebraska~~	~~0.421~~	~~0.166~~
~~New Hampshire~~	~~0.063~~	~~0.025~~
~~New Jersey~~	~~0.153~~	~~0.06~~
~~New Mexico~~	~~0.299~~	~~0.118~~
~~Nevada~~	~~0.285~~	~~0.112~~
~~New York~~	~~0.393~~	~~0.155~~
~~Ohio~~	~~2.057~~	~~0.812~~
~~Oklahoma~~	~~0.721~~	~~0.285~~
~~Oregon~~	~~0.076~~	~~0.03~~
~~Pennsylvania~~	~~1.78~~	~~0.702~~
~~Rhode Island~~	~~0~~	~~0~~
~~South Carolina~~	~~0.58~~	~~0.229~~
~~South Dakota~~	~~0.072~~	~~0.029~~
~~Tennessee~~	~~0.944~~	~~0.373~~
~~Texas~~	~~4.657~~	~~1.838~~
~~Utah~~	~~0.506~~	~~0.2~~
~~Ute Indian Tribe Indian country~~	~~0.06~~	~~0.024~~
~~Virginia~~	~~0.592~~	~~0.234~~

Vermont	0	0
Washington	0.198	0.078
Wisconsin	0.89	0.351
West Virginia	1.394	0.55
Wyoming	0.952	0.376

§ 60.4141 Timing requirements for Hg allowance allocations.

(a) By October 31, 2006, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with §60.4142(a) and (b), for the control periods in 2010, 2011, 2012, 2013, and 2014.

(b) (1) By October 31, 2008 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with §60.4142(a) and (b), for the control period in the sixth year after the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the Hg allowance allocations in accordance with paragraph (b)(1) of this section, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2018, the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017.

(c) (1) By October 31, 2010 and October 31 of each year thereafter, the permitting authority will submit to the Administrator the Hg allowance allocations, in a format prescribed by the Administrator and in accordance with §60.4142(a), (c), and (d), for the control period in the year of the applicable deadline for submission under this paragraph.

(2) If the permitting authority fails to submit to the Administrator the Hg allowance allocations in accordance with paragraph (c)(1) of this section, the Administrator will assume that the allocations of Hg allowances for the applicable control period are the same as for the control period that immediately precedes the applicable control period, except that, if the applicable control period is in 2018, the Administrator will assume that the allocations equal the allocations for the control period in 2017, multiplied by the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140 for 2018 and thereafter and divided by such amount of ounces of Hg emissions for 2010 through 2017 and except that any Hg Budget unit that would otherwise be allocated Hg allowances under §60.4142(a) and (b), as well as under §60.4142(a), (c), and (d), for the applicable control period will be assumed to be allocated no Hg allowances under §60.4142(a), (c), and (d) for the applicable control period.

§ 60.4142 Hg allowance allocations.

(a) (1) The baseline heat input (in MMBtu) used with respect to Hg allowance allocations under paragraph (b) of this section for each Hg Budget unit will be:

(i) For units commencing operation before January 1, 2001, the average of the three highest amounts of the unit's adjusted control period heat input for 2000 through 2004, with the adjusted control period heat input for each year calculated as the sum of the following:

(A) Any portion of the unit's control period heat input for the year that results from the unit's combustion of lignite, multiplied by 3.0;

(B) Any portion of the unit's control period heat input for the year that results from the unit's combustion of subbituminous coal, multiplied by 1.25; and

(C) Any portion of the unit's control period heat input for the year that is not covered by paragraph (a)(1)(i)(A) or (B) of this section, multiplied by 1.0.

(ii) For units commencing operation on or after January 1, 2001 and operating each calendar year during a period of 5 or more consecutive calendar years, the average of the 3 highest amounts of the unit's total converted control period heat input over the first such 5 years.

(2) (i) A unit's control period heat input for a calendar year under paragraphs (a)(1)(i) of this section, and a unit's total ounces of Hg emissions during a calendar year under paragraph (c)(3) of this section, will be determined in accordance with part 75 of this chapter, to the extent the unit was otherwise subject to the requirements of part 75 of this chapter for the year, or will be based on the best available data reported to the permitting authority for the unit, to the extent the unit was not otherwise subject to the requirements of part 75 of this chapter for the year. The unit's types and amounts of fuel combusted, under paragraph (a)(1)(i) of this section, will be based on the best available data reported to the permitting authority for the unit.

(ii) A unit's converted control period heat input for a calendar year specified under paragraph (a)(1)(ii) of this section equals:

(A) Except as provided in paragraph (a)(2)(ii)(B) or (C) of this section, the control period gross electrical output of the generator or generators served by the unit multiplied by 7,900 Btu/kWh and divided by 1,000,000 Btu/MMBtu, provided that if a generator is served by 2 or more units, then the gross electrical output of the generator will be attributed to each unit in proportion to the unit's share of the total control period heat input of such units for the year;

(B) For a unit that is a boiler and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the total heat energy (in Btu) of the steam produced by the boiler during the control period, divided by 0.8 and by 1,000,000 Btu/MMBtu; or

(C) For a unit that is a combustion turbine and has equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy, the control period gross electrical output of the enclosed device comprising the compressor, combustor, and turbine multiplied by 3,413 Btu/kWh, plus the total heat energy (in Btu) of the steam produced by any associated heat recovery steam generator during the control period divided by 0.8, and with the sum divided by 1,000,000 Btu/MMBtu.

(b) (1) For each control period in 2010 and thereafter, the permitting authority will allocate to all Hg Budget units in the State that have a baseline heat input (as determined under paragraph (a) of this section) a total amount of Hg allowances equal to 95 percent for a control period in 2010 through 2014, and 97 percent for a control period in 2015 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140 (except as provided in paragraph (d) of this section).

(2) The permitting authority will allocate Hg allowances to each Hg Budget unit under paragraph (b)(1) of this section in an amount determined by multiplying the total amount of Hg allowances allocated under paragraph (b)(1) of this section by the ratio of the baseline heat input of such Hg Budget unit to the total amount of baseline heat input of all such Hg Budget units in the State and rounding to the nearest whole allowance as appropriate.

(c) For each control period in 2010 and thereafter, the permitting authority will allocate Hg allowances to Hg Budget units in the State that commenced operation on or after January 1, 2001 and do not yet have a baseline heat input (as determined under paragraph (a) of this section), in accordance with the following procedures:

(1) The permitting authority will establish a separate new unit set-aside for each control period. Each new unit set-aside will be allocated Hg allowances equal to 5 percent for a control period in 2010 through 2014, and 3 percent for a control period in 2015 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140.

(2) The Hg designated representative of such a Hg Budget unit may submit to the permitting authority a request, in a format specified by the permitting authority, to be allocated Hg allowances, starting with the later of the control period in 2010 or the first control period after the control period in which the Hg Budget unit commences commercial operation and until the first control period for which the unit is allocated Hg allowances under paragraph (b) of this section. The Hg allowance allocation request must be submitted on or before July 1 of the first control period for which the Hg allowances are requested and after the date on which the Hg Budget unit commences commercial operation.

(3) In a Hg allowance allocation request under paragraph (c)(2) of this section, the Hg designated representative may request for a control period Hg allowances in an amount not exceeding the Hg Budget unit's total ounces of Hg emissions during the control period immediately before such control period.

(4) The permitting authority will review each Hg allowance allocation request under paragraph (c)(2) of this section and will allocate Hg allowances for each control period pursuant to such request as follows:

(i) The permitting authority will accept an allowance allocation request only if the request meets, or is adjusted by the permitting authority as necessary to meet, the requirements of paragraphs (c)(2) and (3) of this section.

(ii) On or after July 1 of the control period, the permitting authority will determine the sum of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) in all allowance allocation requests accepted under paragraph (c)(4)(i) of this section for the control period.

(iii) If the amount of Hg allowances in the new unit set-aside for the control period is greater than or equal to the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate the amount of Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section) to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section.

(iv) If the amount of Hg allowances in the new unit set-aside for the control period is less than the sum under paragraph (c)(4)(ii) of this section, then the permitting authority will allocate to each Hg Budget unit covered by an allowance allocation request accepted under paragraph (c)(4)(i) of this section the amount of the Hg allowances requested (as adjusted under paragraph (c)(4)(i) of this section), multiplied by the amount of Hg allowances in the new unit set-aside for the control period, divided by the sum determined under paragraph (c)(4)(ii) of this section, and rounded to the nearest whole allowance as appropriate.

(v) The permitting authority will notify each Hg designated representative that submitted an allowance allocation request of the amount of Hg allowances (if any) allocated for the control period to the Hg Budget unit covered by the request.

(d) If, after completion of the procedures under paragraph (c)(4) of this section for a control period, any unallocated Hg allowances remain in the new unit set-aside for the control period, the permitting authority will allocate to each Hg Budget unit that was allocated Hg allowances under paragraph (b) of this section an amount of Hg allowances equal to the total amount of such remaining unallocated Hg allowances, multiplied by the unit's allocation under paragraph (b) of this section, divided by 95 percent for 2010 through 2014, and 97 percent for 2014 and thereafter, of the amount of ounces (i.e., tons multiplied by 32,000 ounces/ton) of Hg emissions in the applicable State trading budget under §60.4140, and rounded to the nearest whole allowance as appropriate.

Hg Allowance Tracking System

§ 60.4150 [Reserved]

§ 60.4151 Establishment of accounts.

(a) Compliance accounts. Upon receipt of a complete certificate of representation under §60.4113, the Administrator will establish a compliance account for the Hg Budget source for which the certificate of representation was submitted unless the source already has a compliance account.

(b) General accounts.

(1) Application for general account.

(i) Any person may apply to open a general account for the purpose of holding and transferring Hg allowances. An application for a general account may designate one and only one Hg authorized account representative and one and only one alternate Hg authorized account representative who may act on behalf of the Hg authorized account representative. The agreement by which the alternate Hg authorized account representative is selected shall include a procedure for authorizing the alternate Hg authorized account representative to act in lieu of the Hg authorized account representative.

(ii) A complete application for a general account shall be submitted to the Administrator and shall include the following elements in a format prescribed by the Administrator:

(A) Name, mailing address, e-mail address (if any), telephone number, and facsimile transmission number (if any) of the Hg authorized account representative and any alternate Hg authorized account representative;

(B) Organization name and type of organization, if applicable;

(C) A list of all persons subject to a binding agreement for the Hg authorized account representative and any alternate Hg authorized account representative to represent their ownership interest with respect to the Hg allowances held in the general account;

(D) The following certification statement by the Hg authorized account representative and any alternate Hg authorized account representative: "I certify that I was selected as the Hg authorized account representative or the alternate Hg authorized account representative, as applicable, by an agreement that is binding on all persons who have an ownership interest with respect to Hg allowances held in the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the Hg Budget Trading Program on behalf of such persons and that each such person shall be fully bound by my representations, actions, inactions, or submissions and by any order or decision issued to me by the Administrator or a court regarding the general account."

(E) The signature of the Hg authorized account representative and any alternate Hg authorized account representative and the dates signed.

(iii) Unless otherwise required by the permitting authority or the Administrator, documents of agreement referred to in the application for a general account shall not be submitted to the permitting authority or the Administrator. Neither the permitting authority nor the Administrator shall be under any obligation to review or evaluate the sufficiency of such documents, if submitted.

(2) Authorization of Hg authorized account representative.

(i) Upon receipt by the Administrator of a complete application for a general account under paragraph (b)(1) of this section:

(A) The Administrator will establish a general account for the person or persons for whom the application is submitted.

(B) The Hg authorized account representative and any alternate Hg authorized account representative for the general account shall represent and, by his or her representations, actions, inactions, or submissions, legally bind each person who has an ownership interest with respect to Hg allowances held in the general account in all matters pertaining to the Hg Budget Trading Program, notwithstanding any agreement between the Hg authorized account representative or any alternate Hg authorized account representative and such person. Any such person shall be bound by any order or decision issued to the Hg authorized account representative or any alternate Hg authorized account representative by the Administrator or a court regarding the general account.

(C) Any representation, action, inaction, or submission by any alternate Hg authorized account representative shall be deemed to be a representation, action, inaction, or submission by the Hg authorized account representative.

(ii) Each submission concerning the general account shall be submitted, signed, and certified by the Hg authorized account representative or any alternate Hg authorized account representative for the persons having an ownership interest with respect to Hg allowances held in the general account. Each such submission shall include the following certification statement by the Hg authorized account representative or any alternate Hg authorized account representative: "I am authorized to make this submission on behalf of the persons having an ownership interest with respect to the Hg allowances held in the general account. I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(iii) The Administrator will accept or act on a submission concerning the general account only if the submission has been made, signed, and certified in accordance with paragraph (b)(2)(ii) of this section.

(3) Changing Hg authorized account representative and alternate Hg authorized account representative; changes in persons with ownership interest.

(i) The Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(ii) The alternate Hg authorized account representative for a general account may be changed at any time upon receipt by the Administrator of a superseding complete application for a general account under paragraph (b)(1) of this section. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous alternate Hg authorized account representative before the time and date when the Administrator receives the superseding application for a general account shall be binding on the new alternate Hg authorized account representative and the persons with an ownership interest with respect to the Hg allowances in the general account.

(iii) (A) In the event a new person having an ownership interest with respect to Hg allowances in the general account is not included in the list of such persons in the application for a general account, such new person shall be deemed to be subject to and bound by the application for a general account, the representation, actions, inactions, and submissions of the Hg authorized account representative and any alternate Hg authorized account representative of the account, and the decisions and orders of the Administrator or a court, as if the new person were included in such list.

(B) Within 30 days following any change in the persons having an ownership interest with respect to Hg allowances in the general account, including the addition of persons, the Hg authorized account representative or any alternate Hg authorized account representative shall submit a revision to the application for a general account amending the list of persons having an ownership interest with respect to the Hg allowances in the general account to include the change.

(4) Objections concerning Hg authorized account representative.

(i) Once a complete application for a general account under paragraph (b)(1) of this section has been submitted and received, the Administrator will rely on the application unless and until a superseding complete application for a general account under paragraph (b)(1) of this section is received by the Administrator.

(ii) Except as provided in paragraph (b)(3)(i) or (ii) of this section, no objection or other communication submitted to the Administrator concerning the authorization, or any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account shall affect any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative or the finality of any decision or order by the Administrator under the Hg Budget Trading Program.

(iii) The Administrator will not adjudicate any private legal dispute concerning the authorization or any representation, action, inaction, or submission of the Hg authorized account representative or any alternative Hg authorized account representative for a general account, including private legal disputes concerning the proceeds of Hg allowance transfers.

(c) Account identification. The Administrator will assign a unique identifying number to each account established under paragraph (a) or (b) of this section.

§ 60.4152 Responsibilities of Hg authorized account representative.

Following the establishment of a Hg Allowance Tracking System account, all submissions to the Administrator pertaining to the account, including, but not limited to, submissions concerning the deduction or transfer of Hg allowances in the account, shall be made only by the Hg authorized account representative for the account.

§ 60.4153 Recordation of Hg allowance allocations.

(a) By December 1, 2006, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at a source, as submitted by the permitting authority in accordance with §60.4141(a), for the control periods in 2010, 2011, 2012, 2013, and 2014.

(b) By December 1, 2008, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority or as determined by the Administrator in accordance with §60.4141(b), for the control period in 2015.

(c) In 2011 and each year thereafter, after the Administrator has made all deductions (if any) from a Hg Budget source's compliance account under §60.4154, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with §60.4141(b), for the control period in the sixth year after the year of the control period for which such deductions were or could have been made.

(d) By December 1, 2010 and December 1 of each year thereafter, the Administrator will record in the Hg Budget source's compliance account the Hg allowances allocated for the Hg Budget units at the source, as submitted by the permitting authority or determined by the Administrator in accordance with §60.4141(c), for the control period in the year of the applicable deadline for recordation under this paragraph.

(e) Serial numbers for allocated Hg allowances. When recording the allocation of Hg allowances for a Hg Budget unit in a compliance account, the Administrator will assign each Hg allowance a unique identification number that will include digits identifying the year of the control period for which the Hg allowance is allocated.

§ 60.4154 Compliance with Hg budget emissions limitation.

(a) Allowance transfer deadline. The Hg allowances are available to be deducted for compliance with a source's Hg Budget emissions limitation for a control period in a given calendar year only if the Hg allowances:

(1) Were allocated for the control period in the year or a prior year;

(2) Are held in the compliance account as of the allowance transfer deadline for the control period or are transferred into the compliance account by a Hg allowance transfer correctly submitted for recordation under §§60.4160 through 60.4162 by the allowance transfer deadline for the control period; and

(3) Are not necessary for deductions for excess emissions for a prior control period under paragraph (d) of this section.

(b) Deductions for compliance. Following the recordation, in accordance with §§60.4160 through 60.4162, of Hg allowance transfers submitted for recordation in a source's compliance account by the allowance transfer deadline for a control period, the Administrator will deduct from the compliance account Hg allowances available under paragraph (a) of this section in order to determine whether the source meets the Hg Budget emissions limitation for the control period, as follows:

(1) Until the amount of Hg allowances deducted equals the number of ounces of total Hg emissions, determined in accordance with §§60.4170 through 60.4176, from all Hg Budget units at the source for the control period; or

(2) If there are insufficient Hg allowances to complete the deductions in paragraph (b)(1) of this section, until no more Hg allowances available under paragraph (a) of this section remain in the compliance account.

(c) (1) Identification of Hg allowances by serial number. The Hg authorized account representative for a source's compliance account may request that specific Hg allowances, identified by serial number, in the compliance account be deducted for emissions or excess emissions for a control period in accordance with paragraph (b) or (d) of this section. Such request shall be submitted to the Administrator by the allowance transfer deadline for the control period and include, in a format prescribed by the Administrator, the identification of the Hg Budget source and the appropriate serial numbers.

(2) First-in, first-out. The Administrator will deduct Hg allowances under paragraph (b) or (d) of this section from the source's compliance account, in the absence of an identification or in the case

~~of a partial identification of Hg allowances by serial number under paragraph (c)(1) of this section, on a first-in, first-out (FIFO) accounting basis in the following order:~~

~~(i) Any Hg allowances that were allocated to the units at the source, in the order of recordation; and then~~

~~(ii) Any Hg allowances that were allocated to any unit and transferred and recorded in the compliance account pursuant to §§60.4160 through 60.4162, in the order of recordation.~~

~~(d) Deductions for excess emissions.~~

~~(1) After making the deductions for compliance under paragraph (b) of this section for a control period in a calendar year in which the Hg Budget source has excess emissions, the Administrator will deduct from the source's compliance account an amount of Hg allowances, allocated for the control period in the immediately following calendar year, equal to 3 times the number of ounces of the source's excess emissions.~~

~~(2) Any allowance deduction required under paragraph (d)(1) of this section shall not affect the liability of the owners and operators of the Hg Budget source or the Hg Budget units at the source for any fine, penalty, or assessment, or their obligation to comply with any other remedy, for the same violation, as ordered under the Clean Air Act or applicable State law.~~

~~(e) Recordation of deductions. The Administrator will record in the appropriate compliance account all deductions from such an account under paragraph (b) or (d) of this section.~~

~~(f) Administrator's action on submissions.~~

~~(1) The Administrator may review and conduct independent audits concerning any submission under the Hg Budget Trading Program and make appropriate adjustments of the information in the submissions.~~

~~(2) The Administrator may deduct Hg allowances from or transfer Hg allowances to a source's compliance account based on the information in the submissions, as adjusted under paragraph (f)(1) of this section.~~

~~§ 60.4155 Banking.~~

~~(a) Hg allowances may be banked for future use or transfer in a compliance account or a general account in accordance with paragraph (b) of this section.~~

~~(b) Any Hg allowance that is held in a compliance account or a general account will remain in such account unless and until the Hg allowance is deducted or transferred under §60.4154, §60.4156, or §§60.4160 through 60.4162.~~

~~§ 60.4156 Account error.~~

~~The Administrator may, at his or her sole discretion and on his or her own motion, correct any error in any Hg Allowance Tracking System account. Within 10 business days of making such correction, the Administrator will notify the Hg authorized account representative for the account.~~

~~§ 60.4157 Closing of general accounts.~~

~~(a) The Hg authorized account representative of a general account may submit to the Administrator a request to close the account, which shall include a correctly submitted allowance transfer under §60.4160 through 60.4162 for any Hg allowances in the account to one or more other Hg Allowance Tracking System accounts.~~

~~(b) If a general account has no allowance transfers in or out of the account for a 12-month period or longer and does not contain any Hg allowances, the Administrator may notify the Hg authorized account representative for the account that the account will be closed following 20 business days~~

after the notice is sent. The account will be closed after the 20-day period unless, before the end of the 20-day period, the Administrator receives a correctly submitted transfer of Hg allowances into the account under §60.4160 through 60.4162 or a statement submitted by the Hg authorized account representative demonstrating to the satisfaction of the Administrator good cause as to why the account should not be closed.

Hg Allowance Transfers

§ 60.4160 Submission of Hg allowance transfers.

An Hg authorized account representative seeking recordation of a Hg allowance transfer shall submit the transfer to the Administrator. To be considered correctly submitted, the Hg allowance transfer shall include the following elements, in a format specified by the Administrator:

(a) The account numbers for both the transferor and transferee accounts;

(b) The serial number of each Hg allowance that is in the transferor account and is to be transferred; and

(c) The name and signature of the Hg authorized account representative of the transferor account and the date signed.

§ 60.4161 EPA recordation.

(a) Within 5 business days (except as provided in paragraph (b) of this section) of receiving a Hg allowance transfer, the Administrator will record a Hg allowance transfer by moving each Hg allowance from the transferor account to the transferee account as specified by the request, provided that:

(1) The transfer is correctly submitted under §60.4160; and

(2) The transferor account includes each Hg allowance identified by serial number in the transfer.

(b) A Hg allowance transfer that is submitted for recordation after the allowance transfer deadline for a control period and that includes any Hg allowances allocated for any control period before such allowance transfer deadline will not be recorded until after the Administrator completes the deductions under §60.4154 for the control period immediately before such allowance transfer deadline.

(c) Where a Hg allowance transfer submitted for recordation fails to meet the requirements of paragraph (a) of this section, the Administrator will not record such transfer.

§ 60.4162 Notification.

(a) Notification of recordation. Within 5 business days of recordation of a Hg allowance transfer under §60.4161, the Administrator will notify the Hg authorized account representatives of both the transferor and transferee accounts.

(b) Notification of non-recordation. Within 10 business days of receipt of a Hg allowance transfer that fails to meet the requirements of §60.4161(a), the Administrator will notify the Hg authorized account representatives of both accounts subject to the transfer of:

(1) A decision not to record the transfer, and

(2) The reasons for such non-recordation.

(c) Nothing in this section shall preclude the submission of a Hg allowance transfer for recordation following notification of non-recordation.

Monitoring and Reporting

§ 60.4170 General requirements.

~~The owners and operators, and to the extent applicable, the Hg designated representative, of a Hg Budget unit, shall comply with the monitoring, recordkeeping, and reporting requirements as provided in this section, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter. For purposes of complying with such requirements, the definitions in §60.4102 and in §72.2 of this chapter shall apply, and the terms "affected unit," "designated representative," and "continuous emission monitoring system" (or "CEMS") in part 75 of this chapter shall be deemed to refer to the terms "Hg Budget unit," "Hg designated representative," and "continuous emission monitoring system" (or "CEMS") respectively, as defined in §60.4102. The owner or operator of a unit that is not a Hg Budget unit but that is monitored under §75.82(b)(2)(i) of this chapter shall comply with the same monitoring, recordkeeping, and reporting requirements as a Hg Budget unit.~~

~~(a) Requirements for installation, certification, and data accounting. The owner or operator of each Hg Budget unit shall:~~

~~(1) Install all monitoring systems required under this section and §§60.4171 through 60.4176 for monitoring Hg mass emissions and individual unit heat input (including all systems required to monitor Hg concentration, stack gas moisture content, stack gas flow rate, and CO_2 or O_2 concentration, as applicable, in accordance with §§75.81 and 75.82 of this chapter);~~

~~(2) Successfully complete all certification tests required under §60.4171 and meet all other requirements of this section, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter applicable to the monitoring systems under paragraph (a)(1) of this section; and~~

~~(3) Record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section.~~

~~(b) Compliance deadlines. The owner or operator shall meet the monitoring system certification and other requirements of paragraphs (a)(1) and (2) of this section on or before the following dates. The owner or operator shall record, report, and quality-assure the data from the monitoring systems under paragraph (a)(1) of this section on and after the following dates.~~

~~(1) For the owner or operator of a Hg Budget unit that commences commercial operation before July 1, 2008, by January 1, 2009.~~

~~(2) For the owner or operator of a Hg Budget unit that commences commercial operation on or after July 1, 2008, by the later of the following dates:~~

~~(i) January 1, 2009; or~~

~~(ii) 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which the unit commences commercial operation.~~

~~(3) For the owner or operator of a Hg Budget unit for which construction of a new stack or flue or installation of add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system is completed after the applicable deadline under paragraph (b)(1) or (2) of this section, by 90 unit operating days or 180 calendar days, whichever occurs first, after the date on which emissions first exit to the atmosphere through the new stack or flue, add-on Hg emissions controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system.~~

~~(c) Reporting data.~~

~~(1) Except as provided in paragraph (c)(2) of this section, the owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in paragraph (b) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report maximum potential (or, as appropriate, minimum potential) values for Hg concentration, stack gas flow rate, stack gas moisture content, and any~~

~~other parameters required to determine Hg mass emissions and heat input in accordance with §75.80(g) of this chapter.~~

~~(2) The owner or operator of a Hg Budget unit that does not meet the applicable compliance date set forth in paragraph (b)(3) of this section for any monitoring system under paragraph (a)(1) of this section shall, for each such monitoring system, determine, record, and report substitute data using the applicable missing data procedures in subpart D of part 75 of this chapter, in lieu of the maximum potential (or, as appropriate, minimum potential) values, for a parameter if the owner or operator demonstrates that there is continuity between the data streams for that parameter before and after the construction or installation under paragraph (b)(3) of this section.~~

~~(d) Prohibitions.~~

~~(1) No owner or operator of a Hg Budget unit shall use any alternative monitoring system, alternative reference method, or any other alternative to any requirement of this section and §§60.4171 through 60.4176 without having obtained prior written approval in accordance with §60.4175.~~

~~(2) No owner or operator of a Hg Budget unit shall operate the unit so as to discharge, or allow to be discharged, Hg emissions to the atmosphere without accounting for all such emissions in accordance with the applicable provisions of this section, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter.~~

~~(3) No owner or operator of a Hg Budget unit shall disrupt the continuous emission monitoring system, any portion thereof, or any other approved emission monitoring method, and thereby avoid monitoring and recording Hg mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this section, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter.~~

~~(4) No owner or operator of a Hg Budget unit shall retire or permanently discontinue use of the continuous emission monitoring system, any component thereof, or any other approved monitoring system under this subpart, except under any one of the following circumstances:~~

~~(i) During the period that the unit is covered by an exemption under §60.4105 that is in effect;~~

~~(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring system approved, in accordance with the applicable provisions of this section, §§60.4171 through 60.4176, and subpart I of part 75 of this chapter, by the permitting authority for use at that unit that provides emission data for the same pollutant or parameter as the retired or discontinued monitoring system; or~~

~~(iii) The Hg designated representative submits notification of the date of certification testing of a replacement monitoring system for the retired or discontinued monitoring system in accordance with §60.4171(c)(3)(i).~~

~~§ 60.4171 Initial certification and recertification procedures.~~

~~(a) The owner or operator of a Hg Budget unit shall be exempt from the initial certification requirements of this section for a monitoring system under §60.4170(a)(1) if the following conditions are met:~~

~~(1) The monitoring system has been previously certified in accordance with part 75 of this chapter; and~~

~~(2) The applicable quality-assurance and quality-control requirements of §75.21 of this chapter and appendix B to part 75 of this chapter are fully met for the certified monitoring system described in paragraph (a)(1) of this section.~~

(b) The recertification provisions of this section shall apply to a monitoring system under §60.4170(a)(1) exempt from initial certification requirements under paragraph (a) of this section.

(c) Except as provided in paragraph (a) of this section, the owner or operator of a Hg Budget unit shall comply with the following initial certification and recertification procedures for a continuous monitoring system (e.g., a continuous emission monitoring system and an excepted monitoring system (sorbent trap monitoring system) under §75.15) under §60.4170(a)(1). The owner or operator of a unit that qualifies to use the Hg low mass emissions excepted monitoring methodology under §75.81(b) of this chapter or that qualifies to use an alternative monitoring system under subpart E of part 75 of this chapter shall comply with the procedures in paragraph (d) or (e) of this section respectively.

(1) Requirements for initial certification. The owner or operator shall ensure that each monitoring system under §60.4170(a)(1) (including the automated data acquisition and handling system) successfully completes all of the initial certification testing required under §75.20 of this chapter by the applicable deadline in §60.4170(b). In addition, whenever the owner or operator installs a monitoring system to meet the requirements of this subpart in a location where no such monitoring system was previously installed, initial certification in accordance with §75.20 of this chapter is required.

(2) Requirements for recertification. Whenever the owner or operator makes a replacement, modification, or change in any certified continuous emission monitoring system, or an excepted monitoring system (sorbent trap monitoring system) under §75.15, under §60.4170(a)(1) that may significantly affect the ability of the system to accurately measure or record Hg mass emissions or heat input rate or to meet the quality-assurance and quality-control requirements of §75.21 of this chapter or appendix B to part 75 of this chapter, the owner or operator shall recertify the monitoring system in accordance with §75.20(b) of this chapter. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit's operation that may significantly change the stack flow or concentration profile, the owner or operator shall recertify each continuous emission monitoring system, and each excepted monitoring system (sorbent trap monitoring system) under §75.15, whose accuracy is potentially affected by the change, in accordance with §75.20(b) of this chapter. Examples of changes to a continuous emission monitoring system that require recertification include replacement of the analyzer, complete replacement of an existing continuous emission monitoring system, or change in location or orientation of the sampling probe or site.

(3) Approval process for initial certification and recertification. Paragraphs (c)(3)(i) through (iv) of this section apply to both initial certification and recertification of a continuous monitoring system under §60.4170(a)(1). For recertifications, apply the word "recertification" instead of the words "certification" and "initial certification" and apply the word "recertified" instead of the word "certified," and follow the procedures in §75.20(b)(5) of this chapter in lieu of the procedures in paragraph (c)(3)(v) of this section.

(i) Notification of certification. The Hg designated representative shall submit to the permitting authority, the appropriate EPA Regional Office, and the Administrator written notice of the dates of certification testing, in accordance with §60.4173.

(ii) Certification application. The Hg designated representative shall submit to the permitting authority a certification application for each monitoring system. A complete certification application shall include the information specified in §75.63 of this chapter.

(iii) Provisional certification date. The provisional certification date for a monitoring system shall be determined in accordance with §75.20(a)(3) of this chapter. A provisionally certified monitoring system may be used under the Hg Budget Trading Program for a period not to exceed 120 days after receipt by the permitting authority of the complete certification application for the monitoring system under paragraph (c)(3)(ii) of this section. Data measured and recorded by the provisionally certified monitoring system, in accordance with the requirements of part 75 of this chapter, will be considered valid quality-assured data (retroactive to the date and time of provisional certification), provided that the permitting authority does not invalidate the provisional certification by

~~issuing a notice of disapproval within 120 days of the date of receipt of the complete certification application by the permitting authority.~~

~~(iv) Certification application approval process. The permitting authority will issue a written notice of approval or disapproval of the certification application to the owner or operator within 120 days of receipt of the complete certification application under paragraph (c)(3)(ii) of this section. In the event the permitting authority does not issue such a notice within such 120-day period, each monitoring system that meets the applicable performance requirements of part 75 of this chapter and is included in the certification application will be deemed certified for use under the Hg Budget Trading Program.~~

~~(A) Approval notice. If the certification application is complete and shows that each monitoring system meets the applicable performance requirements of part 75 of this chapter, then the permitting authority will issue a written notice of approval of the certification application within 120 days of receipt.~~

~~(B) Incomplete application notice. If the certification application is not complete, then the permitting authority will issue a written notice of incompleteness that sets a reasonable date by which the Hg designated representative must submit the additional information required to complete the certification application. If the Hg designated representative does not comply with the notice of incompleteness by the specified date, then the permitting authority may issue a notice of disapproval under paragraph (c)(3)(iv)(C) of this section. The 120-day review period shall not begin before receipt of a complete certification application.~~

~~(C) Disapproval notice. If the certification application shows that any monitoring system does not meet the performance requirements of part 75 of this chapter or if the certification application is incomplete and the requirement for disapproval under paragraph (c)(3)(iv)(B) of this section is met, then the permitting authority will issue a written notice of disapproval of the certification application. Upon issuance of such notice of disapproval, the provisional certification is invalidated by the permitting authority and the data measured and recorded by each uncertified monitoring system shall not be considered valid quality-assured data beginning with the date and hour of provisional certification (as defined under §75.20(a)(3) of this chapter). The owner or operator shall follow the procedures for loss of certification in paragraph (c)(3)(v) of this section for each monitoring system that is disapproved for initial certification.~~

~~(D) Audit decertification. The permitting authority may issue a notice of disapproval of the certification status of a monitor in accordance with §60.4172(b).~~

~~(v) Procedures for loss of certification. If the permitting authority issues a notice of disapproval of a certification application under paragraph (c)(3)(iv)(C) of this section or a notice of disapproval of certification status under paragraph (c)(3)(iv)(D) of this section, then:~~

~~(A) The owner or operator shall substitute the following values, for each disapproved monitoring system, for each hour of unit operation during the period of invalid data specified under §75.20(a)(4)(iii), or §75.21(e) of this chapter and continuing until the applicable date and hour specified under §75.20(a)(5)(i) of this chapter:~~

~~(1) For a disapproved Hg pollutant concentration monitors and disapproved flow monitor, respectively, the maximum potential concentration of Hg and the maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to part 75 of this chapter; and~~

~~(2) For a disapproved moisture monitoring system and disapproved diluent gas monitoring system, respectively, the minimum potential moisture percentage and either the maximum potential CO_2 concentration or the minimum~~

potential O_2 concentration (as applicable), as defined in sections 2.1.5, 2.1.3.1, and 2.1.3.2 of appendix A to part 75 of this chapter.

(3) For a disapproved excepted monitoring system (sorbent trap monitoring system) under §75.15 and disapproved flow monitor, respectively, the maximum potential concentration of Hg and maximum potential flow rate, as defined in sections 2.1.7.1 and 2.1.4.1 of appendix A to part 75 of this chapter.

(B) The Hg designated representative shall submit a notification of certification retest dates and a new certification application in accordance with paragraphs (c)(3)(i) and (ii) of this section.

(C) The owner or operator shall repeat all certification tests or other requirements that were failed by the monitoring system, as indicated in the permitting authority's notice of disapproval, no later than 30 unit operating days after the date of issuance of the notice of disapproval.

(d) Initial certification and recertification procedures for units using the Hg low mass emission excepted methodology under §75.81(b) of this chapter. The owner or operator of a unit qualified to use the Hg low mass emissions (HgLME) excepted methodology under §75.81(b) of this chapter shall meet the applicable certification and recertification requirements in §75.81(c) through (f) of this chapter.

(e) Certification/recertification procedures for alternative monitoring systems. The Hg designated representative of each unit for which the owner or operator intends to use an alternative monitoring system approved by the Administrator and, if applicable, the permitting authority under subpart E of part 75 of this chapter shall comply with the applicable notification and application procedures of §75.20(f) of this chapter.

§ 60.4172 Out of control periods.

(a) Whenever any monitoring system fails to meet the quality-assurance and quality-control requirements or data validation requirements of part 75 of this chapter, data shall be substituted using the applicable missing data procedures in subpart D of part 75 of this chapter.

(b) Audit decertification. Whenever both an audit of a monitoring system and a review of the initial certification or recertification application reveal that any monitoring system should not have been certified or recertified because it did not meet a particular performance specification or other requirement under §60.4171 or the applicable provisions of part 75 of this chapter, both at the time of the initial certification or recertification application submission and at the time of the audit, the permitting authority will issue a notice of disapproval of the certification status of such monitoring system. For the purposes of this paragraph, an audit shall be either a field audit or an audit of any information submitted to the permitting authority or the Administrator. By issuing the notice of disapproval, the permitting authority revokes prospectively the certification status of the monitoring system. The data measured and recorded by the monitoring system shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the owner or operator completes subsequently approved initial certification or recertification tests for the monitoring system. The owner or operator shall follow the applicable initial certification or recertification procedures in §60.4171 for each disapproved monitoring system.

§ 60.4173 Notifications.

The Hg designated representative for a Hg Budget unit shall submit written notice to the permitting authority and the Administrator in accordance with §75.61 of this chapter, except that if the unit is not subject to an Acid Rain emissions limitation, the notification is only required to be sent to the permitting authority.

§ 60.4174 Recordkeeping and reporting.

(a) General provisions.

(1) The Hg designated representative shall comply with all recordkeeping and reporting requirements in this section and the requirements of §60.4110(e)(1).

(2) If a Hg Budget unit is subject to an Acid Rain emission limitation or the CAIR NO_x Annual Trading Program, CAIR SO_2 Trading Program, or CAIR NO_x Ozone Season Trading Program, and the Hg designated representative who signed and certified any submission that is made under subpart F or G of part 75 of this chapter and that includes data and information required under this section, §§60.4170 through 60.4173, §60.4175, §60.4176, or subpart I of part 75 of this chapter is not the same person as the designated representative or alternative designated representative, or the CAIR designated representative or alternate CAIR designated representative, for the unit under part 72 of this chapter and the CAIR NO_x Annual Trading Program, CAIR SO_2 Trading Program, or CAIR NO_x Ozone Season Trading Program, then the submission must also be signed by the designated representative or alternative designated representative, or the CAIR designated representative or alternate CAIR designated representative, as applicable.

(b) Monitoring plans. The owner or operator of a Hg Budget unit shall comply with requirements of §75.84(e) of this chapter.

(c) Certification applications. The Hg designated representative shall submit an application to the permitting authority within 45 days after completing all initial certification or recertification tests required under §60.4171, including the information required under §75.63 of this chapter.

(d) Quarterly reports. The Hg designated representative shall submit quarterly reports, as follows:

(1) The Hg designated representative shall report the Hg mass emissions data and heat input data for the Hg Budget unit, in an electronic quarterly report in a format prescribed by the Administrator, for each calendar quarter beginning with:

(i) For a unit that commences commercial operation before July 1, 2008, the calendar quarter covering January 1, 2009 through March 31, 2009; or

(ii) For a unit that commences commercial operation on or after July 1, 2008, the calendar quarter corresponding to the earlier of the date of provisional certification or the applicable deadline for initial certification under §60.4170(b), unless that quarter is the third or fourth quarter of 2008, in which case reporting shall commence in the quarter covering January 1, 2009 through March 31, 2009.

(2) The Hg designated representative shall submit each quarterly report to the Administrator within 30 days following the end of the calendar quarter covered by the report. Quarterly reports shall be submitted in the manner specified in §75.84(f) of this chapter.

(3) For Hg Budget units that are also subject to an Acid Rain emissions limitation or the CAIR NO_x Annual Trading Program, CAIR SO_2 Trading Program, or CAIR NO_x Ozone Season Trading Program, quarterly reports shall include the applicable data and information required by subparts F through H of part 75 of this chapter as applicable, in addition to the Hg mass emission data, heat input data, and other information required by this section, §§60.4170 through 60.4173, §60.4175, and §60.4176.

(e) Compliance certification. The Hg designated representative shall submit to the Administrator a compliance certification (in a format prescribed by the Administrator) in support of each quarterly report based on reasonable inquiry of those persons with primary responsibility for ensuring that all of the unit's emissions are correctly and fully monitored. The certification shall state that:

(1) The monitoring data submitted were recorded in accordance with the applicable requirements of this section, §§60.4170 through 60.4173, §60.4175, §60.4176, and part 75 of this chapter, including the quality assurance procedures and specifications; and

(2) For a unit with add-on Hg emission controls, a flue gas desulfurization system, a selective catalytic reduction system, or a compact hybrid particulate collector system and for all hours

~~where Hg data are substituted in accordance with §75.34(a)(1) of this chapter, the Hg add-on emission controls, flue gas desulfurization system, selective catalytic reduction system, or compact hybrid particulate collector system were operating within the range of parameters listed in the quality assurance/quality control program under appendix B to part 75 of this chapter, or quality-assured SO_2 emission data recorded in accordance with part 75 of this chapter document that the flue gas desulfurization system, or quality-assured NO_x emission data recorded in accordance with part 75 of this chapter document that the selective catalytic reduction system, was operating properly, as applicable, and the substitute data values do not systematically underestimate Hg emissions.~~

~~§ 60.4175 Petitions.~~

~~The Hg designated representative of a Hg unit may submit a petition under §75.66 of this chapter to the Administrator requesting approval to apply an alternative to any requirement of §§60.4170 through 60.4174 and §60.4176. Application of an alternative to any requirement of §§60.4170 through 60.4174 and §60.4176 is in accordance with this section and §§60.4170 through 60.4174 and §60.4176 only to the extent that the petition is approved in writing by the Administrator, in consultation with the permitting authority.~~

~~§ 60.4176 Additional requirements to provide heat input data.~~

~~The owner or operator of a Hg Budget unit that monitors and reports Hg mass emissions using a Hg concentration monitoring system and a flow monitoring system shall also monitor and report heat input rate at the unit level using the procedures set forth in part 75 of this chapter.~~

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Michael Atchison	X				
Dr. J. Ronald Bailey	X				
Elaine Boyd	X				
Dr. Brian W.Christman				X	
Dr. Wayne T. Davis	X				
Dr. Mary English				X	
Stephen R. Gossett				X	
Mayor Tommy Green				X	
Dr. Shawn A. Hawkins	X				
Helen Hennon				X	
Richard M. Holland	X				
John Roberts	X				
Mayor Larry Waters	X				
Alicia M. Wilson				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Air Pollution Control Board on 08/08/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:** Environment and Conservation

DIVISION: Solid Waste Management

SUBJECT: Solid Waste Planning

STATUTORY AUTHORITY: Tennessee Code Annotated, Section 68-211-101 et seq.

EFFECTIVE DATES: January 8, 2013 through June 30, 2013

FISCAL IMPACT: Minimal

STAFF RULE ABSTRACT:

The agency reports that the majority of changes made by these rules are housekeeping in nature.

This rule requires the state to update its existing solid waste plan to address new technologies and serve as a framework for the local solid waste regions' updated solid waste plans. This framework describes the parts of the plan and takes into account changes in statutory requirements for the regions' solid waste plan contents (i.e., disaster debris management plan) and the inclusion of existing statutory language into the rule. The statewide solid waste plan addresses content for updates, revisions, and progress reports for the solid waste regions.

Changes also address the solid waste planning process, including timelines, technical and financial assistance to develop, and content.

This rule includes a plan to eliminate county public collection receptacles (green box) sites in annual progress reports.

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: Justification for the rule changes.
Identify how the proposed changes will benefit municipalities and other affected parties. Identify problems within the existing rules governing solid waste disposal. Identify remedies/solution to these problems that proposed rules correct, simplify, or save money.

Response: As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics. The proposed changes to this rule are housekeeping in nature and provide little change to the current policy, rules and existing statutory requirements. It harmonizes language from the law with the rule by taking existing statutory requirement language and placing it verbatim into the proposed rule amendment.

Benefits come to affected parties though clarification of language-revisions to the existing listing of waste reduction methodologies to include newer technologies used by local governments and regions to allow them to receive waste reduction credit for these activities. It further protects local governments by establishing methods that will evaluate new technologies that may be misleading and costly to uninformed local governments, thereby protecting them.

Other benefits for all local governments include inclusion of disaster debris management components in their solid waste plan that will assist local governments in receiving additional financial credit with FEMA and TEMA in the event of a disaster through their PA325 programs saving local governments millions of dollars, time and resources.

The Waste Reduction Task Force of 2008 identified deficiencies in the existing solid waste systems across the state. Their findings can be located at www.tn.gov/environment/swm/prwr under the Task Force Archives. The Waste Reduction Task Force further identified practical, essential solutions that the regions should implement. These solutions would further increase the opportunity for job creation, increase the tax base and improve the statewide personal income based on findings published and substantiated by several organizations and researched by the College of Charleston.

Comment: Cost of Implementation:
Produce a true cost benefit analysis that examines the cost of land filling vs. cost associated with these proposed rules. Identify any possible expenses that municipalities will incur as a result of compliance with these rules. Identify funding sources intended to offset the cost of implementing these rules.

Response: This rule and the proposed amendment do not require any additional actions or costs on the part of municipalities.

If a municipality chooses to prepare a solid waste plan, the cost for writing this optional plan would be based on the current market rate. The Department provides grants to the local development districts to provide services to the local governments in preparing solid waste plans.

The region, to which a municipality is a part and has representation on their solid waste board, may at its discretion, revise their solid waste plan at any time (as is currently the case). The region's new solid waste plan will dictate new responsibilities and/or processes that all the local governments agree to and approve to implement. The costs of these activities would be known to the region and should be addressed at the specific local level of that region during that process. Activities implemented would be based on availability of local resources including staffing, infrastructure and funding.

No additional funding sources have been identified as this rule does not substantially change the existing circumstances. No major additional expenditures are expected directly relating to this amendment.

Comment: Definition of Municipal Solid Waste:
Your definition of municipal solid waste should include yard waste.

Response: The Department is not currently revising the definition portion of the regulations found at Rule 0400-11-01-.01(2) which reflects the definition of solid waste defined in the statute. Yard waste is considered as landscaping waste and may be disposed in a Class I or Class III landfill.

Comment: TCA 68-211-803 (a) Reference:
These regulations are based on TCA 68-211-800, et al, yet TCA 68-211-803 (a) policy mandates the consideration of health, environment, and job creation. Not only do these regulations not consider the policy, they further poor data capturing by creating more loopholes which allow reports falsely demonstrate improving conditions.

Response: This rule does consider the provisions of the Act. This rule amendment is predominately housekeeping in nature and does not substantially change any existing reporting requirements. Changes to data collection is not included in this rule package.

Comment: Increase of Diversion Rate:
The solid waste board should more thoroughly consider increasing the required diversion rate. They can also assist in helping counties increase their diversion in localized and innovative ways, not just merely report. The increased diversion rate should be incremental and target the 10 largest counties which have 50% of the population. We should start with construction waste recycling and compost food waste, yard waste, and non-recycled paper.

Response: The goal is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

Comment: Rule Title:
It is very misleading to call these "Solid Waste Reduction Regulation." There is nothing in the regulations that will facilitate recycling, composting, or any method of solid waste reduction. This is a serious concern with these regulations. Decision makers and citizens must not be misled into thinking there is a program for reducing solid waste when there is not.

Response: The title of this rule will be revised from "Waste Disposal Reduction" to "Waste Reduction and Planning'. The asserted title is not applied to this rule under revision.

Comment: Diversion Goal:
It is clear that counting and reports are the primary concerns of these regulations and the statute.

A. Credit for landfilled construction waste as recycled, three different ways to count local reports, and ten (10) different base years create a loop-hole riddled system.

B. I am associated with Bio-Cycle Magazine. The October 2010 Bio-Cycle Magazine and Columbia University Bi-Annual Waste Survey determined that Tennessee diverted 4.64% waste and ranked 7th from the bottom among states. Tennessee apparently claims nearly 50% diversion counting landfilled construction waste.

This lack of uniformity is an obvious problem. How many local governments claim 50% waste diversion? How have numbers been verified?

Response: The goal itself is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

The data used by Bio-Cycle Magazine is provided by the Department and is the same information used to determine compliance with the current goal. The Department has no control over how information is interpreted or analyzed by third party groups that may use other defined standards.

Comment: Landfill Capacity:
Identify the permit status, landfill capacity, and location of available landfills in the state.

Response: This rule does not specifically address these issues; however, specific questions regarding the status of facility permits, landfill capacity and the availability of landfills should be directed to the Division of Solid Waste Management Permitting Section.

Comment: 0400-11-01-.09(1)(a):
Why is the base year 2003? Why is there a base year? TDEC should count solid waste generated, recycled, composted, and landfilled. If regions submit other information to comply with statutes, that is fine.

Response: 1995 is the base year set by the Solid Waste Management Act of 1991 to determine waste reduction and diversion efforts. 2003 is the year in which the solid waste regions were required to achieve the 25% waste reduction and diversion goal. The goal allows for all material diverted or reduced including recycling, composting to count towards achievement of the goal. Legislation made the goal ongoing.

Comment: 0400-11-01-.09(1)(a):
The use of multiple base years at the discretion of the local government is unwarranted. Solid waste is governed by the State. How can any reliable numbers be developed with multiple ways of counting waste and multiple base years ranging from 1995 to 1985? All of these numbers are exceedingly unworkable.

Response: The Solid Waste Management Act of 1991 and its subsequent amendments set the method by which the goal is measured. The 2007 amendment allows for the goal to be set by rule, but to date a new goal has not been successfully promulgated so the existing 25% waste reduction and diversion goal and methodology is retained.

Comment: 0400-11-01-.09(2)(a):
This paragraph identifies the "State Solid Waste Plan" versus subparagraph (3)(a) identifies the "Comprehensive Integrated Municipal Solid Waste Plan". What is the difference between the two plans? If there is no difference, why identify each plan differently? Why not combine the two subparagraphs to be more clear and concise on the Department's "Plan"?

Response: There is no difference. The language will be revised to reflect this. The two subparagraphs serve two separate purposes. (2)(a) describes how the plan is used for the purpose of waste reduction. (3)(a) describes in detail the requirements for the plan and incorporates statutory language from the Solid Waste Management Act of 1991 into the rule to establish regulatory harmony between the two documents.

Comment: 0400-11-01-.09(2)(a):
We are concerned about the lack of input from counties and solid waste regions in the formation of a statewide solid waste plan that must later be implemented by counties/regions. We request that the rule provide that any proposed plan must be approved by an ad hoc committee of local representatives before being adopted. Additionally, we request that the rule provide that any proposed waste reduction/recycling practices, best management practices, and hierarchy of waste reduction methodologies shall not be adopted until a full projected fiscal impact is prepared and included. Also, we request the rule state – since there are many factors that change the feasibility of different approaches among counties – that no practice shall be mandated if the costs outweigh the benefits in a particular region.

Response: The Department is preparing a Request For Proposal (RFP) seeking a contractor to develop the Statewide Comprehensive Solid Waste Management Plan (The Plan). Within the scope of services, the chosen contractor will conduct four public meetings across the state prior to starting development of The Plan to set direction and focus for The Plan. Additional public meetings will

be conducted once a draft of The Plan is nearing completion for statewide feedback on the project. This will provide all local governments across the state, as well as the citizenry and industries, to provide valuable input in The Plan's development.

As part of the best management practices in The Plan, we will request that the contractor provide projected fiscal impact statements based on implementation and include expected operation, revenue and expenditures.

Best management practices will not be mandated through The Plan but will serve as a resource for local governments to develop and choose best fit strategies in their ongoing operations for their local solid waste programs to achieve the current waste reduction and diversion goal. Assessment of costs, successes, and use of the practices will be determined at the local level.

Comment: 0400-11-01-.09(2)(a) State Solid Waste Plan:
As written, this section does not provide for input from local governments regarding the development of the state's solid waste plan. Since municipalities must implement the provisions of this plan, they should have a seat at the table. We request that the rule be redrafted to include input from local governments, specifically that an ad hoc committee of local government officials be established to review and approve any proposed plans or rules regarding the state solid waste plan, best management practices, or preferred waste reduction hierarchy prior to adoption by the UST/SWDCB. Geographic diversity and population should be considered when selecting the members of this committee.

Response: The Department is preparing a Request For Proposal (RFP) seeking a contractor to develop the Statewide Comprehensive Solid Waste Management Plan (The Plan). Within the scope of services, the chosen contractor will conduct four public meetings across the state prior to starting development of The Plan to set direction and focus for The Plan. Additional public meetings will be conducted once a draft of The Plan is nearing completion for statewide feedback on the project. This will provide all local governments across the state, as well as the citizenry and industries, to provide valuable input in The Plan's development.

Comment: 0400-11-01-.09(2)(a)2:
TDEC will control and prepare local waste reduction plans and practices. Where is the local input and funding?

Response: All local waste reduction plans are governed by, developed and approved by the solid waste planning region's board. The State reviews the local solid waste plans approved by the local solid waste boards. The local solid waste boards are required by the Solid Waste Management Act of 1991 to provide a public hearing for the general public and the region's stakeholders on any proposed solid waste plan, changes and amendments to the plan prior to approval.

The State of Tennessee currently contracts with the Development Districts to assist solid waste planning across the state for local governments.

Comment: 0400-11-01-.09(2)(a)3: Preferred Waste Reduction Hierarchy:
The proposal states that the Department will prepare a preferred hierarchy of waste reduction methodologies and that such hierarchy shall be considered for determining qualitative equivalence in regional and local government solid waste programs. The Department has indicated that the "hierarchy" will simply be a list of available methodologies to meet the waste reduction goal. We suggest that the term "hierarchy" be replaced with "options" so that regions may utilize the method that is best for their community.

Response: The suggested wording change was made in this part.

Comment: 0400-11-01-.09(2)(a)3:
Are we going to receive partial credit based on the hierarchy? If we're using the forced preferred method are we going to get 25% if what we actually recycled or whatever method we're talking about?

Response: The local solid waste plan as approved by the region determines which practices are used to meet the 25% waste reduction and diversion goal. The current goal is based on reducing the amount of waste going to municipal solid waste landfills by 25%. The hierarchy will only establish the preferred order of waste reduction in much the same way as EPA's waste hierarchy. The region will establish their methodologies of waste reduction based upon available systems, cost, geography, population, etc. Successful implementation of the region's plan will accomplish the goal of directing a minimum of 25% of materials generated away from municipal solid waste landfills.

Comment: 0400-11-01-.09(2)(a)3:
TDEC will determine the hierarchy of waste reduction methodologies and control which recycling or diversion programs local governments will implement. Where is the local input?

Response: The State does not control which recycling or diversion programs local governments implement as this responsibility is the local solid waste region's role. The statewide "Plan" will define very broad, general, widespread and well accepted, existing practices and standards within the solid waste and recycling industry that the local solid waste regions may select and implement based on local conditions to help them achieve the goal. Solid waste planning regions will conduct public hearings to obtain local input from government entities, citizens and industry.

Comment: 0400-11-01-.09(2)(a)3:
By statute the policy is repeatedly stated in writing that policy of the State is to recycle first and that includes composting. (Policy of Solid Waste Act of 1991, TCA 68-211-101) If this is the policy why not implement it now. Why does TDEC have to determine the hierarchy of waste disposal?

Response: The policies of the Solid Waste Management Act of 1991 are currently implemented, reassessed and re-implemented as needed to fulfill the purpose of the Act. Recycling and composting are just two aspects of the waste reduction practices used to effectuate the Act. Local governments may choose from these and other practices to meet their goal. Since material management is locally implemented, it is the local government's choice of which programs to implement to meet the goal based on their solid waste plan along with availability of local resources including infrastructure, staffing and funding.

Comment: 0400-11-01-.09(2)(b):
It appears that the proposed rules simply retain the current universal twenty-five percent (25%) goal while making it more difficult for regions to reach the goal (e.g., eliminating diversion to Class III or Class IV disposal facilities). The General Assembly provided the following guidelines to the board for the construction of the new rule:

'The general assembly recognizes that the ways in which solid waste is generated and managed are very dynamic. The opportunities for recycling and for reduction of waste generated change with both market factors and technological developments. These in turn, affect the costs of solid waste management and recycling. Also there are many factors that change the feasibility of different approaches among the counties, in addition to population and amount of commercial and industrial activity; these include proximity to markets for recyclable materials and the solid waste activities of municipalities. In order to better address all of these changing circumstances, the solid waste disposal control board is authorized to adopt a rule promoting recycling and waste reduction. In so doing, the board shall consider the use of incentives, disincentives, public education, costs and benefits of recycling, and the widely varying circumstances of the different solid waste regions. Upon the effective date of such rule, the provisions of subsection (a) through (f) of this section, § 68-211-861, will be repealed and of no further force and effect and the rule will be enforceable according to its terms and in accordance with § 68-211-816.'

2007 Public Chapter 462, Section 13 (emphasis added). Retaining the current universal twenty-five percent (25%) goal while making it more difficult for regions to reach the goal does not appear to comply with the General Assembly's mandate.

Response: The 25% waste reduction and diversion goal is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is implementing the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

Comment: 0400-11-01-.09(2)(b) Regarding Waste Reduction Methods:
The proposed rule retains the current universal twenty-five percent (25%) goal while making it more difficult for regions to reach the goal (e.g., eliminating diversion to Class III or Class IV disposal facilities). A "blanket" goal does not take into account many factors that affect a region's ability to achieve this goal such as population, geographic diversity, industrial activity, proximity to markets for recyclable materials, and fuel cost. The Department should develop a formula that takes these factors into consideration when determining the waste reduction goal for a particular region.

Response: This rule package does not change Tennessee's 25% waste reduction and diversion goal. Also, all material that is directed away from municipal solid waste (Class I) landfills is counted towards meeting the goal. The rule does not change this. Material going to a Class III or IV landfill would still help the region meet the 25% waste reduction and diversion goal. Methodologies for calculating a region's accomplishment toward achieving the goal have not changed.

Comment: 0400-11-01-.09(2)(b)1:
If landfill bans are a part of the state plan, then are the counties and the people that are required to carry this out, are we then required to implement these bans?

Response: The inclusion of Landfill Bans in this rule as a waste reduction method is only to give credit for local governments that choose to implement local landfill bans as a method towards meeting their waste reduction goal. Landfill bans while considered as a method of waste reduction does not imply any current or future statewide bans such as the current bans on whole tires, used oil, etc.

Comment: 0400-11-01-.09(2)(b)1:
Landfill Bans. Identify the costs associated with implementing landfill bans.

Response: The inclusion of Landfill Bans in this rule as an acceptable waste reduction method does not require any region to implement a landfill ban. As conditions and infrastructure are different for all local governments and regions across the State, it is incumbent upon those agencies to determine the costs and effectiveness of any waste reduction methodology verses expected outcome in the implementation of a locally enacted landfill ban before establishing one.

Comment: 0400-11-01-.09(2)(b)1:
Nashville started landfill bans and as a private company I'm trying to understand how I'm going to comply with that for cardboard, electronics and yard waste. But nobody in Davidson County will tell me how it's going to be enforced. Nobody in the city or state can tell me how it's going to be enforced. Are they going to do an audit of my trucks and fine me or are they going to go into the transfer station and find out. Or are they going out to the landfill for the last six months of material dumps. So for the landfill bans in the rule, I encourage a well thought out plan to the cities and counties.

Response: The Nashville landfill ban is a local issue, and as such, the Department is unable to comment on the specific issues raised. The inclusion of landfill bans as a waste reduction method in this rule only acknowledges that the solid waste regions may use bans as a waste reduction method to help them toward achieving the 25% waste reduction and diversion goal. The extent of Implementation and enforcement would be determined at the local level.

Comment: 0400-11-01-.09(2)(b)2:
Right now in the re-Trac system, the Class III/IV waste is being counted in the total disposed amount, but it is also then part of the diverted amount. In the proposed rules, it would be part of the diverted amount, but is it still going to count as a disposed amount? If so, it would make it impossible for our regions to meet the 25% goal by any means. Or is it only Class I waste that will be counted in the solid waste disposal numbers?

Response: Only Class I waste is counted in the disposal numbers and used in calculating a region's accomplishment toward the 25% waste reduction and diversion goal.

Comment: 0400-11-01-.09(2)(b)2: Waste Reduction Methods:
Material being disposed of in Class 3 and 4 landfill will be counted as waste going into a Class I landfill. The 1991 Solid Waste Management Act, Amended, provides for construction/demolition waste going into a Class 3/4 Landfill not be classified as Municipal Solid Waste going into a Class I Landfill. This would need legislative amendment, not rulemaking, as it is current Tennessee Code.

Response: Materials disposed of in a Class III/IV landfill will not be counted as Class I disposal. Diverting this material away from the Class I landfill would help the region achieve the 25% waste reduction and diversion goal. The 2007 amendments authorize a new goal to be set by rule and the measurements toward the goal.

Comment: 0400-11-01-.09(2)(b)2:
Only a portion of mulched material diverted from Class I Landfills counts towards materials diverted from Class I Landfills. Why would not all material being diverted count towards diversion? Will other materials that are being completely diverted be added to this list of only receiving partial credit reduction?

Response: Any material that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. Materials must be successfully marketed and not landfilled.

Comment: 0400-11-01-.09(2)(b)2:
Tennessee is the only state that counts landfilled construction waste as diverted or recycled. I do not understand how this is useful. The proposed Rule continues to exclude this waste by applying the 25% only to waste formerly landfilled in Class I landfills. This creates an artificial incentive to landfill construction waste that is actually the most plentiful and easiest material to recycle. Recycling C & D creates 10 times as many jobs as landfill disposal. I do not understand the goal or the purpose of making recycling confusing to the public and businesses.

Response: This rule package does not change the existing 25% waste reduction and diversion goal or how material is counted toward the goal. We agree that recycling promotes job creation and sustaining those jobs. Studies also show that recycling further increases the tax base by over $3,000 for every 1,000 tons recycled and improves personal revenue across the state.

Comment: 0400-11-01-.09(2)(b)2:
In my opinion, with a properly backed plan in place, including rules and regulations making jobsite waste recycling more attractive, private industry could and should be able to take on up to 80% of construction waste for recycling. Private industry could and should, with a little nudge from our governmental institutions, take care of this problem in a profitable and environmentally friendly way. Last, but not least, I feel that much greater emphasis needs to be put on the recycling of waste from existing homes and businesses.

Response: Construction and demolition waste recycling is a component of any waste reduction and diversion goal. Local governments have the opportunity to incorporate continued expansion into this area under the proposed rule. This rule does not prohibit this. At this time, however, the new waste reduction goal is not part of this package.

Comment: 0400-11-01-.09(2)(b)6:
The source reduction of "municipal solid waste" allows technical changes in businesses and industry to be counted as waste reduction without documentation. This is another loophole that only furthers the lack of accountability and responsibility of Tennesseans to the health of the state.

Response: Any material generated that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. This would include all source reduction of materials as well as mulch, compost and recyclables successfully marketed.

Comment: 0400-11-01-.09(2)(b)6:
I am concerned with another potential loophole: source reduction of 'municipal solid waste". This allows technical changes in business and industry to be counted as waste reduction even with no documentation.

Response: Any material generated that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. This would include all source reduction of materials as well as mulch, compost and recyclables successfully marketed.

Comment: 0400-11-01-.09(2)(b)6:
This Rule will not promote waste reduction; rather, it convolutes waste counting and reporting. The inclusion of construction and demolition waste as a part of the diversion rate should not be continued. This waste is merely being diverted from one landfill to another; is not being considered for reuse; and should count as part of the base tonnage for landfilled waste. Additionally, the diversion of tires, car batteries, paints and other toxic waste would still continue to be counted as diversion from Class 1 landfills, even though these sources have not been landfilled for years. These loopholes have existed for too long.

Response: The rule identifies acceptable waste reduction and diversion activities that are based on current industry practices. Until a new goal is established by rule the current 25% waste reduction and diversion goal and the supporting methodologies established will continue to direct the State on the determination of a region's compliance with the goal.

Comment: 0400-11-01-.09(2)(b)7(iii):
No portion of wood waste volume reduction will be counted towards Class I waste diversion, even if the wood ash is not placed in a Class I Landfill. Again, the 1991 Solid Waste Management Act, Amended, provides for waste diverted from a Class I Landfill be considered as waste diversion from a Class I Landfill.

Response: Any material generated that does not go into a Class I municipal solid waste landfill counts towards the 25% waste reduction and diversion goal. This would include all volume reduction of materials from air curtain destruction and pit burners as is the current practice. If the ash from these processes is sent to a Class I municipal solid waste landfill instead of diverted to another use, it would be counted as disposal.

Comment: 0400-11-01-.09(2)(b)9:
This part says the Department will evaluate new technologies. Who's going to evaluate this new technology? How is that evaluation going to take place? What criteria are going to be used to evaluate?

Response: As new technologies emerge, the State, solid waste and recycling industries, local governments and other states are confronted with the applicability and trustworthiness of these technologies. The State's beneficial use policy sets a framework in determining applicability and trustworthiness of such technologies. This along with current statutory and regulatory standards, references and prior examples of successful launches of the technology assists in the determination of applicability towards waste reduction.

Comment: 0400-11-01-.09(3):
Subparagraphs (3)(l), (3)(m), (4)(a), and (4)(b) refer to the 25% goal. Each of these subparagraphs state 25% in different terms, such as the 25% goal versus 25% waste reduction and diversion goal versus 25% recycling and diversion goal. Suggest using consistent wording for the 25% goal. There may be other references in this rule to the 25% goal that should be reviewed and revised accordingly.

Response: This rule package does not address the goal or any related language as it might be construed as re-setting the goal and invoking the 2007 Public Chapter 462 updating and revising the existing goal. This will be addressed in a subsequent rule package.

Comment: 0400-11-01-.09(3):

I am very puzzled with the over-riding emphasis on superficial counts of solid waste that excludes any real steps to reduce solid waste. The three (3) different methods of counting solid waste reduction are:

A. Calculate 25% reduction per capita. [Subparagraph (3)(m)].
B. Economic growth basis. [Subparagraph (3)(m)].
C. Qualitative Assessment Methods. [Paragraph (4)].

Apparently, this is in the law. I am concerned that your reliance on such numbers does more to reward local governments with excellent numbers than to actually use solid waste as a raw material for jobs and business.

Response: Yes, the Solid Waste Management Act of 1991 dictates how accomplishment toward the goal is to be measured.

The goal itself is not addressed in this package. As directed by the Solid Waste Disposal Control Board the Department is developing rules based on the findings of the Waste Reduction Task Force in smaller pieces to allow for better discussion and focus on specific topics.

Comment: 0400-11-01-.09(3): Comprehensive Planning:
TDEC will develop the comprehensive integrated solid waste management plan which will serve as the master plan for all local governments. As history has shown, and current reporting indicates, a single comprehensive integrated plan will not work efficiently in every individual solid waste region due to the diversity of the state and local governments.

Response: The statewide comprehensive integrated solid waste management plan will update the existing plan that was adopted in 1991 for the state and serve as the master plan to take into account all subsequent technology improvements. The local solid waste regions will still be the focal point of local solid waste plans. These local plans, which have been the practice since 1991, are written to support the statewide plan at the local level based on what the region plans to implement to achieve the 25% waste reduction and diversion goal using available resources, i.e., staffing, infrastructure and funding.

Comment: 0400-11-01-.09(3)(a):
Every few years the state is going to update their plan. If a new technology comes on the market does that mean the state will say the goal is no longer 25% reduction but now it's 40% reduction, regardless whether the county can afford that new technology or not?

Response: No. The goal is set currently by law as 25% waste reduction and diversion. The 2007 Amendments to the Solid Waste Management Act allows for a new goal to be set by rule. The State Solid Waste Plan will not change the goal. The Plan serves as a guide to the State and to local governments on how to reach the established goal. Review and update of the State plan allows for new technologies to be incorporated into the existing Plan when they come available. The statewide plan does not require the local governments to incorporate every new technology or even every practice into their regional solid waste plan. The local solid waste board makes the determination of which practices are appropriate, available, and cost effective in the region effectuating their solid waste plan and reaching the goal.

Comment: 0400-11-01-.09(3)(c)8:
It says that the county's plan has to come up with a plan for the disposal of household hazardous wastes. Does that mean the state will no longer provide household hazardous waste services, but the counties are now going to have to provide for not only household waste disposal but household hazardous waste?

Response: This part of the proposed rule comes directly from the Solid Waste Management Act and is incorporated into the rule for clarification purposes within the plan contents. The Department will continue to provide mobile HHW collection services and continue to sponsor and develop new regional HHW collection facilities. This part of the plan only describes how local governments intend on managing HHW materials within the region which may include participating in the State's mobile HHW collection events.

Comment: 0400-11-01-.09(3)(c)12:
I feel like it is a bit of a stretch to require me either to form a multi-county region, or tell you why I can't form a multi-county. This is something the counties have struggled with for years and it quite simply boils down to a matter of 'I don't want your waste in my backyard'. At that point you stop listening to each other and come back to the political reality of it. But you know, you can't ignore the politics that go on at the county level, because we don't want your waste over here.

Response: This part of the proposed rule comes directly from the Solid Waste Management Act and is incorporated into the rule for clarification purposes within the plan contents. The determination to be a single or multi-county region has already been made over the past 21 years by each region's local governments. Waste destination is already addressed by the local solid waste region with no change required by this rule.

Comment: 0400-11-01-.09(3)(c)14:
This language talks about various participating jurisdictions. The counties are going to be the only participating jurisdiction without forcing the cities to participate – for the state to insist they participate. They're not going to because it costs money and in these economic times we're all stretched about as far as we can stretch regardless of whether it's the right thing to do or not. They're not going to raise their taxes on their citizens to participate in a plan they're not required to participate in.

Response: Participation of local governments in the solid waste region was determined in the initial development of the region's plan and subsequent updates which included responsibilities for each entity identified. This rule does not change this.

Comment: 0400-11-01-.09(3)(d):
All the counties will later have to write and submit a plan, or write a new plan that can conform to the statewide solid waste plan. Nowhere in this do I read where there's an opportunity for input from the people that are going to be the most affected by it and that is county government.

Response: The Request for Proposal for development of the State's solid waste plan will include statewide meetings to seek input from local governments regarding the plan.

Also, all local governments in Tennessee are currently included in their solid waste region's plan. The plan may be updated in total or in part at the discretion of the solid waste region. Annual updates to this plan are made through the Annual Progress Report that is required to be submitted by March 31 after the corresponding calendar year. This rule does not change this.

Each region is required to review the Annual Progress Report at their solid waste region's public meeting for approval prior to the submission to the Department to provide the general public an opportunity to comment and see the report. Each local government (county and municipal governments) is represented on the solid waste board and has the ability, opportunity and responsibility to give input.

Comment: 0400-11-01-.09(3)(d):
Under subdivision (d), it appears to be a duplication of efforts to require counties to develop separate plans if they approve their region's plan. This could also lead to inconsistencies between plans.

Response: This subparagraph clarifies that each entity in a region, whether county or municipality, shall create their plans to be consistent with the Plan noted in the rule. And, therefore, by developing a plan that is consistent in form and content, there should not be inconsistency within that local government within the region. The region's plan should reflect what the other local governments are doing. This would be accomplished during the solid waste region's board meeting and the presentation of updates to the region's solid waste plan.

Comment: 0400-11-01-.09(3)(d), (e), and (f):
Municipalities and Solid Waste Regions must implement a solid waste plan that is consistent with the TDEC Comprehensive Integrated Solid Waste Management Plan for the state. As history has

shown, and current reporting indicates, a single comprehensive integrated plan will not work efficiently in every individual solid waste region due to the diversity of the state and local governments.

Response: These subparagraphs clarify that each entity in a region, whether county or municipality, shall create their plans to be consistent with the Plan noted in the rule. By developing a plan that is consistent in form and content, there should not be inconsistency within that local government within the region. The region's plan should reflect what the other local governments are doing. This would be accomplished during the solid waste region's board meeting and the presentation of updates to the region's solid waste plan.

Comment: 0400-11-01-.09(3)(g):
When TDEC set a new solid waste of recycling goal, solid waste regions and municipalities will have a minimum of 12 months to meet the goal or implement the plan prescribed to meet this goal. Twelve months, or more, depending on the plan and goal, may be too short a time period for major plan modification, funding and implementation, particularly if unfunded mandates are initiated.

Response: The time to meet the goal or implement the plan prescribed will be extended to 24 months to accommodate this concern.

Comment: 0400-11-01-.09(3)(i):
This paragraph says 'The Department, with funds available, may provide funding or technical assistance to assist local governments and regions in this update process." Your budget is in the same state of affairs as our county's budget. You're not saying the state 'shall' provide money and assistance to save money, but something you're requiring me to do is going to cost me money. The general thing, that's been government in general, and county government in particular, we're just about stretched to the breaking point. So I would ask that we take a serious look at the economic consequence of this rule before it's passed.

Response: The Department has provided technical assistance in solid waste planning for twenty-one years. As this is important in achieving any solid waste waste-reduction goal, continued funding is a priority based on availability of funds for this activity.

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

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

The proposed rules have no effect on small business.

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

There are no reporting, recordkeeping, or other administrative costs required for small business from the proposed rules.

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

The proposed package is housekeeping in nature and should not affect small business and consumers directly unless the region's change their local solid waste plans in a manner that would affect them.

(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, less intrusive or less costly alternatives to achieving the purpose and objectives of this proposed rule.

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

EPA-Nationally

The U.S. Environmental Protection Agency's Resource Conservation Challenge (RCC) has developed the 35 Percent Recycling of Municipal Solid Waste Action Plan. This is a national action plan that lays out a framework or road map for increasing the rate of municipal solid waste recycling and helping the country meet a national goal of 35 percent.

The Government Performance and Results Act (GPRA) require strategic plans to be developed and revised every three years with annual performance reporting each year. This plan states that each year through 2008; maintain the national average MSW generation rate at not more than 4.5 pounds per person per day. And, by 2008, increase recycling of the total annual MSW produced to 35 percent from 31 percent in 2002. Currently, under this ongoing program, the recycling rate has been set at 38%.

Alabama

Alabama law requires that cities and counties develop and adopt comprehensive solid waste management plans. These plans must address how local governments will meet the statewide 25% waste reduction and recycling goal. Alabama law also requires all state agencies, K-12 public schools, state universities and post secondary schools to implement their own recycling programs. The Alabama Legislature passed the Solid Wastes and Recyclable Materials Management Act on April 15, 2008, which required that the Alabama Department of Environmental Management (ADEM) to establish a percentage goal for recycling by October 2009.

Florida

The 2008 Florida Energy Bill (House Bill 7135) created Section 403.7032, Florida Statutes, which establishes a new statewide recycling goal of 75% to be achieved by the year 2020.

Georgia

In 2005, Georgia did away with its percent waste reduction goal and went with a statewide goal to limit waste disposed to 5.0 pounds per person per day by 2012. Specifically spelled out in this goal were individual goals for the following four commodities: glass (0.140 lbs/person/day), paper (0.850 lbs/person/day), metal (0.186 lbs/person/day) and plastic (0.530 lbs/person/day).

Kentucky

In 2002, Kentucky did away with its 25% waste reduction goal. Currently in effect is a statewide goal to achieve 35% recycling in 2010. Only major items recycled by the public (metals, paper products, plastics and glass) are considered. In 2006, Kentucky had a statewide recycling rate of 27%. Individual counties are not required to meet this goal.

Mississippi

Mississippi has a 25% waste reduction goal. By law, each county is required to have an "adequate strategy" established to meet this goal in their solid waste plans. These plans are required to be reviewed annually. However, no method is established for the measurement or enforcement of the goal.

North Carolina

North Carolina has a statewide 40% per capita goal that continues to be the benchmark although approximately 5.1 million tons of waste was recycled in North Carolina, representing a recycling rate of 43%.

South Carolina

In October 2000, South Carolina amended its Solid Waste Act to reflect new state recycling and disposal goals. The recycling goal was changed to 35% of the municipal solid waste (msw) stream. The disposal goal was changed to 3.5 pounds of msw per person per day. Both of these goals were to be met by Fiscal Year 2005. The state did not reach either goal. South Carolina's Departments of Health and Environmental Control have asked the Legislature to extend the deadline for meeting those goals until Fiscal Year 2012.

(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.

Small businesses have no specific duties or requirements under the proposed rule. However, they are expected to assist the State in meeting the statewide waste reduction goal by working with their local governments and the municipal solid waste planning regions as needed.

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 planning for the region noted in the rule will have a positive financial impact on local government.

Department of State
Division of Publications
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Nashville, TN 37243
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Fax: 615-741-5133
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For Department of State Use Only

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

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Solid Waste Management
Contact Person:	Greg Luke
Address:	5th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243-1535
Phone:	(615) 532-0874
Email:	greg.luke@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**
0400-11-01	Solid Waste Processing and Disposal
Rule Number	**Rule Title**
0400-11-01-.09	Waste Disposal Reduction Goal
0400-11-01-.10	Convenience Centers/County Public Collection Receptacles

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

Chapter 0400-11-01
Solid Waste Processing and Disposal

Amendments

The Table of Contents for Chapter 0400-11-01 Solid Waste Processing and Disposal is amended by deleting the title to Rule 0400-11-01-.09 and replacing it with 0400-11-01-.09 Waste Reduction and Planning

Rule 0400-11-01-.09 Waste Disposal Reduction Goal is amended by deleting it in its entirety and replacing it with a new rule so that, as amended, the new rule shall read as follows:

0400-11-01-.09 Waste ~~Disposal~~ Reduction ~~Goal~~ and Planning

(1) General Purpose

(a) The goal of the state is to reduce by twenty-five percent (25%) the amount of solid waste disposed of at municipal solid waste disposal facilities and incinerators by December 31, 2003, as measured on a per capita basis within Tennessee by weight. The goal shall also apply to each municipal solid waste region; but does not apply to individual disposal facilities or incinerators. Individual disposal facilities or incinerators are used only as measurement locations for assessing the achievement of a region's waste reduction efforts. As an alternative to calculating the waste reduction goal on a per capita basis, regions shall have the option of calculating the goal on an economic growth basis using the method prescribed by the Department and approved by the Municipal Solid Waste Advisory Committee.

~~(2) Waste Reduction Methods~~

~~(a)~~(b) The Department may consider a variety of options that a region shall take into account in meeting the twenty-five percent (25%) goal. As used in this rule, 0400-11-01-.09, "municipal solid waste" (MSW) means any garbage, refuse, industrial lunchroom or office waste, household waste, household hazardous waste, yard waste and any other material resulting from the operation of residential, municipal, commercial or institutional establishments and from community activities which are required to be disposed of in a Class I landfill, as defined in regulations adopted pursuant to T.C.A. Title 68, Chapter 211; provided, that "municipal solid waste" does not include the following:

1. Radioactive waste;

2. Hazardous waste as defined in T.C.A. § 68-212-104;

3. Infectious wastes;

4. Materials that are being transported to a facility for reprocessing or reuse; provided further, that reprocessing or reuse does not include incineration or placement in a landfill; and

5. Industrial waste which may include office, domestic or cafeteria waste, managed in a privately owned solid waste disposal system or resource recovery facility, if such waste is generated solely by the owner of the solid waste disposal system or resource recovery facility.

(2) Waste Reduction

(a) Comprehensive Integrated Municipal Solid Waste Management Plan. The Department shall prepare a statewide solid waste plan to be used as guidance in achieving the statewide waste reduction goal. This plan shall be reviewed and if needed updated every five years to account for any new available technologies.

1. The plan shall identify current, preferred waste reduction and recycling practices to assist the State and the solid waste regions to effectuate their solid waste plans.

2. Best Management Practices. The Department shall prepare waste reduction and recycling best management practices based on the state solid waste plan that local governments will implement as needed in sum or in part to attain the statewide goal.

3. Preferred Waste Reduction Options. The Department shall, based on the most current statewide solid waste plan, prepare preferred options of waste reduction methodologies. These options shall be considered for determining qualitative equivalence in regional and local government solid waste programs.

~~(b) Waste reduction methods or activities include, but are not limited to, the following:~~

~~1. Any "municipal solid waste" diverted from a Class I disposal facility to a Class III or Class IV disposal facility as provided under Rules 0400-11-01-.01 through 0400-11-01-.04 adopted pursuant to the provisions of T.C.A. Title 68, Chapter 211, Part 1.~~

~~2. Composting of "municipal solid waste". The composting of municipal solid waste must have a market for such composted product in order to be considered as a method for waste reduction.~~

~~3. Recycling. Recycling constitutes a method of waste reduction so long as the recovered materials are marketed for recycling, or are stored for recycling at a solid waste management facility and at least seventy-five percent (75%) of the stored material must be marketed within the succeeding twelve (12) months. The following processes shall not be considered as marketing of recyclable materials nor counted toward the 25% waste reduction goal:~~

~~(i) Collection or material handling in preparation for buyers.~~

~~(ii) Storage of unprocessed or processed materials. Unprocessed municipal solid waste is not considered as being recyclable.~~

~~4. Source reduction of "municipal solid waste". Source reduction measures as a method of waste reduction may include industrial process modification, feedstock substitutions or improvements in feedstock purity, various housekeeping and management practices, increases in the efficiency of machinery, and recycling within a process.~~

~~(i) Source reduction may also include reduction in the amount and toxicity of waste generated by residential and commercial sectors, through such measures as product substitution, home composting and recycling.~~

~~(ii) Source reduction may also be achieved through the encouragement of consumer habits that include the selection of products that have reduced and recyclable packaging, and the re-use of durable goods.~~

~~5. Problem waste diversion. The diversion of waste tires, used oil, lead-acid batteries, paints and other problem waste, as determined and identified by the Department, from a Class I disposal facility for recycling constitutes waste reduction. Problem wastes diverted from a Class I disposal facility and stored for recycling at a municipal solid waste management facility until marketed qualifies as waste reduction when diverted.~~

~~6. Mulching of "municipal solid waste". Any non-treated wood waste that may be converted to a mulch must have a market in order to be considered as a method for waste reduction.~~

(b) Waste Reduction Methods. The following restrictions and guidance shall be used to evaluate waste reduction methodologies implemented by local governments and their programs.

1. Landfill Bans. Due to the dynamic nature of solid waste, waste streams, and its infrastructure to manage these waste streams, the variety and availability of local markets, local geography and topography also vary, local governments are best suited to design, implement, and manage landfill bans and material redirection at the point of collection.

2. Class III and Class IV materials. Materials received at a Class III or Class IV landfill are not considered as waste reduction unless the materials are recycled or used for other approved beneficial use activities.

3. Composting of "municipal solid waste". Only the portion of composted municipal solid waste that is sold or beneficially used may be counted as waste reduction towards the goal.

4. Mulching of "municipal solid waste". Only the portion of mulch made from municipal solid waste that is sold or beneficially used may be counted as waste reduction towards goal.

5. Recycling. Recycling constitutes a method of waste reduction so long as the recovered materials are marketed for recycling, or are stored for recycling at a solid waste management facility and at least seventy-five percent (75%) of the stored material must be marketed within the succeeding twelve (12) months. The following processes shall not be considered as marketing of recyclable materials nor counted toward the goal:

   (I) Collection or material handling in preparation for buyers pending market.

   (II) Storage of unprocessed or processed materials. Unprocessed municipal solid waste is not considered being recyclable pending market.

6. Source Reduction of "municipal solid waste". Process modifications, feedstock substitutions or improvements, various housekeeping and management practices, increases in the efficiency of machinery that decrease the overall amounts residual materials affect the amount of materials destined for final disposal. As source reduction increases the disposal amount should reflect a proportional decrease.

7. Energy recovery and production. Materials redirected for energy recovery and production shall be considered waste reduction.

   (i) To calculate the tons of waste reduction the following formula shall apply:
   $T^{i} - T^{o} = T^{d}$
   Where:
   T^{i} = tons of municipal solid waste material input into the energy recovery system;
   T^{o} = tons of residual material output from the energy recovery system sent for disposal; and
   T^{d} = tons diverted for energy recovery.

   (ii) Waste incinerated where the primary purpose is not energy recovery is not considered waste reduction.

   (iii) Residuals from wood wastes reduced in a pit burner or air curtain destructor is not considered waste reduction unless diverted from disposal or otherwise beneficially used in accordance with the Department's beneficial use policy.

8. Problem waste diversion. The diversion of waste tires, used oil, lead-acid batteries, paints and other problem waste, as determined and identified by the Department, from a Class I disposal facility for recycling constitutes waste reduction.

9. The Department shall evaluate new technologies, as they are presented to the Department, to determine the applicability towards waste reduction efforts for the regions in meeting the goal.

(3) ~~Region's Waste Reduction Plan~~ Comprehensive Integrated Municipal Solid Waste Management Planning

~~(a) A region's waste reduction plan shall be consistent with the guidelines issued by the Division. Such a plan shall explain the region's waste reduction methods. The region may use any combination of methods; however, the following methods or practices will not be considered in the calculation for the region's waste reduction plan:~~

~~1. Incineration;~~

~~2. Unmarketed municipal solid waste compost;~~

~~3. Recovered materials (other than problem wastes) stored for recycling without being marketed as prescribed by part (2)(b)3 of this rule; and~~

~~4. Illegal or unauthorized storage or disposal of municipal solid waste.~~

(a) The Department shall develop a comprehensive integrated municipal solid waste management plan, hereafter the Plan, for the State based on component requirements in T.C.A. § 68-211-815 and that will serve as a master plan for the State and its local governments in the management of statewide integrated solid waste systems. This plan shall be reviewed every five years and, if needed, updated accordingly based on new technologies, resources, stakeholders, etc. available.

(b) The Plan shall be divided into the following major sections. These sections shall provide and describe in detail how the Plan shall be implemented.

1. Infrastructure, Demographic and Geological Overview

2. Solid Waste Plan

3. Waste Reduction Plan

4. Disaster Debris Management Plan

5. Outreach and Education Plan

6. Funding, Responsibilities, and Administration Plan

(c) At a minimum, each plan and revised plan submitted by a municipal solid waste region shall include the following:

1. Demographic information;

2. A current system analysis of:

(i) Waste streams, including data concerning types and amounts generated;

(ii) Collection capability, including data detailing the different types of collection systems and the populations and areas which receive and do not receive such services;

(iii) Disposal capability, including an analysis of the remaining life expectancy of landfills or other disposal facilities;

(iv) Costs, using a full-cost accounting model developed by the commissioner, including costs of collection, disposal, maintenance, contracts and other costs; and

(v) Revenues, including cost reimbursement fees, appropriations and other revenue sources;

3. Adoption of the uniform financial accounting system required by T.C.A. § 68-211-874;

4. Anticipated growth trends for the next five-year period;

5. Anticipated waste capacity needs;

6. Planned capacity assurance, including descriptions of planned or needed facilities;

7. A recycling plan, including a description of current public and private recycling efforts and planned efforts to enhance recycling within the county or region;

8. A plan for the disposal of household hazardous wastes;

9. Adoption of uniform reporting requirements as required by this part;

10. A description of waste reduction and recycling activities designed to attain the goal required by T.C.A. § 68-211-861;

11. A description of education initiatives aimed at businesses, industries, schools, citizens and others, which addresses recycling, waste reduction, collection and other goals of this part;

12. An evaluation of multi-county solid waste disposal region options with an explanation of the reasons for adopting or failing to adopt a multi-county regional approach;

13. A timetable for implementation of the plan;

14. A description of the responsibilities of the various participating jurisdictions;

15. A certification from the region's title 68, chapter 211, part 9 solid waste authority, if such an authority has been formed, or if no such authority has been formed, the county legislative body of each county in the region that they have reviewed and approved of the region's plan and/or revised plan;

16. A plan for managing solid waste generated as a result of disasters or emergencies based, in part, upon the FEMA 325 Public Assistance Program; and

17. Any other information as the commissioner may deem relevant to the implementation of this part.

(d) Each county shall develop a comprehensive integrative municipal solid waste management plan in accordance with and consistent with the Plan noted in this rule. This plan shall be designed based upon all resources within the county.

(e) Each municipal solid waste region shall compile and develop a comprehensive integrated municipal solid waste management plan in accordance with and consistent with the Plan noted in this rule and from the county plans within the region.

(f) Municipalities may elect to develop an integrated municipal solid waste management plan provided that they meet the same requirements as the county as described by this rule.

(g) When the State approves and sets a new municipal solid waste goal, to implement the goal, each local government and region with an integrated municipal solid waste management plan developed under this rule shall develop and submit a plan update in the format and methodology described by the Department. These local governments and regions shall be given a minimum of two years to prepare major updates for their plan.

(h) All local governments and the municipal solid waste regions developing plans under this rule must submit such plan to the Department for review and approval. Approval by the Department shall deem that the submitted plan is consistent with the Plan described in this rule.

(i) The Department, with funds available, may provide funding or technical assistance to assist local governments and regions in this update process.

(j) Routine updates to the solid waste region's plan shall be submitted by March 31 of each year for the immediate preceding calendar year in a format prescribed by the Department.

(k) Failure to complete an update to the plan or to submit the plan shall subject the solid waste region or local government to possible sanctions pursuant to T.C.A. §§ 68-211-816 and 68-211-871.

~~(b)~~(l) The twenty-five percent (25%) goal applies to only the waste that has been going to Class I landfills or municipal solid waste incinerators. Measurements of waste are to be based on the amount of waste entering a disposal facility prior to combustion or landfilling. Materials recovered or collected for recycling at these facilities prior to combustion or landfilling shall be weighed and deducted from the total amount being disposed.

~~(c)~~(m) The region shall present its calculation of the twenty-five percent (25%) reduction on a per capita basis or the economic growth basis to be prescribed by the Department in accordance with paragraph (1) of this rule.

~~(d)~~(n) The region plan shall utilize the base year of 1995 for measuring waste reduction unless a region can demonstrate that the 1995 data is clearly in error. A region may receive credit toward the waste reduction goal from recycling and source reduction programs prior to 1995, but no earlier than 1985. The region shall notify in writing the Division Director of such an error and request approval of any adjustment to the 1995 data.

~~(e)~~(o) By March 31 of each year, each region shall submit an annual report to the Division. Pursuant to T.C.A. §§ 68-211-863 and 68-211-871, such reports shall include, at a minimum, the amount and type of recycled materials collected in the region.

(4) Qualitative Assessment Methods

(a) An assessment method shall be developed by the Department of Environment and Conservation and approved by the Municipal Solid Waste Advisory Committee. This assessment will be applied to Municipal Solid Waste Planning Regions that failed to meet the twenty-five percent (25%) waste reduction and diversion goal stated in T.C.A. § 68-211-861(a) according to the ~~2003~~ Annual Progress Report submitted to the Division. The qualitative assessment will objectively assess the activities and expenditures of both the Municipal Solid Waste Planning Region and the local governments in the region to determine whether the region's program is qualitatively equivalent to other regions that meet the goal and whether the failure is due to factors beyond the control of the region.

(b) The qualitative assessment shall be done in the following two steps:

1. The Department shall use the waste and diversion reported by the solid waste region for the most current reporting period to determine whether in that year twenty-five percent of the solid waste generated in that year was either diverted from class I facilities or recycled. If it was, the region meets the qualitative assessment and the department does not proceed to the next step.

2. The Department shall evaluate the programs in those regions that do not satisfy ~~subparagraph (2)(a)~~ subparagraphs (3)(l) and (3)(m) of this rule to determine if they are qualitatively equivalent to those that did meet the 25% recycling and diversion goal by evaluating at least the following solid waste program activities for the most current reporting period, giving the first two items the greatest weight:

(i) waste reduction and recycling programs and systems;

(ii) waste diversion programs and systems;

(iii) solid waste education programs and systems;

(iv) waste collection and handling systems; and

(v) solid waste program budgets and staffing.

The methodology shall make comparisons between regions that are as similar as possible in terms of population and socio-economic level to the region that failed to meet the goal.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

Paragraph (1) of Rule 0400-11-01-.10 Convenience Centers/County Public Collection Receptacles is amended by deleting the current paragraph and substituting the following language, so that, as amended, the new paragraph shall read as follows:

(1) Purpose

(a) This rule shall establish the minimum level of service which every county must provide in order to assure that all residents of a county are provided with collection and disposal service.

(b) This rule shall establish minimum standards for the design and operation of convenience centers if such service is selected by a County.

~~(c) This rule shall establish the economic index and local matching rates for grant assistance to counties to establish and upgrade convenience centers.~~

~~(d)~~(c) This rule shall establish requirements for operation and use of county public collection receptacles for municipal solid waste.

Paragraphs (5) and (6) of Rule 1200-01-07-.10 Convenience Centers/County Public Collection Receptacles is amended by deleting them in their entirety and replacing them with the following new paragraph so that, as amended, the new paragraph shall read as follows:

~~(5) Economic Index~~

~~(a) Matching rates for convenience center grants shall be determined using the mean of a county's rank for equalized property tax generation and per capita income. Property tax generation shall be the equalized value of property as published in the Tennessee State Tax Aggregate Report by the State Board of Equalization. Per capita income shall be the income figure published by the United States Department of Commerce, Bureau of Economic Analysis.~~

~~(b) The Department shall issue annually in March the County ranking based on this mean.~~

~~(c) The local share required to match grant funds shall be 10% for those counties in the lower one-half (½) of the economic index. Those counties in the upper one-half (½) of the economic index shall be required to provide a 20% local match.~~

~~(6)~~(5) Requirements for Operation and Use of County Public Collection Receptacles for Municipal Solid Waste

(a) ~~By March 31 of each year, each~~ Each county which maintains and uses receptacles for the collection of municipal solid waste from the general public at sites separate from a convenience center, shall develop a plan for the elimination or conversion to manned convenience centers as

defined in paragraph (2) of Rule 0400-11-01-.01 by June 30, 2015. The county will include the following information as part of the ~~Solid Waste Region's~~ municipal solid waste planning region's annual report (which is submitted to the Division) until said collection receptacles are eliminated or converted:

1. The number of receptacles in the County by location;

2. The location of all receptacles by street address and geo-code (longitude and latitude);

3. Collection times for such receptacles; and

4. Operation procedures and security measures adopted and enforced to maintain and service the receptacles and to ensure the protection of public health and safety. Such information ~~in~~ required by this part must be in the form of a narrative manual and meet the minimum requirements in subparagraph (b) of this paragraph.

(b) Minimum operation and security requirements shall be as follows:

1. All containers must be emptied at a minimum of once every 7 days, except the commissioner may provide an extension of time for severe weather or other emergency conditions.

2. Litter and/or solid waste outside the receptacles must be controlled. Such wastes must be removed at a minimum frequency of at least once every 7 days.

3. Receptacles must be maintained and managed in a manner to minimize disease vectors.

4. Receptacles must be located on an all weather surface (such as gravel).

(c) Per T.C.A. § 68-211-851, as amended, counties which did not have receptacles in place as of January 1, 1996 or which subsequent to such date discontinues use of any receptacle authorized in this paragraph, shall be prohibited from installing or maintaining additional receptacles.

Authority: T.C.A. §§ 68-211-101 et seq., 68-211-801 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Warren Anderson				X	
Michael Atchison	X				
Elaine Boyd	X				
Melissa Bryant				X	
Dr. Jack Deibert				X	
Kenneth Donaldson	X				
Dr. George Hyfantis, Jr.	X				
Jared L. Lynn	X				
Mayor Franklin Smith, III	X				
Mark Williams	X				
Glenn Youngblood	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Solid Waste Disposal Control Board on 08/07/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 04/11/12

Rulemaking Hearing(s) Conducted on: (add more dates). 06/21/12

Date: August 7, 2012

Signature: _____

Name of Officer: Kenneth Donaldson

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

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

_____
Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Environment and Conservation
DIVISION:	Underground Storage Tanks
SUBJECT:	Regulatory Fees for Underground Storage Tanks
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-215-101 et seq.
EFFECTIVE DATES:	January 21, 2013 through June 30, 2013
FISCAL IMPACT:	The agency reports that this rule change will reduce the Division's fund budget by approximately $2 million per year. The agency reports that the fund's balance has improved significantly, and therefore, the Division is passing the benefit on to tank owners.
STAFF RULE ABSTRACT:	This rule reduces the annual underground storage stank fees from $250 per tank per compartment to $125 per tank per compartment.

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.

The commenter stated they fully support the proposal and strongly urged the Board to adopt the proposal.

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

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

This rule change will affect any business that owns regulated underground storage tanks, and will be a reduction in annual costs.

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

There are no additional costs with this proposed rule change.

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

The probable effect will be a reduction in the annual underground storage fees.

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

This is a less costly alternative than the current rule.

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

There are no federal or state counterparts that the Division is aware of.

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

An exemption of small businesses would cause those businesses to pay a higher annual tank fee.

Impact on Local Governments

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

The Department anticipates that these amended rules will have a beneficial financial impact on local governments that own underground storage tanks.

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Sequence Number: 10-23-12
Rule ID(s): 5331
File Date: 10/23/12
Effective Date: 1/21/13

Rulemaking Hearing Rule(s) Filing Form

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

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

Revision Type (check all that apply):

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**
0400-18-01	Underground Storage Tank Program
Rule Number	**Rule Title**
0400-18-01-.10	Fee Collection

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

Chapter 0400-18-01
Underground Storage Tank Program

Amendments

Paragraph (3) of Rule 0400-18-01-.10 Fee Collection is amended by deleting it in its entirety and replacing it with the following so that, as amended, paragraph (3) shall read as follows:

(3) Annual petroleum underground storage tank fees.

(a) The required fee shall be submitted in the specified amount, with checks made payable to the Tennessee State Treasurer.

(b) Any person who is an owner and/or operator of a petroleum underground storage tank subject to annual fees shall pay the required annual fee unless the fee is paid by another person on behalf of the tank owner and/or operator.

(c) The amount of the annual petroleum underground storage tanks fee shall be ~~either~~:

~~1. Two hundred fifty dollars ($250) per year for each non-compartmentalized tank; or~~

~~2. Two hundred fifty dollars ($250) per year per compartment for each compartmentalized tank.~~

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	$100.00	Per Tank
July 1, 1990 to June 30, 2005	$125.00	Per Tank
July 1, 2005 to June 30, 2013	$250.00	Per Tank Compartment
July 1, 2013 forward	$125.00	Per Tank Compartment

(d) The amount of the annual administrative service fee for agencies and functions of the U.S. Government ~~having sovereign immunity~~ shall be ~~either~~:

~~1. Two hundred fifty dollars ($250) per year for each non-compartmentalized tank; or~~

~~2. Two hundred fifty dollars ($250) per year per compartment for each compartmentalized tank.~~

Years Assessed	Fee	Assessment
July 1, 1988 to June 30, 1990	$25.00	Per Tank
July 1, 1990 to June 30, 2005	$25.00	Per Tank
July 1, 2005 to June 30, 2013	$250.00	Per Tank Compartment
July 1, 2013 forward	$125.00	Per Tank Compartment

Agencies and functions of the U.S. Government are not eligible for benefit or financial assistance from the Tennessee Petroleum Underground Storage Tank Fund.

(e) If an annual fee is paid on an existing underground storage tank which is subsequently permanently closed in accordance with Rule 0400-18-01-.07 and replaced by a new underground storage tank installed at the same site in accordance with paragraph (1) or (6) of Rule 0400-18-01-.02 no additional annual fee will be required, provided that the replacement tank has the same number of tank compartments as the existing tank. If the replacement tank has more tank compartments than the existing tank, an additional annual fee of:

1. ~~two~~ Two hundred fifty dollars ($250) per compartment shall be paid if the tank was replaced before July 1, 2013; or

2. One hundred twenty five dollars ($125) per compartment shall be paid if the tank was replaced on or after July 1, 2013.

If the replacement tank has fewer tank compartments than the existing tank, no refund of the annual fee or any portion thereof is due, as stated in subparagraph (f) of this paragraph.

(f) Payment of the entire amount of the annual fee is required for underground storage tanks and/or tank compartments in service or temporarily out of service during any portion of the current billing year. Tanks and/or tank compartments placed into service after the current billing year begins or tanks and/or tank compartments which are permanently closed before the current billing year ends are not due a refund of the annual fee or any portion thereof.

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

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Mayor Allen Barker	X				
Jonathan M. Edwards				X	
John C. Harding	X				
Sharon O. Jacobs				X	
Bhag Kanwar	X				
John Owsley	X				
DeAnne Redman	X				
Larry R. Reynolds				X	
Jon Roach				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Petroleum Underground Storage Tank Board on 09/26/2012, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/27/12

Rulemaking Hearing(s) Conducted on: (add more dates). 09/07/12

Date: September 26, 2012

Signature: _____

Name of Officer: Allen Barker

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

Robert E. Cooper, Jr.
Attorney General and Reporter

Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Environment and Conservation
DIVISION:	Remediation
SUBJECT:	Inactive Hazardous Substance Sites
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-212-206
EFFECTIVE DATES:	January 28, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule deletes the 3M GE Site located in Chattanooga, Hamilton County from the List of Inactive Hazardous Substance Sites.

Public Hearing Comments

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

There were no comments received during the comment period.

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

(If applicable, insert Regulatory Flexibility Addendum here)

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

There are no small businesses impacted by this rulemaking.

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

There are no small businesses impacted by this rulemaking, therefore there are no reporting, recordkeeping, and other administrative costs.

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

There will be no impact on small businesses.

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

No alternatives are available to achieve the purpose of this rulemaking

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

This rulemaking is site specific so there is no direct comparison with and federal or state counterpart.

(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.

There is no effect since this rulemaking does not impact small businesses.

Impact on Local Governments

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

The Department does not anticipate an impact on local governments from this rulemaking.

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File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Division of Remediation
Contact Person:	Robert L. Powell
Address:	4th Floor, L & C Annex 401 Church Street Nashville, Tennessee
Zip:	37243-1538
Phone:	(615) 532-0916
Email:	Robert.Powell@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**
0400-15-01	Hazardous Substance Remedial Action
Rule Number	**Rule Title**
0400-15-01-.13	List of Inactive Hazardous Substance Sites

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

Amendment

0400-15-01
Hazardous Substance Remedial Action

Rule 0400-15-01-.13 List of Inactive Hazardous Substance Sites is amended by deleting the following site from the list, such deletion being made in a manner so that the entire list remains in numerical order.

List of Inactive Hazardous Substance Sites

PROMULGATED LIST

SITE NUMBER	SITE NAME
	ANDERSON (01)
01504	D.O.E. Oak Ridge Oak Ridge, TN
01579	Dupont Smith/Atomic City
SITE NUMBER	SITE NAME
	Oak Ridge, TN
01580	Anderson County Landfill Clinton, TN
	BLOUNT (05)
05501	Aluminum Co. of America Alcoa, TN
05503	Aluminum Co. of America Alcoa, TN
	BRADLEY (06)
06505	Duracell Inc. Cleveland, TN
	CARTER (10)
10502	American Bemburg Plant Elizabethton, TN
10508	Old Bemberg Bldg. Elizabethton, TN
	COCKE (15)
15504	Arapahoe/Rock Hill Labs Newport, TN
15505	Newport Dump Newport, TN
15508	Wall Tube and Metal

	Newport, TN
	DAVIDSON (19)
19511	Stauffer Chemical Nashville, TN
19524	Municipal Landfill Nashville, TN
	FAYETTE (24)
24501	Ross Metals Rossville, TN
24503	Gallaway Pits Gallaway, TN
	FRANKLIN (26)
SITE NUMBER	SITE NAME
26501	AEDC Arnold Air Force Station, TN
	GIBSON (27)
27512	ITT Telecommunications Milan, TN
	HAMBLEN (32)
32506	BASF/Stauffer Chemical Co. Morristown, TN
32514	Old Morristown-Hamblen Co. Landfill Morristown, TN
32517	Neblett Road Dump Morristown, TN
32518	Pine Brook Road Dump Morristown, TN
	HAMILTON (33)
33527	Velsicol/Residue Hill Chattanooga, TN
33540	Montague Park Chattanooga, TN
33543	Hamill Road Dump #3 Chattanooga, TN

HAMILTON (33)

33547	Chattanooga Coke Chattanooga, TN
33550	North Hawthorne Dump Chattanooga, TN
~~33556~~	~~3M GE Ceramics-~~ ~~Chattanooga, TN~~
33557	USVAAP Chattanooga, TN
33584	Chattanooga Creek Chattanooga, TN
33596	Mor-Flo Industries, Inc. Chattanooga, TN
33618	Morningside Chemicals Chattanooga, TN
33620	National Microdynamics (Lutex Chemical) Chattanooga, TN
33635	Tennessee Transformer Chattanooga, TN
33660	Electro-Lite Battery Chattanooga, TN

SITE NUMBER	SITE NAME
	HARDEMAN (35)
35506	Velsicol Chem Toone, TN
	HENRY (40)
40506	Henry County Boneyard Paris, TN
	HICKMAN (41)
41504	Wrigley Charcoal Wrigley, TN
	JEFFERSON (45)
45503	Hodgson, Hollis Jefferson City, TN

KNOX (47)

47514	Witherspoon Landfill Knoxville, TN
47518	Badgett Road Landfill Knoxville, TN
47521	Southern Rail/Coster Shop Knoxville, TN
47523	Foote Mineral/Cas Walker (Dante) Knoxville, TN
47530	Screen Art, Inc. Knoxville, TN
47541	Witherspoon Recycling Knoxville, TN
47545	Sanitary Laundry & Dry Cleaning Knoxville, TN
47547	Roscoe Fields Property Knoxville, TN
47559	Smokey Mountain Smelters Knoxville, TN
47-573	Dixie Barrel & Drum Co. Knoxville, TN

LAWRENCE (50)

50502	Murray-Ohio Landfill Lawrenceburg, TN
SITE NUMBER	SITE NAME
50505	Lawrenceburg Horseshoe Bend Lawrenceburg, TN
50-509	Former Murray Ohio Plant Lawrenceburg, TN

LOUDON (53)

53502	Greenback Industries Greenback, TN
53503	Lenoir City Car Works Lenoir City, TN

MADISON (57)

57508	American Creosote Works Jackson, TN
57510	Porter Cable Jackson, TN
57517	Boone Dry Cleaners Jackson, TN

MARION (58)

58502	North American Environmental Whitwell, TN

MARSHALL (59)

59502	Heil Quaker Corp. Lewisburg, TN
59503	Lewisburg Dump Lewisburg, TN

MAURY (60)

60501	Stauffer Chemical Co. Mt. Pleasant, TN
60534	Monsanto Columbia, TN

MONROE (62)

62505	Red Ridge Landfill Madisonville, TN

POLK (70)

70502	Apache Blast Copperhill, TN

SITE NUMBER	SITE NAME

PUTNAM (71)

71502	Putnam County Landfill Cookeville, TN

ROANE (73)

73504	Roane Alloys Rockwood, TN
73506	Rockwood Iron & Metal Rockwood, TN
73512	Joyner Scrap Yard Rockwood, TN

RUTHERFORD (75)

75522	Old Murfreesboro City Dump Murfreesboro, TN

SCOTT (76)

76502	Oneida Railway Oneida, TN

SHELBY (79)

79503	Arlington Blending Arlington, TN
79517	Bellevue Avenue Landfill Memphis, TN

79518	Cypress Creek Memphis, TN
79525	International Harvester Memphis, TN
79536	W.R. Grace & Co. Memphis, TN
79549	Chickasaw Ordinance Works Memphis, TN
79552	Carrier Corporation Collierville, TN
79561	Nilok Chemical Company Memphis, TN
79569	Chapman Chemical Co. Memphis, TN
79582	Diesel Recon Co. Memphis, TN

SHELBY (79)

SITE NUMBER	SITE NAME
79598	North Hollywood Dump Memphis, TN
79604	Memphis Public Works/Jackson Pits Memphis, TN
79676	Smalley-Piper Collierville, TN
79742	Pulvair Corp. Millington, TN
79758	Old Osmose Chemical Memphis, TN
79781	John Little/Drum Memphis, TN
79798	61 Industrial Park Site Memphis, TN
79799	Tennessee Air National Guard Memphis, TN
79800	Creotox Chemical Company Memphis, TN
79805	Fiberfine of Memphis Memphis, TN
79-843	Warfield Place/Pulvair Memphis, TN

SULLIVAN (82)

82514	Sperry/Unisys Bristol, TN
82516	Earhart Bristol, TN

UNICOI (86)

86501	Bumpass Cove Landfill Embreeville, TN

86502	Bumpass Cove - Fowler Erwin, TN
86505	Morrell Electric, Inc. Erwin, TN
	WARREN (89)
89504	Century Electric Facility McMinnville, TN
	WASHINGTON (90)
90510	Cash Hollow Dump Johnson City, TN
	WAYNE (91)
SITE NUMBER	SITE NAME
91501	Mallory Capacitor Co. Waynesboro, TN
91502	Waynesboro City Dump Waynesboro, TN
	WILSON CO. (95)
95501	TRW/Ross Gear Division Lebanon, TN

Statutory Authority: T.C.A. §§ 68-212-201 et seq. and 4-5-201 et seq.

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Dr. Warren Anderson				X	
Michael Atchison	X				
Elaine Boyd	X				
Melissa Bryant				X	
Dr. Jack Deibert				X	
Kenneth Donaldson	X				
Dr. George Hyfantis, Jr.	X				
Jared L. Lynn	X				
Mayor Franklin Smith, III	X				
Mark Williams	X				
Glenn Youngblood	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Solid Waste Disposal Control Board on 08/07/2012, and is in compliance with the provisions of TCA 4-5-222.

I further certify the following:

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

Rulemaking Hearing(s) Conducted on: (add more dates). 05/30/12

Date: August 7, 2012

Signature: _____

Name of Officer: Kenneth H. Donaldson

Title of Officer: Chairman

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

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

_____
Date

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Environment and Conservation
DIVISION:	Water Resources
SUBJECT:	Waterworks Construction Loan Act
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 68-221-501 et seq.
EFFECTIVE DATES:	January 14, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rulemaking transfers the rules implementing the Waterworks Construction Loan Act to Chapter 0400-45-04 from Chapter 1200-05-04 and makes editorial/citation corrections.

Public Hearing Comments

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

There were no comments made during the public comment period.

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

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

The rule changes will have no impact. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-04 from Chapter 1200-05-04 and to make editorial/citation corrections.

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

There should be no additional costs associated with the rule compliance.

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

The rule changes will not impact small businesses or consumers. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-04 from Chapter 1200-05-04 and to make editorial/citation corrections.

(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 should be no additional costs associated with the rule compliance.

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

There is no comparable federal rule.

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

Not applicable. This rule is for a loan program.

Impact on Local Governments

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

The Department does not anticipate an impact on local governments.

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Sequence Number: _____
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File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Resources
Contact Person:	Tom Moss
Address:	6th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243-1549
Phone:	615-532-0170
Email:	Tom.Moss@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X Repeal

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

Chapter Number	**Chapter Title**
0400-45-04	Regulations Governing the Waterworks Construction Loan Act
Rule Number	**Rule Title**
0400-45-04-.01	Purpose
0400-45-04-.02	Definitions
0400-45-04-.03	General
0400-45-04-.04	Eligible Applicants
0400-45-04-.05	Applications
0400-45-04-.06	Determination of Eligibility
0400-45-04-.07	General Criteria for Evaluation of Eligible Applications

Chapter Number	**Chapter Title**
1200-05-04	Regulations Governing the Waterworks Construction Loan Act
Rule Number	**Rule Title**
1200-05-04-.01	Purpose
1200-05-04-.02	Definitions
1200-05-04-.03	General
1200-05-04-.04	Eligible Applicants
1200-05-04-.05	Applications
1200-05-04-.06	Determination of Eligibility
1200-05-04-.07	General Criteria for Evaluation of Eligible Applications

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

Repeal

Chapter 1200-04-04 Regulations Governing the Waterworks Construction Loan Act is repealed.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

New Rules

Chapter 0400-45-04
Regulations Governing the Waterworks Construction Loan Act

Table of Contents

~~1200-5-4-.01~~ 0400-45-04-.01 Purpose.

The primary purpose of "The Waterworks Construction Loan Act of 1974" is to provide loans to local units of government to stimulate the construction and improvements of needed water supply systems in order to provide the citizens of Tennessee, as well as visitors to the ~~Senate~~ State, an adequate supply of safe water. In making these loans available, the State is in no way attempting to assume responsibilities of local government units to provide adequate water service to the people. As the funds available are sufficient to meet only a part of the total need, in making loans the State must place great emphasis on:

(1) Providing an adequate and safe supply of water for the area to be served;

(2) The availability of grants and loans from other sources;

(3) The creation of efficient systems of regional water supply; and

(4) The willingness and ability of local government units to meet their responsibilities through sound fiscal policies, creative planning, and efficient operation and management.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.02~~ 0400-45-04-.02 Definitions.

Pursuant to ~~Section 2~~ § 68-221-502 of "The Waterworks Construction Loan Act of 1974" and within the scope of this Act, the following definitions will be used unless the context requires otherwise:

~~(7)~~"Act" shall mean "The Waterworks Construction Loan Act of 1974", same being ~~Chapter 671, Public Acts of 1974~~ T.C.A §§ 68-221-501 et seq.

~~(2)~~"Construction" means the erection, building, acquisition, alteration, reconstruction, improvement or extension of waterworks, preliminary planning to determine the economic and engineering feasibility of waterworks, the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of waterworks, and the inspection and supervision of the construction of waterworks.

~~(9)~~"Construction Cost" shall mean the actual cost of construction of the eligible portions of any project for which a loan is made under the Act, including engineering, legal, fiscal, contingency costs, cost of real property, service

connections, meters and meter installations, for water supply systems, or alterations to existing systems. No cost shall be eligible for recurring annual expenditures for administration, repairs, operation and maintenance of any water supply system.

~~(3)~~"Department" means the Tennessee Department of ~~Public Health~~ Environment and Conservation.

~~(4)~~"Eligible Project" means a project for the construction of waterworks for which approval is required under ~~Chapter 20 of Title 53 Tennessee Code Annotated~~ T.C.A §§ 68-221-501 et seq., which conforms with the applicable rules and regulations of the department, and which in the judgment of the department is economically feasible.

~~(6)~~"Law" includes any act or statute, general, special, or local, and the charter of any incorporated town or city or metropolitan government of this state.

~~(5)~~"Municipality" means any county, metropolitan government, incorporated town or city, or special district of this state empowered to provide water services, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.

~~(8)~~"Regional Water Supply System" shall mean a municipality that has the capability to provide water service to an area, either by extension of water service into an area outside its own boundaries or the boundaries of another municipality, or by the acquisition of an existing system, and is permitted, by law, to serve the area; and will make a commitment satisfactory to the Department to extend such services; will minimize the cost of integration with other system(s) where proximity of such system(s) indicate the integration is or may become economically feasible; and the system is administered by a common management.

~~(1)~~"Waterworks" shall be constructed to include all or any part of the following: source of supply, pumping facilities, purification works, collection and storage facilities and distribution system for water, together with all necessary parts and appurtenances for proper operation.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.03~~ 0400-45-04-.03 General.

Subject to the provisions governing the allocations of funds set forth in the Act, the department will enter into contract with municipalities to make loans for the construction of new or improvement of existing water systems. Applications for the funds will be filed in accordance with ~~Section 5~~ Rule 0400-45-04-.05 ~~of these regulations.~~ Pursuant to ~~Section 53-2002 of Tennessee Code Annotated~~ T.C.A § 68-221-102, the plans and specifications for the work proposed to be constructed shall be approved in writing by the department prior to the initiation of any construction. The facilities shall be operated in accordance with rules and regulations. The staff of the Division of Water ~~Quality Control~~ Resources will do a detailed review of the economic analysis submitted with the application in order to ascertain the economic feasibility of the proposed project.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.04~~ 0400-45-04-.04 Eligible Applicants

(1) Only municipalities as defined in these rules and regulations and the Act shall be eligible to apply for loans to assist in the financing of the cost of construction of new of the improvement or expansion of existing water supply system projects.

(2) No applicant shall be eligible for the award of a loan unless the applicant demonstrates to the satisfaction of the Division of Water ~~Quality Control~~ Resources that:

(a) The applicant is a municipality as defined in these rules and regulations and the Act.

(b) The applicant has the financial capacity to provide its share of the project costs. To the extent that the costs are to be provided on a pay-as-you-go basis, the full amount indicated from this source shall be represented by cash on hand and/or may be expected to be included in the applicant's annual budget for the years in which payments under the project contract will be due. To the extent that borrowed funds are anticipated, the applicant shall certify, that the additional

debt, together with the applicant's existing debt, is within the debt limitation provisions of the general laws of the State.

(c) The applicant has substantially complied or will substantially comply with all applicable laws, rules, regulations and ordinances of the State.

(d) The estimated revenues to be derived from the project under the applicant's proposed schedule of fees and charges will be adequate to provide for proper operation, maintenance, and administration, reasonable expansion of the system and repayment of present and proposed indebtedness, as determined from the detailed engineering report and other available information, and will comply with ~~Sections 12 and 13 of the Act~~ T.C.A. §§ 68-221-512 and 68-221-513. For this purpose, if the project described in the application is to be an integral part of an existing system, the revenues to be derived from operation of the entire system shall be utilized in determining the adequacy of the applicant's proposed schedule of fees and charges.

(e) The applicant has attempted, without success to obtain the necessary financial assistance from other State, Federal, or private sources at a lesser cost.

(f) The proposed project will be placed under construction within the fiscal year in which the loan is received. The repayment period may be determined by the applicant, but in no case shall the period exceed thirty (30) years. Also, repayment shall begin no later than one month after completion of the project. Each municipality after entering into a loan agreement shall remit to the ~~State Funding Board~~ Tennessee Local Development Authority such amounts and at such times as shown in the amortization schedule established by the ~~State Funding Board~~ Tennessee Local Development Authority and the Department.

(3) Eligible Project Costs – Eligible project costs shall include the actual cost of construction of facilities, and the cost of equipment and appurtenances, for any project for which a loan is made under the Act, and the actual cost of necessary engineering, legal, and fiscal services related to the project for which a loan is made. Eligible costs also include the cost of purchase of acquisition of real property or interest therein. Costs incurred prior to approval of the application will be eligible with the exception of those costs involved in completing the documents for the application.

(4) Limitations on Eligible Costs – Eligible costs are limited to the extent that any one project shall not be awarded a loan which exceeds 25% of the total funds appropriated by the Legislation.

(5) Exclusion from Eligible Costs – Eligible costs do not include recurring annual expenditures for administration, repairs, operation and maintenance of any water supply systems project, and these costs must be excluded from the applicant's share of the total construction costs.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.05~~ 0400-45-04-.05 Applications

(1) Applications for project grants for the construction of new or the expansion or improvement of existing water supply systems shall be submitted on the appropriate form, and shall be accompanied by all documentation, assurances, and other information called for in the instructions for completing and filing of applications.

(2) All applications shall be complete and received in the ~~Nashville~~ Central Office of the Division of Water ~~Quality Control of the Tennessee Department of Public Health~~ Resources no later than May 1 of the year preceding the fiscal year in which the funds are available~~, except for fiscal year 1975 for which a special date will be set~~.

(3) All applications for project loans of water supply shall be so identified and be forwarded directly to the Director of the Division of Water ~~Quality Control of the Tennessee Department of Public Health~~ Resources. Applications and all supporting documents shall be submitted in such form and in such number as specified in the instructions for completing applications.

(4) Any application which does not contain information sufficient to permit the Division of Water ~~Quality Control~~ Resources to determine either the eligibility of the application or the assignment of a priority, shall not be deemed as received until such information is furnished by the applicant to the Division of Water ~~Quality Control~~ Resources.

(5) An applicant shall furnish information in addition to or supplemental to the information contained in its application and supporting documentation upon request by the Division of Water ~~Quality Control~~ Resources.

(6) An applicant may amend a pending application to include additional data or information in support of its original application at any time prior to the date on which the final priority to be assigned to application is determined.

(7) An application may be withdrawn from consideration upon request of the applicant, but if resubmitted shall be considered as a new application.

(8) The amount of the loan request in the application can be adjusted provided the funds are available and the change is not caused by the change in the project scope.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.06~~ 0400-45-04-.06 Determination of Eligibility

(1) Each application and supporting documents shall be reviewed by the Division of Water ~~Quality Control~~ Resources to determine if it contains all required information and meets the eligibility requirements of the Act and these rules and regulations.

(2) Each applicant will be notified by the Division of Water ~~Quality Control~~ Resources within sixty (60) days of the actual date of receipt of the application as to eligibility for consideration for a project loan award.

(3) Applications from ineligible applicants will be returned to the applicant.

(4) Eligible applications will be processed for priority determination and qualifications for a project loan award in accordance with the procedures set forth in these rules and regulations.

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

~~1200-5-4-.07~~ 0400-45-04-.07 General Criteria for Evaluation of Eligible Applications.

During the review periods set forth in these rules and regulations, all eligible applicants shall be assigned a priority for loan funds. Priorities shall be assigned by the Division of Water ~~Quality Control~~ Resources for applications for project loans for water systems based upon the following criteria:

CRITERIA CATEGORIES	POINTS
(1) Public Health Needs	
If the water being conveyed to the consumer by municipal systems has been declared by the Division of Water ~~Quality Control~~ Resources ~~of the Tennessee Department of Public Health~~ to be an actual and/or potential health hazard because of the chemical or bacteriological quality	25
or	
If water presently being conveyed to the consumers is from individual systems and is declared by the Division of Water ~~Quality Control~~ Resources ~~of the Tennessee Department of Public Health~~ to be an actual and/or a potential health hazard because of the chemical or bacteriological quality	20
(2) Financial Needs	

One point will be given for each $100 of total (present plus proposed) indebtedness per connection up to a maximum of 20

(3) Treatment Facility Needs (quantity)

Applications for systems not capable of meeting the needs (quantity) of present consumers will receive 20

or

Those systems not capable of meeting the needs (quantity) of new consumers will receive 20

(4) Regional ~~War~~ Water System

If the proposed project is part of a regional system, the application will receive 20

or

If the proposed project will become a part of a regional system, within two years, the application will receive 15

(5) Distribution System

Applications for systems that must improve in order to meet the maximum demand of the present consumer will receive 15

or

Application for systems that must be expanded to serve additional consumers will receive 10

Authority: T.C.A. §§ 68-221-501 et seq. and 4-5-201 et seq.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Environment and Conservation
DIVISION:	Water Resources
SUBJECT:	Safe Dams Act
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 69-11-101 et seq.
EFFECTIVE DATES:	January 14, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rulemaking transfers the rules implementing the Safe Dams Act to Chapter 0400-45-07 from Chapter 1200-05-07 and makes editorial/citation corrections.

Public Hearing Comments

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

There were no comments on the rule changes.

Regulatory Flexibility Addendum

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

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

The rule changes will have no impact. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-07 from Chapter 1200-05-07 and to make editorial/citation corrections.

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

There should be no additional costs associated with the rule compliance.

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

The rule changes will have no impact. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-07 from Chapter 1200-05-07 and to make editorial/citation corrections.

(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 should be no effect on small businesses or consumers.

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

There is no comparable federal rule.

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

Exemption of small businesses from the Safe Dams Act would put public safety at risk from dam failures on unregulated dams.

Impact on Local Governments

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

The Department does not anticipate an impact on local governments.

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

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Supply
Contact Person:	Tom Moss
Address:	6th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243-1549
Phone:	615-532-0170
Email:	Tom.Moss@tn.gov

Revision Type (check all that apply):

___ Amendment
_X_ New
_X_ Repeal

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

Chapter Number	**Chapter Title**
0400-45-07	Rules and Regulations Applied to the Safe Dams Act of 1973
Rule Number	**Rule Title**
0400-45-07-.01	General
0400-45-07-.02	Definitions
0400-45-07-.03	Duties and Authority
0400-45-07-.04	Certifications of Construction, Operation and Alteration
0400-45-07-.05	Classification of Dams
0400-45-07-.06	Standards for Existing Dams
0400-45-07-.07	Design Standards for New Dams
0400-45-07-.08	Engineering Requirements
0400-45-07-.09	Fees
0400-45-07-.10	Emergency Action by Owner

Chapter Number	**Chapter Title**
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Rule Number	**Rule Title**
1200-05-07-.01	General
1200-05-07-.02	Definitions
1200-05-07-.03	Duties and Authority
1200-05-07-.04	Certifications of Construction, Operation and Alteration
1200-05-07-.05	Classification of Dams
1200-05-07-.06	Standards for Existing Dams
1200-05-07-.07	Design Standards for New Dams

1200-05-07-.08	Engineering Requirements
1200-05-07-.09	Fees
1200-05-07-.10	Emergency Action by Owner
1200-05-07-.11	Repealed

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

Repeal

Chapter 1200-05-07 Rules and Regulations Applied to the Safe Dams Act of 1973 is repealed.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-45-07
Rules and Regulations Applied to the Safe Dams Act of 1973

Table of Contents

~~1200-5-7-.01~~ 0400-45-07-.01 General.

(1) Passed on May 1, 1973, "The Safe Dams Act of 1973", T.C.A. §69-11-101 et seq., provides that on or after July 1, 1973, no person shall construct, enlarge, repair, alter, remove, maintain, or operate a non-federal dam in the State of Tennessee without first obtaining a certificate. The Act further requires every owner of a dam file with the Commissioner of Environment and Conservation an application for a certificate.

(2) Under the Act, certain provisions and conditions are established for the issuance and continuance of said certificates, and authority is granted the Commissioner for the adoption of general rules and regulations which he deems necessary to accomplish the purpose of the Act. To safeguard the public by reducing the risk of failure of such dams, the following rules and regulations are made to (1) effect the orderly inventory and inspection of existing dams in Tennessee; (2) provide for pre-construction review and approval of all future dam construction and alteration of dams; and (3) allow for a program of regular inspection of dams within the State.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

1200-5-7-.02 Definitions.

For the purpose of these rules and regulations, the term:

~~(1)~~ "Abutment" means the bordering area of the dam site which functions as a support for the ends of the dam structure.

~~(2)~~ "Act" means "The Safe Dams Act of 1973", T.C.A. § 69-11-101 et seq., as amended.

~~(3)~~ "Alterations" means any repair, change to the structure, removal or change in use of a dam that may affect the safety of that dam.

~~(4)~~ "Applicant" means any owner of an existing or new dam who applies to the Division for a "Certificate" under the provisions of the Act.

~~(5)~~ "Appurtenant Works" means such structures as spillways, either in the dam or separate therefrom; the reservoir and its rims; water level outlet works; access bridges; and water conduits such as tunnels, pipelines or penstocks, either through the dam or its abutments.

~~(6)~~ "Certificate" means a "Certificate" as required by the Act for the construction, alteration, or operation of a dam.

~~(7)~~ "Commence Construction" means the actual start of on-site building but does not include preliminary surveying work or engineering plans preparation.

~~(8)~~ "Commissioner" means the Commissioner of the Department of Environment and Conservation, his duly authorized representatives and in the event of his absence or a vacancy in the office of Commissioner, the Deputy Commissioner.

~~(9)~~ "Conduit" means any closed waterway including but not limited to, a cast-in-place cut-and-cover culvert, a precast or prefabricated pipe embedded in the dam or foundation or a tunnel bored through the dam.

~~(10)~~ "Dam" means any artificial barrier, together with appurtenant works, which does or may impound or divert water, and which either (1) is or will be twenty (20) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Commissioner, or (2) has or will have an impounding capacity at maximum water storage elevation of thirty (30) acre-feet or more. Provided, however, that any such barrier which is or will be less than six (6) feet in height, regardless of storage capacity, or which has or will have a maximum storage capacity not in excess of fifteen (15) acre-feet, regardless of height, shall not be considered a dam, nor shall any barrier, regardless of size, be considered a dam, if, in the judgment of the Commissioner, such barrier creates an impoundment used only as a farm pond. Diversion weirs, roadbeds, water tanks, and wastewater impoundment barriers as defined in this section are not dams.

~~(11)~~ "Days" means calendar days, including Sundays and holidays.

~~(12)~~ "Division" means the Division of Water ~~Supply~~ Resources of the Tennessee Department of Environment and Conservation.

~~(13)~~ "Director" means the Director of the Division of Water ~~Supply~~ Resources of the Department of Environment and Conservation of the State of Tennessee.

~~(14)~~ "Diversion Weir" means a structure substantially within the bed of a stream, designed to impound water only during low flow conditions, that would not cause substantial overflow of water onto the downstream floodplain in the event of failure, and meets the definition of a Category 3 dam in ~~Rule 1200-5-7-.05~~ part (2)(b)3 of Rule 0400-45-07-.05.

~~(15)~~ "Easily Erodible" means any soil with a plasticity index of less than ten (10) or greater than forty (40).

~~(16)~~ "Emergency Spillway" means the spillway which conveys out of the reservoir any runoff in excess of that conveyed by the principal spillway.

~~(17)~~ "Engineer" means a professional engineer registered by the State of Tennessee.

~~(18)~~ "Erosion Resistant" means any soil not easily erodible.

~~(19)~~ "Existing Dam" means any dam complete and capable of impounding water prior to October 3, 1987.

~~(20)~~ "Enlargement" means any change in, or addition to, an existing dam or reservoir, which does or may raise the water storage elevation of the dam.

~~(21)~~ "Factor of Safety" means the ratio of the forces or moments resisting mass movement to the forces or moments tending to produce mass movement.

~~(22)~~ "Farm Pond" means any impoundment used only for providing water for agricultural and domestic purposes such as livestock and poultry watering, irrigation of crops, recreation, and conservation, for the

owner or occupant of the farm, his family, and invited guests, but does not include any impoundment for which the water, or privileges or products of the water, are available to the general public.

(a) General Public as used above means patrons, members, and customers of institutions and/or clubs such as but not limited to summer camps, schools, retirement facilities, churches, private clubs, communes, hunting clubs, and health care facilities.

(b) The following are some examples of impoundments which are not farm ponds:

Lakes owned or operated by a city, county, or the state, lakes that lie on three or more property parcels, residential subdivision lakes, industrial waste impoundments, industrial water supply impoundments, impoundments owned or used by hunting clubs, public water supply impoundments, commercial land development impoundments, and watershed district impoundments.

(c) The following are some examples of impoundments which are farm ponds:

1. Impoundments directly used in support of farming operations.

2. Impoundments used for agriculture, livestock watering, recreation or conservation solely by the owner and not available to the general public.

~~(23)~~ "Foundation" means the earth or rock on which the dam rests.

~~(24)~~ "Freeboard" means the difference in elevation between the top of the dam and the maximum reservoir water surface that would result should the inflow design flood occur and should the outlet works function as planned.

~~(25)~~ "Impoundment" means the water or liquid substance that is or will be stored by a dam.

~~(26)~~ "Maximum Water Storage Elevation" means the elevation of the lowest point on the top of the dam, excluding any spillway structures.

~~(27)~~ "Maximum Storage Capacity" means the volume of water stored at the maximum water storage elevation.

~~(28)~~ "New Dam" means any dam that is not an existing dam.

~~(29)~~ "Normal Water Storage Elevation" means the normal elevation of water surface which is obtained by the reservoir when the intake and outlet works are operating as planned during periods of normal precipitation and runoff and not during periods of drought or flood.

~~(30)~~ "Owner" means any person who owns an interest in, controls, or operates a dam.

~~(31)~~ "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, county, municipal or quasi-municipal corporation, public utility, utility or other district, the State of Tennessee and its departments, divisions, institutions, and agencies, and the duly authorized officers, agents, and representatives thereof, or any combination of any of the above. Person does not include the United States government nor any agency owned by the United States or any agency thereof, nor those who own a dam or reservoir leased to or operated by the United States or any agency thereof, nor those dams licensed by the Federal Energy Regulatory Commission (previously the Federal Power Commission).

~~(32)~~ "Principal Spillway" means the spillway which conveys normal runoff out of the reservoir.

~~(33)~~ "Probable Maximum Precipitation" "(PMP)" means the greatest amount of rainfall of a six-hour duration which would be expected for a given drainage basin as determined by National Weather Service meteorological estimates. The PMP for 10 square miles shall be used for watersheds smaller than 10 square miles.

~~(34)~~ "Probable Maximum Flood" "(PMF)" means the flood that may be expected from the most severe

combination of critical meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the probable maximum precipitation (PMP).

~~(35)~~ "Removal" means altering a dam such that it is no longer a dam as defined in these rules.

~~(36)~~ "Reservoir" means any basin which contains or will contain the water impounded by a dam.

~~(37)~~ "Roadbed" means the earth support work of a road prepared for surfacing which is not intended to impound water and which does not impound water continuously.

~~(38)~~ "Spillway" means the feature of a storage or detention dam which is designed to release surplus water, and at diversion dams is a means to bypass flows exceeding those which are turned into the diversion system.

~~(39)~~ "Structural Height" means the height of the dam measured from the natural bed of the stream or watercourse at the downstream toe of the barrier to the low point in the top of the dam.

~~(40)~~ "Wastewater Impoundment Barrier" means an artificial barrier impounding a body of wastewater for the purpose of treatment and designed so that no surface runoff from areas adjacent to the barrier is introduced into the impoundment.

~~(41)~~ "Water Tank" means a vessel designed and used to hold water.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

~~1200-5-7-.03~~ 0400-45-07-.03 Duties and Authority.

The general responsibility to administer and enforce the provisions of this Act and all rules and regulations thereunder shall be carried out by the Division of Water ~~Supply~~ Resources of the Department of Environment and Conservation.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

~~1200-5-7-.04~~ 0400-45-07-.04 Certificates of Construction, Operation, and Alteration.

(1) General Provisions for Certificates.

(a) Certificate applications shall be made on forms available from the Commissioner. Where there are multiple owners of a dam, each owner shall not be required to file an application if all owners are listed in the application filed by any one of them.

(b) Application for a Certificate shall be made on forms available from the Commissioner and shall include the following information:

1. The name of the dam.

2. The name of the owner.

3. The legal address of the owner and/or lessee.

4. The location of the dam.

5. The type, size and height of the dam.

6. The storage capacity and reservoir surface area for normal and maximum water surface elevation.

7. The purpose or purposes for which the dam or reservoir is to be used.

8. In the case of an application by an owner or lessee of a dam, the names and addresses

of all persons having a real property interest in the dam.

9. Such other plans and detailed information as the Commissioner may deem reasonable and necessary to fulfill his responsibilities hereunder.

(c) An owner making application for an Alteration or Construction Certificate shall engage a qualified professional engineer, practicing in accordance with the registration laws of Tennessee, to plan, to prepare designs and specifications, and to supervise construction. This engineer must be qualified and experienced in the design and construction of dams of the type proposed and may be required to present evidence of his qualifications to undertake the project.

(d) The Commissioner shall examine the application for a certificate of approval and cause an on-the-ground inspection to be made of the existing or proposed dam or reservoir and downstream floodplain. He shall then, within sixty (60) days of the receipt of the completed application for a certificate of approval, either grant the certificate or disapprove it in writing, stating the reasons for disapproval. In the case of applications for construction certificates, applicants who fail to submit, within 18 months from the date of the original application submittal, plans or other detailed information required by the Commissioner must refile an application and plans review fee to obtain a construction certificate.

(e) Certificates are not transferable from one person to another or from one dam to another.

(f) The Commissioner shall be notified of any proposed change in the operation of a dam.

(g) Certificates shall not be granted until all fees required by the provisions of the Act and these rules have been paid.

(h) It shall be a violation of the Safe Dams Act for any person to knowingly submit a false or inaccurate report, data, or information.

(2) Operating Certificate.

(a) No person shall operate a dam without an Operating Certificate.

(b) Application for an Operating Certificate for a new dam already having a Construction Certificate shall be made on forms available from the Commissioner within thirty (30) days of the completion of the dam. The application shall be accompanied by a history of the construction of the dam as maintained by the responsible engineer and by a statement signed by the responsible engineer certifying that the project was constructed in conformity with approved plans and specifications. The history of construction shall include but not be limited to:

1. A record of all geological and foundation data.

2. Date, location, and results of all material tests made.

3. Narrative of problems encountered during construction and changes in design. (Necessity for such changes shall be reported to the Division for approval before proceeding with construction.)

4. Photographs of completed foundations, critical features (such as construction and backfilling around conduits and low level outlet structures) and periodic stages of construction are desirable. These may be required for selected projects.

5. A record of permanent location points, benchmarks, and any instruments embedded in the structure.

6. Plans which show the actual construction of the dam after changes in the original design.

(c) Application for an Operating Certificate for a dam already having an Alteration Certificate shall be made within thirty (30) days from the completion of the alteration on forms available from the

Commissioner. The application shall be accompanied by a statement signed by the responsible engineer certifying that the project was constructed in conformity with the approved plans and specifications. Additional information about the construction, such as that listed in ~~1200-5-7-.04(2)~~ subparagraph (b) of this paragraph, must be included if the Commissioner determines that such information is needed to insure that the alteration is constructed properly.

(d) Any new dam or dam alteration must be constructed in accordance with the approved plans and specifications in order to receive an Operating Certificate.

(e) A new dam must not be allowed to impound water other than transient storage due to storm runoff until an Operating Certificate has been issued.

(f) Application for an Operating Certificate shall be made on forms available from the Commissioner. Any dam owner who is notified by the Commissioner of the need to apply for an Operating Certificate shall submit such application within thirty (30) days.

(g) Whenever legal title to a dam, for which a certificate of approval has been issued, is modified to create real property interests, including leasehold interests, in persons not listed on the application for such certificate, the owner of such dam shall make application for a new certificate within ninety (90) days of the date such interests are created, other provisions of this chapter notwithstanding.

(h) An Operating Certificate shall be issued only on evidence satisfactory to the Commissioner that the requirements of Rule ~~1200-5-7-.06~~ 0400-45-07-.06 are being met for an existing dam and the requirements of Rule ~~1200-5-7-.07~~ 0400-45-07-.07 are being met for a new dam.

(3) Construction Certificate.

(a) No person shall commence construction on a new dam without first obtaining a Construction Certificate from the Commissioner.

(b) Application for a Construction Certificate shall be made at least 60 days prior to the commencement of construction on forms available from the Commissioner.

(c) The Commissioner shall issue a Construction Certificate for construction of a new dam only if the requirements of Rule ~~1200-5-7-.07~~ 0400-45-07-.07 Design Standards for New Dams, Rule ~~1200-5-7-.08~~ 0400-45-07-.08 Engineering Requirements, and Rule ~~1200-5-7-.09~~ 0400-45-07-.09 Fees, are met.

(d) The owner or his agent shall provide written notice to the Commissioner within five days of the date that construction commences and shall include the name of the engineer's inspector. For dams which are to be greater than 30 feet high or which will impound more than 100 acre-feet at the maximum storage capacity, the engineer in charge of construction or his inspector shall be on site whenever construction is occurring. The Commissioner may require such full time inspectors on smaller dams as he deems necessary. During construction the Commissioner may make such inspections as are needed to ensure conformity with approved plans and specifications. The inspection by the Commissioner does not relieve the owner or the responsible engineer from providing adequate inspection of the construction in progress.

(e) If at any time during the progress of the work the Commissioner finds that the work is not being done in accordance with the approved plans and specifications or approved revisions, he shall serve written notice to that effect to the owner. Such notice shall state the particulars in which the approved plans and specifications have not been complied with and may request the suspension of work until such compliance has been effected. If, after due notice, the owner, or his duly authorized agents, fails to comply with the requirements of the above notice, the Certificate by which construction is authorized shall be subject to revocation by the Commissioner.

(f) The owner or his agent shall give written notice of the completion of the dam to the Commissioner within five (5) days of the completion or in time for the Commissioner's representative to be present at the final inspection with the engineer and the contractor, whichever occurs sooner.

(4) Alteration Certificate.

(a) No person shall make an alteration to a dam without first obtaining an Alteration Certificate.

(b) Application for an Alteration Certificate shall be made on forms available from the Commissioner at least 60 days prior to a planned alteration. The application shall identify the dam, state reasons why alteration, repair, or removal is necessary, give details of the proposed work, and provide an evaluation of the effects of the contemplated action. Plans and specifications will accompany the application along with a schedule for accomplishing the proposed project. The plans and specifications shall be submitted in conformance with Rule ~~1200-5-7-.08~~ 0400-45-07-.08. The Commissioner may require full time inspection of any alteration construction by the responsible engineer or his inspector as he determines is necessary to ensure that the construction is performed properly.

(c) The owner or his agent shall provide written notice to the Commissioner within five days of the date that construction commences and shall include the name of the engineer's inspector if an inspector is required. The owner or his agent shall give written notice of the completion of the alteration to the Commissioner within five (5) days of the completion or in time for the Commissioner's representative to be present at the final inspection with the engineer and the contractor, whichever occurs sooner.

(d) In the event of an emergency where immediate repairs are necessary to safeguard life and property, such repairs shall be made immediately by the owner, or his duly authorized agents, and in accordance with Rule ~~1200-5-7-.10~~ 0400-45-07-.10. In such events, the Commissioner shall be notified of the necessary emergency repairs and of work under way. The owner shall give written notice to the Commissioner within two days of learning of the emergency.

(5) Duration of Certificates.

(a) Construction and Alteration Certificates shall be for a single construction event. Construction Certificates shall be valid only for construction that begins within one year of issuance of the certificate.

(b) Alteration and Operating Certificates shall be valid for a definite period of time, not to exceed five (5) years, as determined by the Commissioner and stated on the certificate. In determining the period of approval, the Commissioner may take account of any circumstances pertinent to the situation, including, but not limited to, the size and type of dam, topography, geology, soil conditions, hydrology, climate, use of reservoir and the lands lying in the floodplain downstream from the dam, and the hazard category of the dam.

(6) Imposition of Additional Conditions - Hazard Categories.

(a) In granting a Certificate, the Commissioner may impose such conditions relating to the inspection, operation, maintenance, alteration, repair, use, or control of a dam or reservoir as he determines are necessary for the protection of public health, safety, or welfare.

(b) The Commissioner shall establish hazard categories for dams in accordance with ~~Rule 1200-5-7-.05~~ paragraph (2) of Rule 0400-45-07-.05.

(7) Modification of certificates. The Commissioner may modify a Certificate or the conditions attached to it. Such modifications shall become effective ninety (90) days following issuance by the Commissioner of a revised Certificate, except when the Commissioner finds that a state of emergency exists, and that life or property would be endangered by delay. In case of an emergency declared by the Commissioner, the new conditions shall be effective immediately.

(8) Suspension, Revocation, or Modification. The Commissioner may revoke, suspend, or modify any Certificate issued pursuant to the Act or deny the issuance of a Certificate for cause including, but not limited to the following:

(a) Violation of any condition of said Certificate.

(b) Obtaining a Certificate by misrepresentation, or failure to disclose fully all relevant facts.

(c) Violation of any provision of the Act or any rule promulgated thereunder.

(9) Rights of Appeal. Any applicant aggrieved by the denial of a Certificate or any term or condition in a Certificate may appeal to the Commissioner for a hearing within sixty (60) days of the date of issuance of the Certificate or the denial of a Certificate. After sixty (60) days no such appeal may be filed. All appeals shall be conducted in accordance with T.C.A. § 69-11-118 ~~of the Act~~ and Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

~~1200-5-7-.05~~ 0400-45-07-.05 Classification of Dams.

Dams will be classified in accordance to size, hazard potential, and design characteristics in order to formulate a priority basis for selecting dams to be scheduled in the inspection program and also to provide compatibility between guideline requirements and involved risks. When conditions at the dam or the hazard potential changes, the dam may be reclassified, and, if necessary, the dam must be upgraded to meet the standards of the new classification. The downstream conditions will be evaluated for hazard potential reclassification at least every 5 years.

(1) Size. The classification for size is based on the height of the dam and storage capacity in accordance with the table below. The height of the dam is established with respect to the maximum water storage elevation measured from the natural bed of the stream or watercourse at the downstream toe of the barrier, or if it is not across a stream or watercourse, the height from the lowest elevation of the outside limit of the barrier, to the maximum water storage elevation. For the purpose of determining project size, the maximum storage elevation will be considered equal to the top of dam elevation as defined in ~~Rule 1200-5-7-.02~~ paragraph (26) of Rule 0400-45-07-.02. Size classification will be determined by either storage or height, whichever gives the larger size category. For size classification purposes, fractions of heights and storages shall be rounded down to the nearest whole number, e.g., 49.9 feet would be classified in the 20 to 49 feet category.

Size Classification

Category	Storage (Ac-Ft)	Height (Ft)
Small	30 to 999	20 to 49
Intermediate	1,000 to 49,999	50 to 99
Large	50,000 or greater	100 or greater

(2) Hazard Potential Category.

(a) Every dam will be assigned a hazard potential category to reflect the damage which might occur in the event of a dam failure, either structurally or operationally. The hazard potential will take into account a number of factors which will include, but not be limited to: the physical characteristics and degree of development of the site and valley downstream; the relationship of the site to industrial and residential areas; use of downstream properties throughout the danger reach; geological considerations; public and private uses of the impoundment or reservoir; and probable future downstream development.

(b) The hazard potential category of a dam may impose different standards at different sites for design and conditions for issuance of a Certificate and will have a bearing upon the frequency of inspections by the Commissioner. The following categories are established to permit the association of criteria with the damage that might result from such a failure.

1. Category 1 dams are located where failure would probably result in any of the following: loss of human life; excessive economic loss due to damage of downstream properties; excessive economic loss, public hazard, or public inconvenience due to loss of

impoundment and/or damage to roads or any public or private utilities.

2. Category 2 dams are located where failure may damage downstream private or public property, but such damage would be relatively minor and within the general financial capabilities of the dam owner. Public hazard or inconvenience due to loss of roads or any public or private utilities would be minor and of short duration. Chances of loss of human life would be possible but remote.

3. Category 3 dams are located where failure may damage uninhabitable structures or land but such damage would probably be confined to the dam owner's property. No loss of human life would be expected.

(3) Removal of Dams. A dam shall be considered removed if it meets one of the following criteria.

(a) A portion of the dam is removed such that at the invert of the removed portion the dam is less than six feet high or has less than 15 acre-feet of storage capacity.

(b) A portion of the dam is removed or an open-channel spillway is built such that the invert of the removed portion is at the approximate elevation of the top of the tailings or sediment in the impoundment and the dam can no longer permanently impound water. In the case of embankment dams that receive surface runoff from areas adjacent to the impoundment, the open channel must be sufficiently large to preclude overtopping during the Freeboard Design Storm specified in ~~Rule 1200-5-7-.06~~ subparagraph (3)(b) of Rule 0400-45-07-.06 or ~~Rule 1200-5-7-.07~~ subparagraph (4)(d) of Rule 0400-45-07-.07, respectively.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

~~1200-5-7-.06~~ 0400-45-07-.06 Standards for Existing Dams.

(1) Stability. All dams shall be stable. There shall not be excessive cracks, sloughing, seepage or other signs of instability or deterioration. In cases where the stability of the dam is questionable, it shall be the responsibility of the owner to either demonstrate to the Commissioner that the dam is stable or drain the reservoir and remedy the unstable condition prior to refilling the reservoir.

(2) Slope Protection

(a) Earth embankments shall be protected from surface erosion by appropriate vegetation or some other type protective surface such as riprap or paving and shall be maintained. Examples of appropriate vegetation include, but are not limited to, Bermuda grass and fescue. All inappropriate vegetation such as honeysuckle, briers, bushes, and trees shall be removed from the dam. Some trees may be allowed to remain on a dam if the Commissioner concurs with a justification from a qualified engineer for doing so. Such justification must satisfy the Commissioner that the number, size, location, root characteristics, etc., of such trees will not adversely affect the dam's structural integrity and safety nor impede inspection.

(b) The root mass of all trees larger than four (4) inches in diameter as measured at two feet above ground level shall be grubbed out and the hole backfilled with suitable fill material properly compacted. Smaller trees may either be cut at ground level or be removed as specified above. The Commissioner may require an engineer to oversee the tree removal.

(3) Emergency Spillway.

(a) All dams shall have an emergency spillway system with capacity to pass a flow resulting from a 6 hour design storm indicated in subparagraph (b) ~~below~~ of this paragraph for a hazard classification appropriate for the dam. However, if the applicant's engineer provides calculations, designs, and plans to show that the design flow can be stored, passed through, or passed over the dam without failure occurring, or if he can successfully demonstrate to the Commissioner by engineering analysis that the dam is a safe structure and can certify that the dam is sufficient to protect against probable loss of human life downstream, said dam design may be approved by the Commissioner.

(b) Minimum Freeboard Design Storms.

Hazard Potential Category	Size	Freeboard Design Storm (6 Hours)
Category 3 (Low)	Small	100 year
	Intermediate	1/3 PMP
	Large	1/2 PMP
Category 2 (Significant)	Small	1/3 PMP
	Intermediate	1/2 PMP
	Large	PMP
Category 1 (High)	Small	1/2 PMP
	Intermediate	PMP
	Large	PMP

(c) No dam which is modified after original construction to increase its design storm to a 1/2 PMP or greater shall be required to pass a larger design storm unless the dam itself is enlarged or its normal or maximum storage volume is increased.

(4) Concrete and Masonry Dams. Concrete and/or masonry dams shall be structurally sound and shall have joints free of trees and other vegetation and shall show no signs of significant structural deterioration such as excessive cracks, spallation, efflorescence and exposed reinforcing steel.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

~~1200-5-7-.07~~ 0400-45-07-.07 Design Standards for New Dams.

(1) Design of Dams. Designs of dams shall conform to accepted practices and procedures of the engineering profession. Design references developed by the U.S. Army Corps of Engineers, Soil Conservation Service, and the Bureau of Reclamation may be used although the limiting criteria must be in accordance with these rules.

(a) All dams will be considered on an individual basis and reviewed in accordance with prevailing practices that are currently accepted by the engineering profession.

(b) All structures other than Category 3 dams constructed before 2008 shall be designed to withstand seismic accelerations of the following intensities: Zone 1 = 0.025g, Zone 2 = 0.05g, Zone 3 = 0.15g. Zones refer to "Geologic Hazards Map of Tennessee" by Robert A. Miller, 1978. All dams constructed during or after 2008 shall be designed to withstand the peak ground acceleration for an earthquake with a 10% probability of exceedance in 50 years as determined by the United States Geological Survey at the time the construction permit is issued. A different peak ground acceleration may be used if site specific studies using accepted engineering practices determine that a different value is appropriate.

(c) A complete engineering report, plans, and specifications shall be submitted for each dam.

(d) A complete geotechnical report shall be submitted as an integral part of the engineering report for all Hazard Potential Category (HPC) 1 and 2 dams (defined in Rule ~~1200-5-7-.05~~ 0400-45-07-.05). For HPC 3 dams, sufficient investigation will have to be made to determine if the site and the fill material to be used are suitable, and this information will have to be included in the engineering report.

(e) A hydrologic/hydraulic analysis shall be submitted as an integral part of the engineering report for all dams. A breach analysis shall be submitted for all HPC 1 and HPC 2 dams and, for the former, shall be included in the Emergency Action Plan. The breach analysis must use surveyed cross sections at all stations where homes or other structures may be flooded. A sunny-day breach shall be modeled with the impoundment at the elevation of the emergency spillway invert when the failure begins, or, if there is no emergency spillway, at the elevation of the inlet of the

principal spillway. Breach modeling under sunny-day, overtopping, or any other conditions, is site specific.

(f) All Category 1 dams shall submit to the Commissioner an Emergency Action Plan. This plan shall include, but not be limited to, the following:

1. Inundation information and an inundation map based on the breach analysis.

2. Procedures for notification of people downstream and law enforcement and other government agencies.

3. Resources for emergency actions such as contractors, equipment supply businesses, etc.

(g) Design calculations for all major components of the structure, i.e., spillways, pipes, etc., shall be included in the engineering report.

(2) Principal Spillways.

(a) All component parts of the principal spillway except attached gates and trash racks will be of equal durability. The structural design criteria and detailing of such spillways will conform to recognized standards and codes of practice.

(b) In requiring the capacity of the principal spillway, the Commissioner may consider: (1) the benefits that accrue to the reduction of the discharge rate, (2) damages that may result from prolonged storage in the reservoir, (3) damages that may result from prolonged outflow, (4) the possibility of occurrence of significant runoff from two or more consecutive storm events within the time required to empty the reservoir, and (5) limitations in water rights or other legal requirements.

1. All conduits under a dam shall support the external loads imposed with an adequate factor of safety. They must withstand the internal hydraulic pressures without leakage under full external load and settlement. They must convey water at the design velocity without damage to the interior surface of the conduit.

2. Principal spillway conduits under earth dams shall be designed to support fill heights greater than the original constructed height where there is a reasonable possibility that it may become desirable to raise the embankment height at a later date to incorporate additional storage.

3. Principal spillway conduits shall be of reinforced concrete pipe, cast-in-place reinforced concrete, ductile iron pipe, or plastic pipe. Fill height and foundation conditions require special considerations for ductile iron pipe and plastic pipe so that each use will be checked on an individual basis; cradling or encasement in concrete may be required. Welded steel pipe is not acceptable for Category 1 and Category 2 dams, and corrugated metal pipe is not acceptable for any class of dam.

4. Principal spillway conduits shall be field tested for watertightness before backfilling. This requirement as well as the method of testing shall appear on the plans or in the specifications.

5. Rigid principal spillway conduits shall be designed as positive projecting conduits.

6. All reinforced concrete water pipe - steel cylinder type - prestressed, all reinforced concrete water pipe - steel cylinder type - not prestressed, and all reinforced concrete water pipe - noncylinder type - not prestressed, shall meet the AWWA specifications effective at the time of application.

7. Elliptical or other systems of reinforcement requiring special orientation of pipe sections are not permitted in pipe drop inlet barrels.

8. Reinforced concrete pipe, with or without cradles, shall be designed to support at least 12 feet of earth fill above the pipe at all points along the conduit.

(c) The minimum inside diameters of pipes shall be as follows:

1. Category 3 dams: The minimum diameter of the principal spillway barrel will be 18 inches for fill heights up to 50 feet and 24 inches for greater heights; or

   Where the drop inlet is designed hydraulically in such a way that the flow in the barrel under all possible conditions of discharge and foundation consolidation is positively known to be open channel flow with the water surface in the conduit subject to atmospheric pressure only, the minimum diameter shall be 18 inches; or

   Where welded steel pipe is used, the principal spillway shall be designed in accordance with conditions presented in ~~Rule 1200-5-7-.07(2)~~ subparagraph (e) of this paragraph.

2. Category 2 dams: The minimum diameter of the principal spillway barrel shall be 24 inches.

3. Category 1 dams: The minimum diameter of the principal spillway barrel shall be 30 inches.

4. Smaller conduits may be used if detailed calculations show them to be hydraulically and structurally adequate and all other requirements of this rule ~~1200-5-7-.07~~ are met.

(d) Where the barrel and cradle or bedding are to rest directly on firm bedrock thick enough so that there is essentially no foundation consolidation under the barrel, the cradle under the pipe need not be articulated.

(e) Principal spillways of welded steel pipe may be used for Category 3 dams under the following conditions, all of which must be met:

1. The minimum diameter of the barrel will be 18 inches.

2. The height of fill over the pipe will be less than 35 feet.

3. Welded steel pipe conduits are to conform to American Society of Testing Materials (ASTM) specifications A53, A120, A135, A139, or A134 and are to be structurally designed as rigid pipe. A joint extension safety margin of 1.5 inches is to be provided for conduits on yielding foundations. Welded pipe is to be protected by an approved exterior coating.

(f) Conduit joints will be designed and constructed to remain water tight under maximum anticipated hydrostatic head and maximum probable conditions of joint opening, including the effects of joint rotation, and must have a margin of safety where required.

(g) Trash racks will be designed and built to provide positive protection against clogging of the spillway at any point. The average velocity of flow through a clean trash rack will not exceed 2.5 feet per second with the water elevation in the reservoir five feet above the top of the trash rack or at the crest of the emergency spillway, whichever is lower. Velocity will be computed on the basis of the net area of opening through the rack.

For dry dams, a trash rack may be used in lieu of a ported concrete riser. The principal spillway trash rack will extend sufficiently above the anticipated sediment elevation at the inlet to provide full design flow through the spillway with velocities through the net area of the trash rack above the sediment elevation not in excess of two feet per second when the water surface in the reservoir is five feet above the top of the trash rack.

(h) All closed conduit principal spillways designed for pressure flow will have an anti-vortex device.

(3) Drawdown Facilities.

(a) All new dams shall have a drawdown facility. This facility shall be capable of draining the reservoir in ten (10) days or less. It may be assumed that this requirement has been met if seventy-five (75) percent of the liquid volume from the normal water storage elevation has been evacuated in the ten (10) day period. The use of a longer period must be justified.

(b) The necessary drawdown facility for any dam shall be made an integral part of the principal spillway structure if the principal spillway configuration warrants it, but in no case will the drawdown facility be valved on the downstream side of the embankment. Siphon facilities will be accepted after proper engineering justification.

(c) ~~The above stated requirement~~ Subparagraph (b) of this paragraph does not apply in the case of a water supply line through the dam, but in such cases provision must be made for a positive shutoff on the upstream side of the structure.

(d) Drawdown systems shall be maintained in an operable condition. Drawdown valves shall be opened and closed at least annually to ensure operability.

(4) Emergency Spillways.

(a) An emergency spillway shall be provided for each structure, unless the principal spillway is large enough to pass the routed freeboard hydrograph discharge and the debris that comes to it. A conduit type principal spillway having a barrel with a cross-sectional area of 20 square feet or more, an inlet which will not clog, and an elbow designed to facilitate the passage of debris, is the minimum size and design that may be utilized without an emergency spillway. If a principal spillway of this type and size is not provided, danger from clogging requires the use of an emergency spillway regardless of the volume of storage provided.

(b) A single uncontrolled open channel spillway may be used for all purposes provided it is designed to accommodate all discharges, including the freeboard storm, without damage to the structure. However, a positive means to drain the reservoir must also be provided.

(c) Emergency spillways shall be proportioned so that they will pass the freeboard hydrograph at the safe velocity determined for the site. They shall have sufficient capacity to pass the freeboard hydrograph with the water surface in the reservoir at or below the maximum storage elevation.

(d) Minimum Freeboard Design Storms

Size	Freeboard Design Storm (6 Hour)
Small	½ PMP
Intermediate	PMP
Large	PMP

(e) All dams shall have an emergency spillway system with capacity to pass a flow resulting from a 6 hour design storm indicated in subparagraph (d) ~~above~~ of this paragraph for the size corresponding to the dam. Any new dam constructed between October 3, 1987, and February 19, 2001, shall be required to pass the Freeboard Design Storm specified in subparagraph ~~1200-5-7-.06~~ (3)(b) of Rule 0400-45-07-.06. However, if the applicant's engineer provides calculations, designs, and plans to show that the design flow can be stored, passed through, or passed over the dam without failure occurring, or if he can successfully demonstrate to the Commissioner that the dam is a safe structure and can certify that the dam is sufficient to protect against probable loss of human life downstream, said dam design may be approved by the Commissioner. The establishment of the criteria in subparagraph (d) ~~above~~ of this paragraph does not eliminate the need for sound engineering judgment but only establishes the lowest limit of design considered acceptable.

(f) The relationship between the water surface elevation in the reservoir and the discharge through

the emergency spillway shall be evaluated by computing the head losses in the inlet channel upstream of the control section, or if a control section is not used, by computing the water surface profile through the full length of the spillway. Manning's formula will be used to evaluate friction losses and determine velocities.

(g) The freeboard hydrograph shall be routed through the reservoir starting with the water surface at the elevation of the principal spillway inlet.

(h) A vegetated earth or unlined emergency spillway shall be approved when computations indicate that it will pass the design storm without jeopardizing the safety of the structure. The risk of recurring storms, excessive erosion, and inadequate vegetative cover will be considered acceptable in such a spillway when its average frequency of use is predicted to be not more frequent than once in 25 years for Category 3 dams, once in 50 years for Category 2 dams, and once in 100 years for Category 1 dams.

1. Vegetated and earth emergency spillways may be open channels and may consist of an inlet channel, a control section and an exit channel. Subcritical flow exists in the inlet channel and the flow may be supercritical in the exit channel.

2. Vegetated emergency spillways may be trapezoidal in cross-section and shall be protected from damaging erosion by a grass cover. They shall be used at sites where a vigorous grass growth can be sustained by normal maintenance without irrigation.

3. Earth spillways may be used in those areas where vegetative growth cannot be maintained. They are similar to vegetated spillways but are designed for lower permissible velocities and less frequent use. The needed maintenance after a flow occurs is the responsibility of the certificate holder.

4. Earth and vegetated emergency spillways are designed on the basis that some erosion or scour is permissible if its occurrence is infrequent, if maintenance facilities are provided, and if damage from a severe storm, as represented by the freeboard inflow hydrograph, will not endanger the structure.

5. A Manning's "n" of 0.040 may be used for determining the velocity and capacity in vegetated spillways. Permissible velocities in earth spillways may be based on an "n" value of 0.020 but the capacity of earth spillways will be based on an appraisal of the roughness condition at the site.

6. When the anticipated average use of a vegetated emergency spillway is more frequent than once in 50 years, the maximum permissible velocity will be in accordance with the values given below. The values may be increased 10 percent when the anticipated average use is not more frequent than once in 50 years or 25 percent when the anticipated average use is not more than once in 100 years. The maximum velocity limitations given below for vegetated or earth emergency spillways apply to the exit channel.

7. The values given will be the upper limit for all grasses. Values for grasses or grass mixtures will be determined by comparison with the values shown, with due consideration given to the growth characteristics and density attained in the local area by the species under consideration.

8. Where bona fide studies or investigations have been made to determine the permissible velocity for a specific soil and site, these values may be used in lieu of those shown below.

9. Maximum Permissible Velocities for Vegetated Earth Spillways.

Grasses or Grass Mixtures

Soil Type	Slope	Maximum Permissible Velocity
Erosion Resistant	0-5 % 5-10%	8.0 fps 7.0 fps
Easily Erodible	0-5 % 5-10%	6.0 fps 5.0 fps

(5) Earth Embankments.

(a) Sufficient freeboard shall be provided to prevent overtopping with the passage of the freeboard hydrograph plus the additional freeboard required by the site for wave action.

(b) The top width of earth embankments will not be less than the value given by the following equation:

$$W = \frac{H + 35}{5}$$

where H = height of embankment in feet.

W = minimum top width of embankment in feet.

(c) The earth embankment will be riprapped or have other wave erosion protection provided over the full range in stage between three feet above and below the normal pool elevation.

(d) All dams shall be designed and constructed to prevent the development of instability due to excessive seepage forces, uplift forces, or loss of materials in the embankment, abutments, spillway areas, or foundation. Seepage analysis for design and inspection during construction shall be in sufficient detail to prevent the occurrence of critical seepage gradients. All dams permanently impounding water shall be constructed with an embankment toe drain with drain pipes installed to discharge the seepage.

(e) All dams shall have a permanent bench mark monument located near the embankment in undisturbed soil or in bedrock. This bench mark shall be detailed in the plans and specifications.

(f) All dams shall be protected from surface erosion by appropriate vegetation or some other type of protective surface such as rip-rap or paving and shall be maintained. Examples of appropriate vegetation include, but are not limited to, Bermuda grass and fescue. All inappropriate vegetation such as honeysuckle, briers, bushes and trees shall be kept off the dam by routine mowing.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

~~1200-5-7-.08~~ 0400-45-07-.08 Engineering Requirements.

(1) Engineering Standards. The design engineer shall take into consideration the standards and recommendations made in accepted publications concerning dams, and also the current practices of the various agencies that may be concerned with the design and construction of dams.

(2) Engineering Drawings. All drawings shall be submitted in the form of permanent type drawings of a standard and uniform size. Drawings that do not conform to standard practices and drawings that are not easily legible will not be reviewed.

(3) Engineering Plans. At least four (4) complete sets of construction plans and specifications shall be submitted to the Commissioner. Upon approval, each submitted copy shall be stamped accordingly, two copies retained for the Division's file, and the remaining copies returned to the applicant. An approved copy bearing the stamp of approval must be kept at the construction site during all times of construction.

(4) Engineering Report. The engineering report shall be submitted for review prior to or along with the submittal of the plans and specifications. The engineering report is the basis of the design and shall include, but not be limited to, the data and analyses required by Rule ~~1200-5-7-.07~~ 0400-45-07-.07 for new dam construction or by Rule ~~1200-5-7-.06~~ 0400-45-07-.06 for alterations to existing dams.

(5) Plans and Specifications. The plans and specifications shall provide the details of the structure designed in the engineering report, the construction materials, the construction methods, and shall include, but not be limited to, the following:

(a) Standard and uniform paper. Preferably 24" x 36".

(b) Cover sheet.

(c) Site plan.

(d) Embankment plan and profile views.

(e) Spillways plan and profile views.

(f) Seepage control detail including collection system.

(g) Wave protection detail.

(h) Service spillway outfall structure and energy dissipator details.

(i) Location of permanent bench mark.

(j) Location sketch.

(k) Actual mean sea level (MSL) elevations of the dam and its appurtenant works.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

~~1200-5-7-.09~~ 0400-45-07-.09 Fees.

(1) Project Review Fee. A project review fee will be charged by the Commissioner for all new dam and reservoir construction. The fee is to accompany the application for a Construction Certificate. New dams will not be charged for the inspection fee for the initial Operating Certificate. The fee will be based upon the size categories shown below, but in no case shall the total project review fee exceed one percent (1%) of the total estimated cost of the dam.

Schedule of Charges

Height of Dam	Charge for Project Review
6 - 40 feet	$1000
41 - 60 feet	$1500
greater than 60 feet	$2000

If a construction certificate expires without construction having begun, the certificate holder may re-apply for a new construction certificate within one year of the expiration date of the original certificate and pay a project review fee of only $500, provided that no substantial changes have been made to the plans and specifications.

(2) Safety Inspection Fee. Fees will be charged for Safety Inspections by the Division. The fee is to accompany the application for an Operating Certificate. The fee will be $500 per inspection. All fees and charges shall be payable only by check or money order to the State of Tennessee.

(3) No fees shall be imposed for inspections of dams which are constructed, operated, or maintained by a watershed district pursuant to T.C.A. § 69-7-101 et seq.

Authority: T.C.A. §§ 69-11-101 et seq., 68-203-101 et seq. and 4-5-201 et seq.

1200-5-7-.10 Emergency Action by Owner.

Nothing in T.C.A. § 69-11-117 ~~of the Act~~, whereby the Commissioner has the authority to act under a state of emergency requested of and declared by the Governor, nor any provisions or requirements for Certificates, shall be construed to relieve or prevent an owner or operator of a dam of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam. In the event of an emergency where immediate repairs are necessary to safeguard life and property, such repairs shall be made immediately by the owner or his duly authorized agents. In such events, the Commissioner shall be promptly notified of the necessary emergency repairs and of work under way, if any, and such work shall conform to such requirements as specified by the Commissioner.

Authority: T.C.A. §§ 69-11-101 et seq., and 4-5-201 et seq.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Environment and Conservation
DIVISION:	Water Resources
SUBJECT:	Water Well Licensing and Well Construction Standards
STATUTORY AUTHORITY:	Tennessee Code Annotated, Section 69-10-101 et seq.
EFFECTIVE DATES:	January 14, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	These rule amendments move the rules relative to water well licensing and well construction standards to Chapter 0400-45-09 from Chapter 1200-04-09 and make editorial/citation corrections. The only other change to the Water Well rules is the addition of the application fee breakdown for the various licenses in paragraph (2) of Rule 0400-45-09-.04. These fees are currently required by the Water Well Act. The agency reports that when these rules become effective, the specific fee amounts will no longer be included in the statute. The agency reports that this rule amendment does not increase the fees, which have been in place pursuant to the Act for more than twenty years.

Public Hearing Comments

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

There were no comments made during the public comment period.

Regulatory Flexibility Addendum

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

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

The rule changes will not impact the drilling industry. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-09 from Chapter 1200-04-09 and to make editorial/citation corrections. The only other change to the Water Well Rules was the addition of the application fee breakdown for the various licenses in paragraph (2) of Rule 0400-45-09-.04. These fees being added to these rules are currently required by the Water Well Act. When the rules become effective the specific fee amounts will no longer be included in the statute. This amendment does not increase in the fees that have been in place in the Act for over 20 years.

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

There should be no additional costs associated with the rule compliance.

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

The rule changes will not impact the drilling industry. The purpose for the rule amendments were to perform re-numbering to Chapter 0400-45-09 from Chapter 1200-04-09 and to make editorial/citation corrections. The only other change to the Water Well Rules was the addition of the application fee breakdown for the various licenses in paragraph (2) of Rule 0400-45-09-.04. These fees being added to these rules are currently required by the Water Well Act. When the rules become effective the specific fee amounts will no longer be included in the statute. This amendment does not increase in the fees that have been in place in the Act for over 20 years.

(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 should be no additional costs associated with the rule compliance.

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

There is no comparable federal rule.

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

The drilling industry by and large is a small business enterprise. Exempting them from the rules would mean that public health would be at risk from poor water quality by from improper well, pump and treatment installation by unlicensed drillers, pump installers and treatment installers.

Impact on Local Governments

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

The Department does not anticipate an impact on local governments.

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

Rulemaking Hearing Rule(s) Filing Form

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

Agency/Board/Commission:	Environment and Conservation
Division:	Water Resources
Contact Person:	Tom Moss
Address:	6th Floor, L & C Tower 401 Church Street Nashville, Tennessee
Zip:	37243-1549
Phone:	615-532-0170
Email:	Tom.Moss@tn.gov

Revision Type (check all that apply):

___ Amendment
X New
X Repeal

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

Chapter Number	**Chapter Title**
0400-45-09	Water Well Licensing Regulations and Well Construction Standards
Rule Number	**Rule Title**
0400-45-09-.01	Definition of Terms
0400-45-09-.02	Requirements
0400-45-09-.03	Satisfactory Proof of Experience
0400-45-09-.04	Applications
0400-45-09-.05	Examinations
0400-45-09-.06	Licenses
0400-45-09-.07	Suspension and Revocation
0400-45-09-.08	Role of Complaints in Enforcement Decisions Related to Licenses
0400-45-09-.09	Appeals
0400-45-09-.10	Well Construction Standards
0400-45-09-.11	Installation of Pumps, Filters, and Water
0400-45-09-.12	Disinfection of Water Supply Wells
0400-45-09-.13	Repair of Water Wells
0400-45-09-.14	Well Registration - Identification
0400-45-09-.15	Data and Records Required
0400-45-09-.16	Well Abandonment
0400-45-09-.17	Geothermal Well Construction Standards for Closed Loop Geothermal Boreholes
0400-45-09-.18	Monitor Well Construction Standards

Chapter Number	**Chapter Title**
1200-04-09	Water Well Licensing Regulations and Well Construction Standards

Rule Number	Rule Title
1200-04-09-.01	Definition of Terms
1200-04-09-.02	Requirements
1200-04-09-.03	Satisfactory Proof of Experience
1200-04-09-.04	Applications
1200-04-09-.05	Examinations
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1200-04-09-.14	Well Registration - Identification
1200-04-09-.15	Data and Records Required
1200-04-09-.16	Well Abandonment
1200-04-09-.17	Geothermal Well Construction Standards for Closed Loop Geothermal Boreholes
1200-04-09-.18	Monitor Well Construction Standards

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

Repeal

Chapter 1200-04-09 Water Well Licensing Regulations and Well Construction Standards is repealed.

Authority: T.C.A. §§ 69-10-101 et seq., and 4-5-201 et seq.

New Rules

Chapter 0400-45-09
Water Well Licensing Regulations and Well Construction Standards

Table of Contents

~~1200-04-09-.01~~ 0400-45-09-.01 Definition of Terms

~~(1)~~ "Abandoned well" means any well that has permanently been discontinued from further use. A well shall be declared abandoned when the pump has been disconnected or removed for reasons other than repair or replacement or when the well is in such a state of disrepair that continued use for the purpose intended is impracticable.

~~(2)~~ "Abandonment" means the act of properly sealing an abandoned well.

~~(3)~~ "Act" means the Water Wells Act of 1963 as amended (T.C.A. §§ ~~69-11-101~~ 69-10-101 et seq.)

~~(4)~~ "Animal pen" means an enclosed area one-half (1/2) acre or less where ten or more animals congregate for feeding and watering where vegetation or ground cover has been destroyed or is missing and the area is covered with manure or mud.

~~(5)~~ "Aquifer" means a geologic formation, a group of such formations, or a part of a formation that will yield usable quantities of water to wells.

~~(6)~~ "Artesian" means ground water confined under sufficient hydrostatic pressure to rise above the aquifer containing it.

~~(7)~~ "Beneficial Use" means application of a resource to a purpose that produces economic or other benefits, tangible or intangible, economic or otherwise, such as procurement of water for domestic, industrial, or agricultural use or for a municipal water supply.

~~(8)~~ "Bentonite" means a clay derived from volcanic ash consisting of at least 85% montmorillonite. Bentonite is available in the following forms:

(a) "Bentonite granules" means 8 mesh pure bentonite, without additives.

(b) "Bentonite pellets" means commercially manufactured tablets made by compressing pure bentonite, without additives, into forms greater than 1/4 inch in size.

(c) "Bentonite chips" means commercially processed angular fragments of pure bentonite without additives.

~~(9)~~ "Board" means Board of Ground Water Management.

~~(10)~~ "Borehole" means the cylindrical opening created by the action of a drill or auger as it penetrates the subsurface.

~~(11)~~ "Casing" means pipe or tubing, constructed of specified materials and having specified dimensions and weights, that is installed in a borehole during or after completion of the borehole to support the side of the hole and thereby prevent caving, to allow completion of the well, to prevent formation material from entering the well, and to prevent entry of undesirable water into the well.

~~(12)~~ "Certificate" means a written or printed statement or decal issued by the Department to the licensee which assigns a license number and license type to the license holder.

~~(13)~~ "Closed loop geothermal borehole" means a cylindrical opening created by the action of a drill or auger as it penetrates the subsurface greater than twenty feet in depth used to either extract or transfer heat from the earth for heating or cooling. This is also referred to as a geothermal well in the T.C.A. § ~~69-11-101~~ 69-10-101 et seq.

~~(14)~~ "Closed Loop Installer" means a person who installs and grouts droplines or closed loops in closed loop geothermal boreholes. This may also be referred to as a looper.

~~(15)~~ "Commissioner" means the Commissioner of Environment and Conservation, the Commissioner's duly authorized representative and, in the event of his absence or a vacancy in the office of Commissioner, the Deputy Commissioner of Environment and Conservation.

~~(16)~~ "Completion date of well" means the date that drilling equipment leaves or is removed from the well site. For closed loop geothermal borehole systems, the completion date of the borehole shall be the date of the drilling equipment is removed from the property.

~~(17)~~ "Completion of drilling" means the date that drilling equipment leaves or is removed from the well site. For closed loop geothermal boreholes, the completion of drilling shall be the date that the drilling equipment is removed from the property.

~~(18)~~ "Consolidated rock" means rock that is firm and coherent, solidified or cemented, such as granite, gneiss, limestone, slate or sandstone, which has not been decomposed by weathering.

~~(19)~~ "Contamination" means the act of introducing into water foreign materials of such nature, quality, and quantity as to cause degradation of the quality of the water.

~~(20)~~ "Department" means the Department of Environment and Conservation.

~~(21)~~ "Director" means the Director of the Tennessee Division of Water ~~Supply~~ Resources.

~~(22)~~ "Domestic use" means the use of water for drinking, bathing, or culinary purposes.

~~(23)~~ "Drill" means to dig, drill, re-drill, construct, deepen or alter a well.

~~(24)~~ "Driller" means any person with knowledge and skill gained through practical experience in drilling operations who manages or supervises the digging, drilling, or redrilling of a well or borehole.

~~(25)~~ "Dropline" in the context of closed loop geothermal boreholes means the u-bend closed loop piping material placed in a closed loop borehole to circulate a liquid to transmit heat to a geothermal exchange unit. In the context of water wells the "dropline" means the piping which conveys water obtained from the water well to land surface.

~~(26)~~ "Employee" means a person hired by the license holder under ~~this~~ the Act to work for wages or salary where the license holder has submitted for such person, a notarized affidavit of supervision.

~~(27)~~ "Experience" means the skill and knowledge derived from the actual direct participation and practice gained in a specific occupation. For drillers, experience includes the skill and knowledge gained in operating drilling equipment to drill and construct a well or closed loop geothermal borehole. For installers, experience includes the skill, knowledge and actual direct participation in determining the equipment required and installing equipment either in or on wells or closed loop geothermal boreholes. Such skill and knowledge must qualify the individual to deal with circumstances and problems that may be encountered by an occupation.

~~(28)~~ "Geothermal well" means a hole drilled into the earth, by boring or otherwise, greater than twenty feet in depth constructed for the primary purpose of adding or removing British Thermal Units (BTU) from the earth for heating or cooling. This is also referred to as a closed loop geothermal borehole.

~~(29)~~ "Grout" means a stable, impervious, minimum shrinkage bonding material that is capable of producing a watertight seal required to protect against the intrusion of contamination.

~~(30)~~ "Inactive well" means any well not in use and does not have functioning equipment, including bailers, associated either in or attached to the well.

~~(31)~~ "Installation of pumps" means the procedure employed in the placement and preparation for operation of pumps and pumping equipment in water wells, including all construction involved in making entrances to the well and establishing seals.

~~(32)~~ "Installer" means any person who installs or repairs well pumps or who installs filters or water treatment devices.

~~(33)~~ "Liner casing" means pipe that is installed inside a completed and cased well for the purpose of sealing off undesirable water or for repairing ruptured or punctured casing or screens.

~~(34)~~ "Log" means a record of the consolidated or unconsolidated formations penetrated in the drilling of a well, and includes general information concerning construction of a well.

~~(35)~~ "Monitoring well" means a hole drilled into the earth, by boring or otherwise, constructed for the primary purpose of obtaining information on the elevation or physical, chemical, radiological or biological characteristics of the ground water and/or for the recovery of ground water for treatment.

~~(36)~~ "Overburden" means unconsolidated earth material that overlies consolidated rock material.

~~(37)~~ "Open loop borehole" means a water well designed to produce source water above land surface to provide heat transfer to a geothermal unit.

~~(38)~~ "Person" means any individual, organization, group, association, partnership, corporation, limited liability company, utility district, state or local government agency or any combination of them.

~~(39)~~ "Pit" means a cavity or hole in the ground, the bottom of which is below the level of the surrounding turf.

~~(40)~~ "Pitless Adapter" or "pitless unit" means a device specifically manufactured for the purpose of allowing a below ground lateral connection between a well and its plumbing appurtenances.

~~(41)~~ "Potable water" means water that is not brackish or saline and does not contain total coliform bacteria or chemical constituents in such quantity or type as to render the water unsafe, harmful or generally unsuitable for human consumption.

~~(42)~~ "Production of water" means withdrawing water from the ground for beneficial use.

(a) Wells for the production of water include, but are not limited to, the following:

1. Borings that are used to locate, divert, withdraw, develop or manage ground water supplies for beneficial uses;

2. Test holes drilled to determine the availability of water supplies for beneficial uses; and

3. Wells drilled to supply water for ground water open loop heat pumps and air conditioners.

(b) The following are not wells for the production of water as used in these rules:

1. Post holes;

2. An excavation for the purpose of obtaining or prospecting for oil, natural gas, minerals other than water, products of mining and quarrying;

3. Injection wells regulated under Chapter ~~1200-4-6~~ 0400-45-06 of the rules of the Water Quality Control Board;

4. Cathodic protection wells;

5. Wells used for dewatering purposes in construction work;

6. Monitor wells, geographical test borings and piezometers that are regulated by rules of the Water Quality Control Board or otherwise by the Department;

7. Ponds, pits, sumps and drainage trenches;

8. Contaminant recovery wells otherwise regulated by the Department; and

9. Closed loop geothermal boreholes.

~~(43)~~ "Pumps and pumping equipment" means any equipment or materials utilized or intended for use in withdrawing or obtaining ground water, including well seals in a water well. Closed loops or droplines installed in closed loop geothermal boreholes are not considered pumping equipment.

~~(44)~~ "Recovery well" means any well constructed for the purpose of removing contaminated groundwater or other liquids from the subsurface.

~~(45)~~ "Repair" means work involved in deepening, reaming, sealing, installing, or changing casing depths, perforating, screening, or cleaning, acidizing, or redevelopment of a well excavation, or any other work which results in breaking or opening a well seal.

~~(46)~~ "Standard Dimension Ratio (SDR)" means the quotient obtained when the outside diameter of thermoplastic well casing is divided by the wall thickness.

~~(47)~~ "Static water level" means the level at which the water stands in the well when the well is not being pumped and is expressed as the distance from a fixed reference point to the water level in the well.

~~(48)~~ "Supervision" means the act of directing and managing full or part time unlicensed employees engaged in the business of constructing wells, or installing pumps, closed loops in closed loop geothermal boreholes or installing water treatment devices on wells.

~~(49)~~ "Water Treatment Equipment" means any equipment, devices or filters utilized in altering the characteristics or quality of ground water for its intended use.

~~(50)~~ "Water Well" means a hole drilled into the earth, by boring or otherwise, for the production of water.

~~(51)~~ "Well" means one of the three types of holes in the earth: geothermal well, a monitoring well, or a water well.

~~(52)~~ "Well closure" means the act of backfilling and sealing a well either active or abandoned in accordance with well abandonment standards.

~~(53)~~ "Well construction" means all acts necessary to construct a well including, but not limited to the location and excavation of the borehole; placement of casings, screens and fittings; development and testing.

~~(54)~~ "Well development" means the procedures used to remove mud or fine material from the drilled borehole, to correct any damage to the aquifer that occurred during drilling a water well and to improve the water passageways into the well from the aquifer.

~~(55)~~ "Well driller" means an individual, firm or corporation engaged in the business of constructing wells.

~~(56)~~ "Wellhead" means the upper terminal of the well including adapters, ports, valves, seals, and other attachments.

~~(57)~~ "Well owner" means the person who owns the real property on which a well exists or is to be drilled provided however, in the case of any monitoring well or remediation required by the Department or the Commissioner, the well owner shall be the person responsible for such monitoring or remediation.

~~(58)~~ "Well seal" means an approved arrangement or device used to cap a well or to establish and maintain a junction between the casing of a well and the piping or equipment installed therein, the purpose or function of which is to prevent pollutants from entering the well at the upper terminal.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.02~~ 0400-45-09-.02 Requirements.

~~After the effective date of this regulation,~~ Applicants for driller's and installer's licenses shall meet the following requirements to qualify for licensing under the Act:

(1) Be at least 18 years of age;

(2) Have a minimum of two (2) years experience, prior to the date of application, working in the occupation for which a license is being sought;

(3) Complete grade 10 in high school or submit proof of equivalent achievement demonstrated by successful completion of approved short courses or written examinations. Up to four years of full-time employment may be substituted for equal years of education. This shall be in addition to the experience requirements in paragraph (2) of this rule; and

(4) Pass an examination as prescribed by the Board.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.03~~ 0400-45-09-.03 Satisfactory Proof of Experience.

Satisfactory proof of experience shall consist of either of the following methods.

(1) A list of ten (10) wells the applicant has constructed or worked on during a minimum of the last two years prior to the date of making the application for a license. The information shall include for each well the following:

(a) Name and address of the owner or owners of each well;

(b) Location and intended use of each well;

(c) Major construction features such as depth, type of casing, backfill, yield and water quality;

(d) Date of completion; and

(e) Work done by applicant and approximate customer cost.

(2) Copies of occupational licenses or certificates covering two years and indicating that the applicant has been engaged in the occupation for which a license is being sought.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.04~~ 0400-45-09-.04 Applications.

(1) All applications for licensing shall be submitted to the Director on the form prescribed by the Board and provided by the office of the Director.

(2) An application will not be accepted for processing unless the application is complete, accompanied by the fee required ~~by the Act~~, and signed by the applicant. The following fee schedules are assigned for each license application and renewal of license category:

Water Well Driller License (W)	$100
Monitor Well Driller License (M)	$100
Geothermal Driller License (G)	$100
Geothermal Borehole Only Drilling License (B)	$100
Well Closure License (C)	$100
Pump Installer License (P)	$50
Water Treatment Installer License (T)	$50
Close Loop Installer License (L)	$50

(3) No fee received with an application will be returned. This includes the fee received from an applicant who fails to pass an examination or meet the requirements of ~~Rule 1200-4-9-.02~~ paragraphs (1), (2) and (3) of Rule 0400-45-09-.02.

(4) The individual who signs the application must meet the requirements of Rule ~~1200-4-9-.02~~ 0400-45-09-.02 and ~~1200-4-9-.05~~ paragraph (1) of Rule 0400-45-09-.05.

(5) Applicants who do not meet the requirements of ~~Rule 1200-4-9-.02~~ paragraph (1), (2) and (3) of Rule 0400-45-09-.02 will be notified that their application has been denied and the reasons therefore.

(6) Any person whose application has been denied may request in writing to the Board within thirty (30) days of receipt of the letter of denial, an informal meeting with the Board for the purpose of explaining, or supplementing the application. Based on the person's explanation, the Board may accept the application for processing.

(7) An applicant whose application has been denied may not file a new application for a period of thirty (30) days following the date of the letter of denial. A new application must be resubmitted with the required application fee.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.05~~ 0400-45-09-.05 Examinations.

(1) All applicants who meet the requirements of ~~rule 1200-4-9-.02~~ paragraphs (1), (2) and (3) of Rule 0400-45-09-.02 will be required to take a written examination and thereafter appear before the Board for an interview.

(2) Written examinations to be given to applicants shall be approved by the Board.

(3) Applicants admitted to the written examination will be required to take a general examination related to borehole construction standards and related subjects including basic ground water hydrology. Closed loop installer applicants are not required to take a general exam. All applicants will be required to take one or more specialty examinations designed to test the competence and ability of the applicant to perform the work of a driller or installer. The specialty examinations may include, but are not limited to, the following:

(a) For Driller applicants:

1. Cable tool drilling;

2. Air rotary drilling;

3. Mud rotary drilling;

4. Reverse Circulation;

5. Monitor well;

6. Geothermal well drilling for closed loop geothermal boreholes; and

7. Well closure and abandonment.

(b) For Installer applicants:

1. Pump installation for water wells;

2. Installation of water treatment devices; and

3. Closed loop installation for closed loop geothermal boreholes.

(4) Examinations shall be offered at least four times annually in a manner and at a time and place prescribed by the Director. Applicants will not be allowed to carry any reference materials into either the written examination room or oral interview area. Each examination shall be monitored by such person(s) as may be designated by the Director, or by one or more members of the Board. No persons, other than members of the Board, monitors, and examinees will be permitted in the room while the written examination is being administered.

(5) The grade scored by each applicant on the written examination shall be posted in the space provided upon the examinee's application form. Each applicant will be notified of his or her grade scored on the examination by first-class mail, sent to the address appearing on the application.

(6) A minimum grade of seventy (70) percent on the general and seventy (70) percent on any other specialty exam category is required to pass the written exam, and be eligible for an interview with the Board. Individuals whose license or combination of licenses have been revoked, refused to renew or suspended must retake and pass all applicable exams.

(7) A person failing an examination may apply for reexamination the next time examinations are offered by the Department, but no sooner than thirty (30) days from the date of the previous examination.

(8) Interviews of applicants will be conducted before at least three members of the Board. Questioning by individual Board members to the quality and quantity of the applicant's experience will include, but not be limited to, the following:

(a) Where and when it was obtained;

(b) Types of equipment used;

(c) What was the applicant's level of responsibility;

(d) Familiarity of the applicant with addressing problems such as:

1. Construction techniques used in each type well drilled for each license applied for.

2. Operation of drilling equipment used in drilling wells or boreholes.

3. Installation techniques and principles of operation for pumps and or water treatment devices.

(e) Knowledge of State well construction standards; and

(f) Responsibilities of licensees to the well owner and the Department.

(9) Based on the applicant's answers to the questions in the interview, each Board member will vote for or against issuance of a license to the applicant. An applicant must receive a passing vote from a majority of the quorum present to be recommended for licensing.

(10) Applicants who pass both the written exam and interview with the Board will be recommended for licensing to the Commissioner.

(11) Holders of Tennessee Water Well Driller License who apply for a monitor or geothermal driller license before January 1, 2004, will not be required to appear for an oral interview provided they pass the required geothermal or monitor specialty exam.

(12) Experience as required in Rule ~~1200-4-9-.03~~ 0400-45-09-.03 obtained in monitor well drilling or water well drilling by all applicants will satisfy the requirements of experience required for a geothermal well driller's license.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.06~~ 0400-45-09-.06 Licenses.

(1) Issuance. An applicant recommended by the Board and approved by the Commissioner or the Commissioner's designee shall be issued a license to engage in the type of business for which he has applied and has demonstrated a satisfactory level of competency to perform. The Commissioner or the Commissioner's designee may issue a restrictive license, which may allow a license holder to operate under limited conditions such as well closure operations only.

(a) Driller applicants shall be issued either one or combination of four licenses:

1. A water well driller license to construct wells for the production of water, (W for water wells).

2. A geothermal well driller license to drill closed loop geothermal boreholes and install closed loops in closed loop geothermal boreholes, (G for geothermal).

3. A monitor well driller license to construct wells for monitoring ground water, (M for monitor).

4. A well closure license to close and abandon wells, (C for well closure and abandonment).

(b) Installer applicants shall be issued one or a combination of three licenses:

1. A license to install pumps on water wells, (P for pump installation on water wells).

2. A license to install closed loops or droplines for heat transfer in closed loop geothermal wells, (L for closed loop or dropline installation in closed loop geothermal boreholes).

3. A license to install water treatment on water wells, (T for Treatment on water wells).

(c) A wallet-sized card bearing the name of the licensee, type or class of license, expiration date, license number and signature of the Commissioner or the Commissioner's designee will be issued to the licensee and shall be carried on the person whenever engaged in the well or drilling contracting or installer business.

(d) All licenses issued pursuant to these rules shall be valid for a period not to exceed one year and shall expire on July 31 following the date of issuance.

(e) Reciprocity to drillers and installers licensed in other states will be granted by the Department provided the applicant makes a written request for reciprocity and the applicant meets the requirements of the written exam as required under ~~Rule 1200-4-9-.05,~~ paragraph (6) of Rule 0400-45-09-.05, the applicant is currently licensed in the state for the same category and in good standing in that state and reciprocal privileges have been granted by that state to a licensee in Tennessee. An oral interview will not be required.

(f) A licensee shall not allow any individual to operate under his license unless the individual to be supervised by the licensee is employed by the licensee and holds an installer or rig operator card. Proof of employment must be on file with the Department prior to commencement by the employee of any activities requiring supervision. Proof of employment shall consist of a notarized Affidavit of Supervision.

(g) All persons licensed by the Department under these rules shall keep the Department advised of their current address and must readily accept all mail sent to them by the Department.

1. The Department shall be notified of any change of address, phone number, company name or addition of a company name within thirty (30) days of the change.

2. For purposes of these rules, registered or certified mail sent with proper postage to the licensee's last known address shall be considered adequate notification regardless of whether it is accepted or returned unclaimed.

3. Because of the Department's duty to supervise license holders and because written communication is a necessary aspect of such supervision, a licensee's refusal to accept mail or failure to claim registered or certified mail is a violation of these regulations and may result in enforcement action.

(h) All holders of licenses shall, when requested by the Director ~~of the Division of Water Supply~~, give twenty-four (24) hour advance notice to the Division of Water ~~Supply~~ Resources upon which any well construction or reconstruction for any part thereof, any well closure, well development or the installation of any pumping equipment or water treatment devices shall take place. This notification shall include the owner's name, address and location of the work site.

(i) In order to renew any license or combination of licenses, the licensee shall submit to the Commissioner satisfactory proof of the required credit hours of training approved by the Board of Ground Water Management or Director completed during the previous license year. Three (3) credit hours will be required to renew any license for the license period beginning August 1, 2004 and ending July 31, 2005. Five (5) credit hours will be required for all applicants who wish to renew a license or combination of licenses for all license years after July 31, 2005. First year license holders not previously licensed for any installer or driller category will not be required to obtain continuing education credits for their first year of renewal. Second and subsequent year license holders will be required to obtain continuing education credits thereafter to renew a license or combination of licenses.

(j) Approved training shall be designed to improve, advance or extend the licensee's professional skill and knowledge relating to the ground water industry such as well drilling, pump installation and water treatment courses. Training may consist of any of the following, provided there is satisfactory proof of completion acceptable to the Commissioner or Board:

1. Courses, seminars, workshops or lectures;

2. Extension studies and correspondence courses;

3. Papers published in professional journals and requiring peer review;

4. Lectures and scheduled courses at national or regional meetings of the National Ground Water Association, Tennessee Water Well Association or its successors;

5. College-level or postgraduate course work given by accredited college or university.

6. Assignment of Credit

   (i) For courses for which continuing education units (CEUs) have been assigned, one CEU is equal to fifty minutes of instruction, that is approved by the Board;

   (ii) Credits shall be approved on an hour for hour basis for attendance at an approved training program;

   (iii) Credits are approved on a two for one hour basis for the instructor of an approved program;

   (iv) One credit hour is approved for attendance at the annual National Ground Water Association Convention or South Atlantic Jubilee;

   (v) One credit hour is approved for attendance at a state association convention;

   (vi) Credits are approved on a credit hour for credit hour basis for a course, seminar or workshop approved by the National Water Well Association for continuing education;

   (vii) Credit hours may not be carried over to a new CEU cycle.

7. Procedures for Approval of Activities

   (i) Activities submitted for approval shall be on a form provided by the Director and shall include the following information:

      (I) Description of course or activity matter;

      (II) Length of activities in hours;

      (III) Name of instructor and qualifications;

      (IV) Date, time and location.

   (ii) A change in subject matter, length or instructor requires approval by the Director.

8. Proof of Continuing Education

   (i) The licensee is responsible for the submission of proof of all approved training. Inability of the applicant to substantiate credit hours submitted is grounds for disallowance of the credits in question.

   (ii) Proof of continuing education consists of:

      (I) Official transcripts from educational institution;

      (II) A certificate or other documentation signed by the instructor or sponsor of the training attesting to the satisfactory completion of the training;

(III) Other documentation determined by the Director in light of the nature of training, to establish that training was actually received by the applicant.

(iii) A licensee who fails to satisfactorily complete the required continuing education credits due to an unusual event such as an incapacitating illness or similar unavoidable circumstances may make a written request to the Board of Ground Water Management for an extension of time. The board may set conditions as deemed appropriate to renew a license. All requests by licensees for an extension of time must be made in writing with supporting documentation.

(2) Renewal. Before a license can be renewed, a license holder in good standing must file an application for renewal on a form made available by the Director and submit with the completed application the annual fee as specified in the Act and continuing education credits on or before July 31 of each year.

(a) Upon approval by the Commissioner a renewal license will be issued for a period not to exceed one year and shall expire on July 31.

(b) A renewal certificate shall consist of a wallet-sized card in duplicate containing at least the name of the license, type or class of license, license number, expiration date and signature of the Commissioner or the Commissioner designee. One section of the card shall be kept with the original license certificate and the duplicate shall be carried by the licensee whenever engaged in the water well business.

(c) If the application and fee for renewal of a licensee is not received by the Director by the date of expiration, that license cannot be renewed and the license holder must file a new application to obtain a valid license.

(d) A duplicate license to replace any lost, destroyed or mutilated license will be issued by the Director upon receipt of written request from the licensee and a payment of fifteen dollars ($15.00) to cover the cost of reissuance.

(e) If a licensee's employees will at any time be in charge of well or borehole construction, or pump or water treatment installation, or closed loop installation in the absence of the licensee, he shall request the Director to issue a wallet-sized identification operator card for them. This card shall bear the name of the employee to whom it is being issued and the signature and license number of the licensee under whose supervision the work is being performed. The card shall be carried by the licensee's employee at all times at the work site.

(f) A decal shall be issued for identification purposes for each drilling rig, water truck, pump truck, and water treatment equipment vehicle used by a drilling contractor or installer. The decal shall be prominently displayed where it can be seen at all times from outside the vehicle.

(g) Decals furnished for drilling rigs and service vehicles are not transferable. The decals shall be removed and destroyed when a drilling rig or service vehicle is sold, traded or otherwise disposed of. A new decal for a newly acquired drilling rig or service vehicle will be provided without cost upon receipt of a written notice of acquisition of a different drilling rig or service vehicle.

(h) All drill rigs, water trucks, pump trucks, and water treatment equipment vehicles used by drillers and installers shall be permanently and prominently marked on the driver side door of the rig or vehicle for easy identification with the company name or name of the license holder. The letters shall be bold in print, on a background of contrasting color, and not less than two (2) inches in height. Portable magnetic signs will not be allowed unless the signs are permanently attached to the vehicle.

(i) If the application, renewal fee or requirements for continuing education are not received by the Director by the date of expiration, the license shall expire. Expired licenses may be reissued without examination or board appearance if the renewal fee and application are submitted within twelve (12) months of the date of expiration, all requirements for continuing education have been met and no additional monies are owed to the Department.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.07~~ 0400-45-09-.07 Suspension and Revocation.

(1) The Commissioner may suspend or revoke a license or operator card and/or refuse to issue or renew a license or operator card if he finds that the applicant for, or holder of such license:

(a) Has intentionally made a material misstatement in the application for such license;

(b) Has willfully violated any provision of this chapter or any rule or regulation promulgated pursuant thereto;

(c) Has obtained or attempted to obtain, such license by fraud or misrepresentation;

(d) Has been guilty of fraudulent or dishonest practices;

(e) Has demonstrated a lack of competence as a driller of wells or as an installer;

(f) Has failed to comply with an order or assessment issued by the Commissioner; or

(g) Has been convicted of a felony.

(2) A holder of a license which has been revoked in accordance with this rule, after a waiting period of not less than one (1) year after the license was revoked, may petition the Commissioner for a hearing for reinstatement of his license.

(3) Upon suspension, revocation or non-renewal of a license or combination of licenses, the Commissioner may with advice from the Board, impose such terms and conditions as in his judgment shall be considered just.

(4) Any person whose license is suspended, revoked or non-renewed shall not perform the duties of a well driller or installer in the State of Tennessee, or work under the supervision of a licensed driller or installer.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.08~~ 0400-45-09-.08 Role of Complaints in Enforcement Decisions Related to Licensees.

(1) In making determinations as to whether to issue an order for corrective action, a penalty assessment, or a license revocation, the Commissioner may utilize information obtained from complaints by any persons.

(2) The Board may utilize its expertise to evaluate any complaints received from the public. The Board may then make a recommendation to the Commissioner as to what enforcement options are appropriate.

(3) In reaching these conclusions about enforcement action, the Commissioner and the Board may, in addition to any other investigation conducted by the Division, interview both the complainant and the licensee who is the subject of the complaint.

(4) If a licensee takes action to correct any violation of the Act or rules that is the subject of a complaint, such action and the degree of the effectiveness of the action are factors to be considered by the Commissioner and the Board in their decisions regarding appropriate enforcement action.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.09~~ 0400-45-09-.09 Appeals.

Any person whose application is denied for any reason may request a review of the denial in accordance with the provisions of the Uniform Administrative Procedures Act (T.C.A. ~~Section~~ §§ 4-5-101 et seq.) by filing that request with the Commissioner within thirty (30) days of receipt of the denial.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.10~~ 0400-45-09-.10 Well Construction Standards.

These rules will apply solely to wells constructed for the production of water from underground sources and have no application to wells constructed for quarry blast holes or mineral prospecting, or any purpose other than production of water.

(1) Requirements

(a) No person shall construct, reconstruct, or repair, or cause to be constructed or reconstructed or repaired any water well; nor shall any person install, repair, or cause to be installed or repaired any pump, pumping equipment, water filter or water treatment device to be used on a water well except in accordance with the provisions of the Wells Act (T.C.A. §§ ~~69-11-101~~ 69-10-101 et seq.) and these rules.

(b) Every well driller, within sixty (60) days after completion of a water well, shall submit a report on the construction or reconstruction of the well to the Department. The well completion report shall be made on a form provided by the Department or a reasonable facsimile approved by the Department.

(c) A Notice of Intent to drill a water well must be submitted by the property owner or the licensed well driller to the Director in the manner prescribed by the Department, prior to commencement of drilling a water well in Tennessee. The licensed driller is required to have sufficient documentation that a Notice of Intent was submitted to the Division of Water ~~Supply~~ Resources before beginning operations at a drill site. Sufficient documentation for a Notice of Intent being filed may include one of the following:

1. Fee receipt of the Notice of Intent.

2. Confirmation number of the Notice of Intent or other approved format approved by the Director and issued by the Department.

(d) The Notice of Intent fee or copy of the receipt for a Notice of Intent fee shall accompany the submission of the driller's report. No well or borehole shall be drilled unless the driller has documentation that a Notice of Intent has been filed. All well reports shall be submitted with documentation of the Notice of Intent fee being paid. Documentation of the fee being paid shall consist of the receipt originating from a Notice of Intent or money collected and enclosed with the original driller's report by the driller for the Notice of Intent. A Notice of Intent and fee is not required for well closure, deepening or reworking any water well or closed loop geothermal borehole. The amount of the Notice of Intent fee shall be reviewed by the Department at least every five (5) years and shall currently be scheduled as follows:

1. Water wells for production of water per property site $75.~~00~~

(e) The requirement to furnish the Department a Notice of Intent fee payment shall not apply to water wells drilled in any local jurisdiction which is authorized, by private act or pursuant to the provisions of an adopted "home rule" charter, to regulate the location and construction of these wells and which has established a fee for the inspection of both geothermal and water wells approved by the Commissioner.

(f) A Notice of Intent fee shall not apply to any property owner, who within the past five years has filed a notice of intent and paid the fee for the same property. The property owner or driller must identify on the new Notice of Intent submitted for the property the identification number from the first Notice of Intent fee submitted.

(g) Checks returned for insufficient funds will be charged an established check processing fee and the Division will seek payment from the individual responsible for writing the check.

(h) A Notice of Intent shall expire one hundred and eighty days from the original date filed by the well driller or homeowner.

(i) When strict compliance with these standards is impractical, the driller or installer shall make application to the Department for approval of an alternative standard prior to the work being done. The Department may grant the request for an alternative standard if it determines the proposed standards offer an equivalent or higher level of protection to the environment. In an emergency or in exceptional instances, the Department will respond to a verbal request provided the applicant submits a written application within ten (10) days of the verbal application.

(j) Every well driller or person holding a well closure license, within sixty (60) days of abandonment of a water well, shall submit a report of the abandonment of the well or borehole to the Department. The abandonment report shall be made on a form provided by the Department or a reasonable facsimile approved by the Department. The report shall include the same information as required on the completion report and shall include specific information on how the well was closed and the placement and type of backfill placed in the well bore. The abandonment report shall be signed by the licensed driller or person holding a well closure license. All well closure reports shall include a diagram showing the location and distance in feet of the closed well from one specific landmark and septic system or sewer systems on the property.

(2) Location

(a) The construction of a water well is prohibited at other than a safe distance from any known potential source of contamination. The minimum safe distances shown in Table A shall apply for the sources of contamination listed therein.

(b) A water supply well may be constructed in an area subject to flooding provided the top of the water tight casing extends not less than two (2) feet above the one hundred (100) year flood plain.

(c) Relation to buildings, pits, and basements:

1. A well located adjacent to a building shall be so located that the center line of the well extended vertically will clear any projection from the building by not less than five (5) feet.

2. New wells shall not be constructed in pits or basements.

(d) New wells shall not be located closer than ten (10) feet from a property line. New wells located from ten (10) feet to twenty-five (25) feet from a property line shall require a minimum of thirty-five (35) feet of casing installed below land surface with impervious material such as cement grout or bentonite chips, tablets or bentonite grout backfilled in the annular space to a depth of thirty-five feet.

TABLE A

MINIMUM DISTANCES TO SEPARATE WATER WELLS
FROM POTENTIAL SOURCES OF CONTAMINATION

SOURCES OF CONTAMINATION	MINIMUM DISTANCES
Animal pens or feed lots	100 feet
Leaching Pits; sewage lagoons	200 feet
Pit Privys	75 feet
Sewer lines	50 feet
Sludge and septage disposal sites	100 feet
Septic tanks and drain fields	50 feet
House to septic tank connections, if the line is tight	10 feet

(3) Source of Water Supply

(a) The source of water for any well shall be at least nineteen (19) feet below the surface of the ground.

1. In the event that no other ground water source is available, a source of less than nineteen (19) feet deep may be developed provided that:

(i) Prior to the installation of the casing in the well, the Division of Water ~~Supply~~ Resources Central Office is notified by phone regarding:

(I) County and street address of the well

(II) Name and phone number of the well owner

(III) Street address of owner if different from address of the well

(ii) A minimum of ten (10) feet of casing is installed below ground surface.

(iii) The well is sealed from land surface to a minimum ten (10) feet below ground with either cement grout or bentonite.

(iv) The owner of the well is advised by the driller concerning the development of a water bearing zone less than nineteen (19) feet deep by sending a written report to the homeowner and to the Division, at the time the completion report is submitted, containing the following advisory:

(I) The owner may need to place a chlorinator on the well to treat the water for potential problems with microbiological contamination.

(II) A shallow water bearing zone may be more subject to surface contamination surrounding the well and the well yield may diminish over time.

(III) The homeowner should provide a copy of the report and disclaimer to any prospective buyer prior to any resale of the property where the well is located.

(b) The driller shall develop the most favorable water-bearing zone(s) and seal off any source(s) of less desirable quality.

(c) It shall be the duty of any person attempting to construct a water well to seal off salt water, oil, gas, or any other fluid or material which might contaminate a source of fresh water.

(4) Drilling Fluids for Water Wells

(a) Water used during the construction of a water well shall be obtained from a public water supply, water well or protected spring box. Water taken from ponds, lakes, streams or other surface sources shall not be used.

(b) All water used shall also be treated with enough liquid bleach or hypochlorite granules to retain a free chlorine residual of at least two (2) parts per million.

(c) The driller shall denote on the water well report submitted to the Department from what source his drilling process water was obtained.

(d) Drilling fluids and additives shall be materials specified by the manufacturer for use in water well construction and approved by the Department.

(e) During the course of drilling a water well with air rotary equipment, a minimum of one (1) gallon of water per minute must be injected or added into the air stream. The amount of water injected shall be sufficient to control dust and to keep the hole cleaned out.

(f) The amount of rock drill oil used to lubricate down hole drilling hammers shall not exceed hammer manufacturer's recommendations. The oil used to lubricate the hammer shall be specifically designed for that purpose.

(g) Petroleum based products or byproducts spilled or leaked from a drill rig or pump truck in any quantity greater than one (1) quart shall be removed from the area within a twenty-five (25) foot radius around the well by the driller or installer responsible for the spill before the drill rig or pump truck leaves the site.

(5) Casing

(a) Wells drilled for the production of water shall be cased with watertight casing extending from at least nineteen (19) feet below the land surface to a minimum of six (6) inches above land surface. For wells located in areas subject to flooding, see ~~rule 1200-4-9-.10~~ subparagraph (2)(b) of this rule. For water sources less than nineteen (19) feet deep see ~~Rule 1200-4-9-.10~~ subparagraph (3)(a) of this rule.

1. The watertight casing in wells constructed to obtain water from a consolidated rock formation shall be firmly seated and sealed below all crevices that release inferior quality water or mud into the well or to a depth of at least five (5) feet below the top of the consolidated rock whichever is greater.

2. The watertight casing in wells constructed to produce water from an unconsolidated aquifer (such as saturated gravel or sand) shall extend at least to the top of the aquifer or to a depth of nineteen (19) feet which ever is greater.

(b) Except as otherwise specified in these regulations, the permanent well casing shall:

1. Casing shall be new or in like new condition. Such casing or pipe shall not be used unless free of leaks, corrosion, and dents; is straight and true, and not out of round, seamless or welded, black or galvanized steel pipe conforming to the weights and dimensions given in Table B and meeting the American Society for Testing and Materials (ASTM) Standards A53-87b or A589-85. Reject pipe shall not be used;

2. Have watertight joints that may be welded, or threaded and coupled; and

3. Be equipped with a drive shoe if the casing is to be driven.

4. Pipe sizes that are not listed in Table B and are less than ten (10) inches in diameter shall match listed values as closely as possible.

5. Pipe sizes that are ten (10) inches in diameter or larger shall be Schedule 20 pipe as a minimum.

TABLE B

MINIMUM DIMENSIONS AND WEIGHTS FOR WATER WELL CASING

Diameters in inches		Minimum Wall Thickness in Inches	Weight in Pounds per foot
External	Internal	in Inches	Plain Ends Only
3.500	3.250	0.125	4.51
4.000	3.732	0.134	5.53
4.500	4.216	0.142	6.61
5.500	5.192	0.154	8.79
6.000	5.672	0.164	10.22
6.625	6.255	0.185	12.72
8.625	8.249	0.188	16.90

(c) Thermoplastic well casing may be installed in wells constructed to obtain water from unconsolidated aquifers (such as saturated gravel, sand or overburden) provided:

1. The casing is new;

2. The casting meets or exceeds the requirements of ASTM Standard F-480-88 and bears the NSF (National Sanitation Foundation) seal in each section of casing;

3. The Standard Dimension Ratio (SDR) shall not exceed 26;

4. The casing is installed after the borehole has been drilled to the final depth of the finished well, and no additional drilling takes place after the casing has been installed; and

5. Joints shall be solvent cemented with a quick-setting cement, or threaded and coupled.

(d) In areas where the water is obtained from overburden above the consolidated rock surface, the casing shall be set at or just above the consolidated rock. A screen may be attached to the bottom of the casing or the lowermost few feet of the casing may be slotted or perforated to allow water to enter the well provided the top of the screen or the topmost perforation in the casing is at least 20 feet below land surface. The completed well shall be finished so that extraneous material such as sediment cannot enter the well.

(e) Water well casing shall extend a minimum of six inches above the finished land surface unless, site conditions dictate that the well head will be better protected below ground surface and the upper terminus is constructed in the following manner:

1. The casing is terminated just below ground surface in a watertight manhole cover.

2. The manhole cover lid and skirt shall be all cast steel or aluminum construction.

3. The manhole cover shall have a sufficient diameter to use a well cap below the manhole lid.

4. The manhole shall be secured by a concrete pad two inches thick and no less than 24 inches in diameter.

5. The manhole cover shall be equipped with a positive drain to an area where water cannot enter from flooding or where excessive runoff could back up through the drain to the well head. The drain may be located in the basement area of a house.

6. The manhole cover shall be clearly marked on the cover as a "water well".

7. Construction techniques for casings cut off below ground level shall conform to the drawing in figure 1.

BELOW GROUND SURFACE WELL HEAD CONSTRUCTION

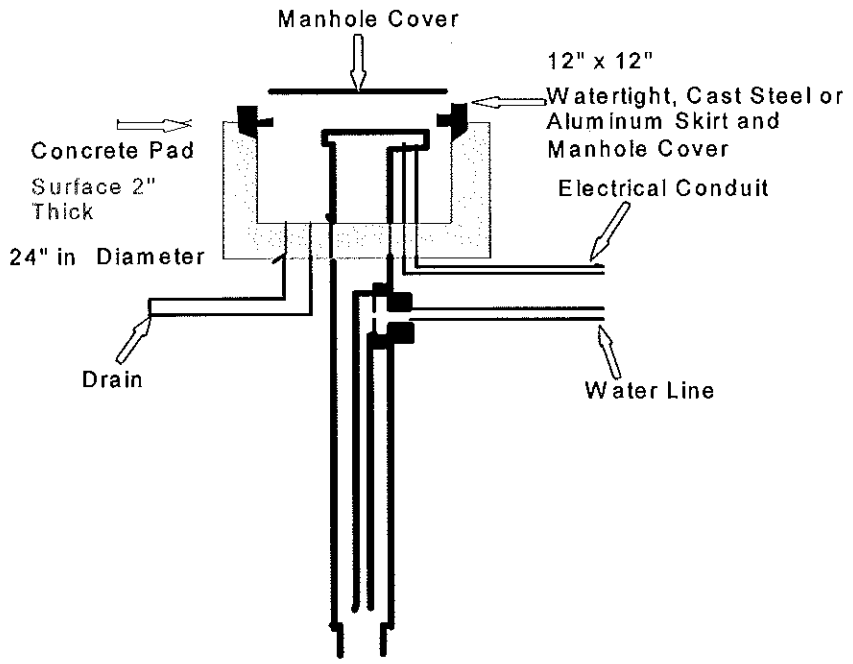

Figure 1

(f) The upper terminus of the well head shall be capped with a watertight well seal or cap specifically designed for capping the well.

(6) Backfilling and Grouting

(a) The grout material used in the backfilling or grouting of a water well shall consist of a mixture of Portland Class A cement or quick setting cement in a ratio of not over six (6.0) gallons of water per ninety-four (94) pound sack of cement, or a high solids mixing bentonite grout with a minimum of 20% solids and a weight of no less than nine and two tenths (9.2) pounds per gallon as measured by a standard mud balance. The use of bentonite, in chip or tablet form, ranging in size from one-quarter inch (1/4) to three-quarters of an inch (3/4) will be allowed as an alternate seal to slurry grouting. The bentonite shall be mixed and applied in accordance with the manufacturer's recommendations. The use of low solids bentonite drilling clay designed for use as a drilling fluid to form a filter cake on the side walls of the borehole and to increase viscosity of water) is prohibited for use as a grout or sealing material except as an additive. Only bentonite grout, bentonite tablets, or bentonite chips approved by the National Sanitation Foundation (NSF) or American National Standards Institute (ANSI) certified parties as meeting NSF product standard 60 or 61 shall be approved by the Department as appropriate grouting or sealing material.

(b) For wells completed with either steel or plastic well casing, the annular space between the casing and borehole wall of the well from a depth of three (3) feet to ten (10) feet below land surface shall be backfilled with an impervious material of either cement grout or bentonite as defined in ~~Rule 1200-4-9-.10(6)~~ subparagraph (a) of this paragraph. The remaining annular space between the casing and borehole wall shall be backfilled with an impervious material or combination of materials such as cement, bentonite, sand, puddled clay or well cuttings. However, the department recommends that the remaining annular space between the casing and the borehole wall of the well to the bottom of the watertight casing, be filled with the same grout or sealing material used from three to ten feet.

(c) Placement of the backfill material shall be done in such a way that there are no bridges or gaps in the annulus. The top of the backfill material shall remain level with the land surface surrounding the well.

(d) If bentonite is used for backfill, it shall be placed in accordance with the manufacturer's recommendations. For example, the product "Holeplug" from Baroid requires the annular space in a well to be one and one half inches (1-1/2") in clearance or more when "Holeplug" three fourths inch (3/4") is used. The annular space must be a minimum of three fourths inch (3/4") in clearance in the event that "Holeplug" three eighths inch (3/8") bentonite is used.

(e) If cement based grout or bentonite based grout is used for backfill, it shall be placed around the casing by one of the following methods:

1. Pressure

   The annular space between the casing and the borehole wall shall be a minimum of one and five-tenths (1.5) inches, and grout shall be pumped or forced under pressure through the bottom of the casing until it fills the annular space around the casing and overflows at the surface; or

2. Pumping

   The annular space between the casing and formation shall be a minimum of one and five tenths (1.5) inches and grout shall be pumped into place through a pipe or hose extended to the bottom of the annular space which can be raised as the grout is applied, but the grout pipe or hose shall remain submerged in grout during the entire application; or

3. Other

   The annular space between the casing and the borehole wall shall be a minimum of two (2) inches and the annular space shall be completely filled with grout by any method that will insure complete filling of the space, provided the annular area does not contain water or other fluid. If the annular area contains water or other fluid, it shall be evacuated of fluid or the grout shall be placed by the pumping or pressure method.

(7) Well Screens

(a) Any water well finished in an unconsolidated rock formation shall be equipped with a screen or perforated pipe that will adequately prevent the entrance of soil or formation material into the well after the well has been developed and completed by the well contractor.

(b) The well screen shall:

1. Be of steel, stainless steel, plastic or other Department approved material and shall be of a strength to satisfactorily withstand chemical and physical forces applied to it during and after installation;

2. Be of a design to permit optimum development of the aquifer with minimum head loss consistent with the intended use of the well;

3. Have openings designed to prevent clogging and shall be free of rough edges, irregularities or other defects that may accelerate or contribute to corrosion or clogging; and

4. Be provided with such fittings as are necessary to seal the top of the screen to the watertight casing and to close the bottom. If the screen is installed through the casing, a packer, seal or other approved design shall be used to prevent the entry of ground water into the well through any openings other than the screen.

(c) Multi-screened wells shall not connect aquifers or zones which have differences in:

1. Water quality to the extent that intermixing of the waters would result in deterioration of the water quality in any aquifer or zone.

2. Static water levels that would result in depletion of water from any aquifer or zone, or significant loss of head in any aquifer or zone.

(8) Gravel-Packed Wells

(a) In constructing a gravel-packed well:

1. The gravel shall be composed of quartz, granite, or similar rock material and shall be clean, rounded, uniform, water-washed and free from clay, silt, or other deleterious material.

2. The gravel shall be placed in the annular space around the screens and casing by any method that will insure accurate placement and avoid bridging or segregation.

3. The gravel pack shall have a minimum thickness of at least one-inch and shall be placed a minimum of nineteen feet below land surface.

4. The gravel shall be disinfected using water with a free chlorine residual of at least 50 parts per million (ppm).

(b) The gravel pack shall not connect aquifers or zones which have differences:

1. In water quality that would result in deterioration of the water quality in any aquifer or zone.

2. In static water levels that would result in depletion of water from any aquifer or significant loss of head in any aquifer or zone.

(9) Large Diameter Wells

(a) Large-diameter bored or augered wells may be cased with concrete pipe provided such wells are constructed as follows:

1. The bore hole shall have a minimum diameter of six (6) inches larger than the outside diameter of the casing.

2. The annular space around the casing shall be filled with grout to a depth at least five feet below the static water level or twenty (20) feet below land surface, whichever is greater. The grout shall be placed in accordance with the requirements of ~~rule 1200-4-9-.10~~ subparagraph (6)(d) of Rule 0400-45-09-.10.

3. The annular space around the casing below the grout shall be completely filled with sand or gravel that has been disinfected with water containing a free-chlorine residual of at least 50 parts per million (ppm).

4. The sand or gravel material shall be composed of quartz, granite, or similar rock material and shall be clean, rounded, uniform, water-washed and free from clay, silt, or other deleterious material.

(b) The wellhead shall be completed in the same manner as required for other water-supply wells.

(10) Well Development. Prior to completion of a well for water supply, the driller shall take all steps necessary to:

(a) Remove any mud, drill cuttings, or other foreign matter from the well that would render the well useless for its intended purpose;

(b) Correct any damage to the aquifer that might have occurred during drilling; and

(c) Disinfect the well.

(d) Fracturing as an aid in water well development:

1. Fracturing includes the use of explosives, acid or pumping fluids or air into water well in an attempt to increase the yield of the well. General water well disinfection procedure with chlorine is not considered fracturing. A licensed driller shall supervise fracturing and submit a rework report for each site.

2. Water used in fracturing must be obtained from a public water supply, water well or protected springbox and chlorinated a minimum of two (2) parts per million chlorine residual prior to injection.

3. Wells located closer than fifty (50) feet from known sources of pollution shall not be fractured. Known sources of pollution include but are not limited to septic tanks field lines and sewers.

4. All packers set in a zone to be fractured by fluid or air must be placed at depths greater than fifty feet below land surface or a depth greater than twenty feet below the bottom of water tight casing, or whichever is greater in depth from land surface.

5. The driller shall submit a report of driller within sixty (60) days upon completion of fracturing the well reworking the well, and denote in the comments section the zone fractured, water used and amount of pressure induced on each zone.

(11) Wellhead Completion

(a) The top of the casing shall be cut off smooth and level, be free from dents and cracks, and shall terminate at least six (6) inches above the land surface. All wells shall be capped with an approved well cap.

(b) Underground installations leading from the well shall employ a pitless adapter which does not require welding at the casing. Pitless units or adapters shall comply with the Water Systems Council's Pitless Adapter Division (PAD) PAS-1 (6th Ed., March 1987) and shall bear the PAD symbol of certification or shall otherwise have been approved by the Department.

(c) Pitless units or adapters shall be constructed and installed so as to prevent the entrance of contaminants into the well or potable water supply, conduct water from the well, protect the water from freezing, and provide access to water system parts within the well.

(d) Surface drainage shall be diverted away from the well head so that water is not allowed to stand around the casing.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.11~~ 0400-45-09-.11 Installation of Pumps, Filters, and Water Treatment Units.

Primary responsibility for compliance with the provisions set forth herein for the installation of water well pumps, filters and water treatment units rests with the installer of these devices.

(1) The capacity of the pump shall be consistent with the intended use and yield characteristics of the well.

(2) The pump and related equipment for the well shall be conveniently located to permit easy access and removal for repair and maintenance.

(3) The base plate of a pump placed directly over the well shall be designed to form a watertight seal with the well casing or pump foundation.

(4) In installations where the pump is not located directly over the well, the annular space between the casing and pump intake or discharge piping shall be closed with a watertight seal designed specifically for this purpose.

(5) The well shall be properly vented at the wellhead to allow for pressure changes within the well. The vent shall be screened to prevent entry of insects.

(6) Any suction line installed underground between the well and pump shall be surrounded by six (6) inches of impervious material such as cement, or encased in a larger pipe that is sealed at each end.

(7) All conduits, valves and other plumbing fixtures used to convey water from a water-supply well to any building or other outlet shall be installed in accordance with manufacturer's requirements.

(8) All pressure tanks shall be installed above ground unless the tank is specifically designated by the manufacturer for below ground burial.

(9) The electrical wiring and equipment used in connection with the installation of a water well pump shall:

(a) Meet underwriters specifications;

(b) Be installed in accordance with the National Electrical Code or local codes and ordinances if the latter are more restrictive;

(c) Be equipped with a fused or circuit breaker disconnect switch.

(d) Be served by an entirely separate circuit from other equipment.

(10) Water filters and water treatment units shall be installed and serviced to accommodate water quality problems as determined by physical, chemical or bacteriological evaluation or field test; and the function of the equipment shall achieve the results specified by the manufacturer. In servicing and installing treatment units the sanitation of the water supply shall be protected.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.12~~ 0400-45-09-.12 Disinfection of Water Supply Wells.

(1) All water wells shall be disinfected upon completion of construction, reworking, pump installation or repairs as follows:

(a) A chlorine solution shall be placed in the well in sufficient dosage to produce a chlorine residual of at least one hundred (100) parts per million (ppm) in the water standing in the well (see Tables C and D for the correct amount). A chlorine solution may be prepared by dissolving dry hypochlorite granules (trade names include HTH, Chlor-Tabs, etc.) in water or by liquid bleach (trade names include Clorox, Purex, etc). (CAUTION: When working with chlorine, persons should be in a well ventilated place. The powder or strong liquid should not come in contact with skin or clothing. Solutions are best handled in wood, plastic or crockery containers because metals are corroded by strong chlorine solutions).

TABLE C

QUANTITY OF DISINFECTANT REQUIRED TO PRODUCE A FREE CHLORINE RESIDUAL OF 100 PARTS PER MILLION (PPM) IN DRILLED WELLS.

Feet of Water	Liquid Bleach (Clorox, Purex, etc.) (5.25 % Chlorine)			Dry Granules (HTH, Clor-Tabs, etc.) (70% Chlorine)			Feet of Water
	Well Diameter			Well Diameter			
	4-inch	6-inch	8-inch	4-inch	6-inch	8-inch	
10	1/4 cup	1/2 cup	1 cup	1 tab.	2 tabs.	1/2 oz.	10
20	1/2 cup	1 cup	1 pt.	2 tabs.	4 tabs.	1 oz.	20
30	3/4 cup	1 1/2 cups	1 1/2 pts.	3 tabs.	1 oz.	1 1/2 oz.	30
40	1 cup	1 pt.	1 3/4 pts.	4 tabs.	1 1/4 ozs.	2 ozs.	40
50	1 1/4 cups	1 1/4 pts.	1 qt.	5 tabs.	1 1/2 ozs	2 1/2 ozs	50
60	1 1/3 cups	1 1/2 pts.	1 1/4 qts.	6 tabs.	1 3/4 ozs.	3 ozs.	60
70	1 1/2 cups	1 3/4 pts.	1 1/2 qts.	1 oz.	2 ozs.	3 1/2 ozs.	70
80	1 3/4 cups	1 qt.	1 3/4 qts.	1 oz.	2 1/4 ozs.	4 ozs.	80
90	1 pt.	1 1/4 qts.	2 qts.	1 1/4 ozs.	2 1/2 oz.	4 1/2 ozs.	90
100	1 1/4 pt.	1 1/4 qts.	2 1/4 qts.	1 1/4 ozs.	3 ozs	5 ozs.	100
120	1 1/3 pts.	1 1/2 qts.	2 1/2 qts.	1 1/2 ozs.	3 1/2 ozs.	6 ozs.	120
140	1 1/2 pts.	1 3/4 qts.	3 qts.	1 3/4 ozs.	4 ozs.	7 ozs.	140
160	1 3/4 pts.	2 qts.	3 1/2 qts.	2 ozs.	4 1/2 ozs.	1/2 lbs.	160
180	1 qt.	2 1/4 qts.	1 gal.	2 1/4 ozs.	5 ozs.	2/3 lbs.	180
200	1 1/4 qts.	2 1/2 qts.	1 1/4 gal.	2 1/2 ozs.	6 ozs.	3/4 lbs.	200
250	1 1/2 qts.	3 qts.	1 1/2 gals.	3 1/4 ozs.	1/2 lb.	1 lbs.	250
300	2 qts.	1 gal.	1 3/4 gals.	5 ozs.	2/3 lb.	1 lbs.	300
400	2 1/2 qts.	1 1/4 gal.	2 1/4 gals.	6 1/4 ozs.	3/4 lbs.	1 1/2 lbs.	400
500	2 3/4 qts.	1 1/2 gal.	2 3/4 gals.		1 lbs.	2 lbs.	500

Measures:
2 cups = 1 pint (pt)
2 pints = 1 quart (qt)
4 quarts = 1 gallon (gal)

7 tablets = 1 ounce (oz)
8 ounces = 1/2 pound (lb)
16 ounces = 1 pound (lb)

Equations for calculating amount of disinfectant required to chlorinate drilled wells with diameters larger than 8 inches:

Pints of liquid bleach = $D^2 h \div 10$

Ounces of dry granules = $D^2 h \div 9$

where: D = Diameter of well in feet
h = height of water above bottom of well in feet.

TABLE D

QUANTITY OF DISINFECTANT NEEDED TO PRODUCE A FREE CHLORINE RESIDUAL OF 100 PARTS PER MILLION (PPM) IN DUG OR BORED WELLS

Feet of Water	Liquid Bleach (5.25% Chlorine) Well Diameter in feet				Dry granules (70% chlorine) Well Diameter in feet			
	2 ½	3	4	5	2 1/2	3	4	5
1	1 1/4 cups	1 pt	1 Qt	1 1/4 qts	5 tabs	1 oz	2 ozs	3 ozs
2	1 1/4 qts	1 qt	1 1/2 qts	2 1/2 qts	1 1/2 ozs	2 ozs	4 ozs	6 ozs
3	1 qt	1 1/2 qts	2 1/4 qts	3 1/2 qts	2 1/4 ozs	3 ozs	6 ozs	9 ozs
4	1 1/4 qts	2 qts	3 qts	5 qts	3 ozs	4 ozs	1/2 lb	3/4 lb
5	1 1/2 qts	2 1/4 qts	4 qts	1 1/2 gals	4 ozs	5 ozs	3/4 lb	1 lb
10	3 qts	1 1/4 gals	2 gals	3 gals	7 ozs	1/2 lb	1 1/2 lbs	2 lbs
15	1 gal	1 3/4 gals	3 gals	4 1/2 gals	3/4 lb	1 lb	2 lb	3 lbs
20	1 1/2 gals	2 1/4 gals	4 gals	6 gals	1 lb	1 1/2 lbs	2 1/2 lbs	3 1/2 lbs

Equations for calculating amounts of chlorine needed to disinfect dug or bored wells.

Pints of liquid bleach = D^2h) 10

Ounces of dry granules = D^2h) 9

where: D = diameter of well in feet
h = height of water above bottom of well in feet.

(b) Place the required amount of liquid bleach or dry granules in the well by one of the following methods:

1. Dry granules or tablets may be dropped in the top of the well and allowed to settle to the bottom; or

2. Liquid bleach may be mixed with water and poured in the top of the well and allowed to settle to the bottom.

(c) Agitate the water in the well to insure thorough dispersion of the chlorine throughout the entire length of the well.

(d) The well casing, pump column and any other equipment above the water level in the well, shall be thoroughly rinsed with the chlorine solution as a part of the disinfecting process.

(e) The chlorine treated water shall stand in the well for a period not less than twelve (12) hours. The well shall, thereafter, be pumped until the odor of the chlorine is no longer detectable.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.13~~ 0400-45-09-.13 Repair of Water Wells.

(1) All materials used in the replacement or repair of any water well shall meet the requirements for a new installation.

(2) Plastic pipe approved by the National Sanitation Foundation (NSF) and rated at 160 psi (SDR = 26) may be used for liner casing. The liner casing shall be installed with centering guides to insure proper centering in the well and the annular space around the liner casing shall be completely sealed at both ends to repel the inflow of extraneous material from the lined interval.

(3) Repairs to wells completed with the top of the well casing terminating below ground shall include extending the well casing above land surface in accordance with ~~rule 1200-4-9-.10~~ subparagraph (5)(a) of Rule 0400-45-09-.10.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.14~~ 0400-45-09-.14 Well Registration - Identification.

(1) Each water well constructed or reconstructed shall be equipped before the drill rig leaves the site with an identification tag or decal bearing a registration number. The tag and registration number shall be supplied by the Department.

(2) The identification tag or decal shall be securely attached to the well casing or other appurtenance where it is readily visible.

(3) The identification tag or decal shall not be removed from the well unless otherwise approved by the Department.

(4) The registration number shall be recorded on the well completion report to be submitted by the driller to the Department.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.15~~ 0400-45-09-.15 Data and Records Required.

(1) A "Report of Well Driller" (well completion report) shall be submitted to the Department on a form provided or approved by the Department within sixty (60) days after completion of the drilling, construction, reconstruction or closure of each water well.

(2) The report shall be true and accurate. The report shall include as a minimum the following accurate information about the well. Footage shall be accurate to the nearest foot of measurement:

(a) Name and address of the person for whom the well was drilled;

(b) The location of the well as denoted by county, street address and road name;

(c) The location of the well as denoted by driller map number coordinate or latitude and longitude of the well;

(d) Proposed use of the well;

(e) The date completed for each well;

(f) The "log" of the well;

(g) The depth, diameter and general specifications for the well including;

1. Casing lengths used, type, diameter, wall thickness or SDR rating;

2. Liners used, location, type, diameter, wall thickness or SDR rating;

3. Bottom depth of casing, and depth of screen or slotted pipe;

4. Type backfill material used and location of backfill, and location of packers;

5. Static water level, depth to bedrock, (if encountered) for bedrock wells only;

6. Water bearing zones encountered in excess of one gallon per minute for bedrock wells only;

7. General water quality.

(h) Licensed driller's name and Tennessee license number;

(i) The well driller tag number and Notice of Intent Number;

(j) Information on well head completion, i.e. well cap, well disinfection, information supplied by the homeowner to the driller or confirmation by the driller that the septic tank and field lines are located fifty (50) feet or greater from the water well.

(3) The original report shall be signed by the licensee and submitted to the Director. The licensed driller shall maintain a copy of each report and fee payment submitted for five (5) years.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.16~~ 0400-45-09-.16 Well Abandonment.

(1) The driller or person holding a license for well closure shall backfill and close any newly drilled water well not intended for use in which casing has not been installed or from which casing has been removed, within fifteen (15) days after the drill rig leaves the site. The driller shall take all steps necessary to maintain safety around the site until the closure process is completed. Prior to closing any such well, the driller shall:

(a) Remove all equipment or material that may obstruct access to the bottom of the well;

(b) Check the entire depth of the well for obstructions that may interfere with sealing operations and remove them, and

(c) Thoroughly chlorinate the well prior to sealing by the addition of sufficient quantities of liquid bleach or dry hypochlorite granules to produce a free chlorine residual of twenty-five (25) parts per million (ppm).

(2) Except as provided in paragraphs (3), (4), (5) and (6) of this rule water well plugging and closure shall be accomplished by a licensed driller by the following methods:

(a) For uncased water wells, a cement grout or bentonite as defined in ~~Rule 1200-4-9-.16(2)~~ subparagraph (c) of this paragraph or other grout material approved by the Department shall be placed in the well bore from two feet below land surface to a minimum of twenty-five (25) feet below land surface. Native soil may be used to backfill the borehole from land surface to two feet below land surface or the driller may use cement or bentonite to land surface. The well bore twenty-five (25) feet below land surface shall be filled with either bentonite, cement grout, clean crushed stone one half inch in diameter or less, well cuttings, puddled clay, sand or combined mixture of any of these listed materials. Backfill shall remain level with land surface.

(b) For water wells with a minimum of nineteen feet of casing installed, a surface plug consisting of either cement grout or bentonite as defined in ~~Rule 1200-4-9-.16(2)~~ subparagraph (c) of this paragraph shall be placed in the well bore from land surface to a minimum of five (5) feet below land surface. An additional seal of cement grout or bentonite as defined in ~~Rule 1200-4-9-.16(2)~~ subparagraph (c) of this paragraph shall also be placed in the well bore for a minimum length of ten (10) feet. The top of this ten (10) foot seal shall either be located within twenty (20) feet below the bottom of the casing or at the top of the well screen or perforated pipe. The remaining well bore or casing shall be backfilled with either bentonite, cement grout, clean crushed stone one half inch in diameter or less, well cuttings, puddled clay, sand, or combined mixture of any of these listed materials. Surface casing may be terminated two (2) feet below land surface and

native soil may be placed in the well bore from two feet to land surface provided that the upper surface plug of cement or bentonite grout is placed in the borehole from two to seven feet below land surface. Backfill shall remain level with land surface.

(c) The grout material used in the plugging and abandonment of a water well shall consist of a grout material approved by the Department or a mixture consisting of Portland Class A cement or quick setting cement in a ratio of not over six (6.0) gallons of water per ninety-four (94) pound sack of cement, or a high solids bentonite grout with a minimum of 20% solids and a weight of no less than nine and two tenths (9.2) pounds per gallon as measured by a standard mud balance. The use of bentonite, in chip or tablet form, ranging in size from one-quarter inch (1/4") to three-quarters (3/4) of an inch will be allowed as an alternate seal to slurry grouting. The bentonite shall be mixed and applied in accordance with the manufacturer's recommendations. The use of low solids bentonite drilling clay (designed for use as a drilling fluid to form a filter cake on the side walls of the borehole and to increase viscosity of water) is prohibited for use as a grout or sealing material except as an additive. If bentonite is used as a sealing material only bentonite grout, bentonite tablets, or bentonite chips, approved by the National Sanitation Foundation (NSF) or American National Standards Institute (ANSI) certified parties as meeting NSF product standard 60 or 61 shall be approved by the Department as appropriate grouting or sealing material.

(d) Placement of the backfill material shall be done in such a way that there are no bridges or gaps in the well bore. The top of the backfill material shall remain level with land surface.

(3) Wells extending into more than one aquifer shall be filled and sealed in such a way that exchange of water from one aquifer to another is prevented.

(4) The sealing of flowing wells shall be accomplished only after the wells have been treated to reduce the flow to zero. This may be accomplished by introducing high specific gravity fluids which are approved for use in potable water systems into the bottom of the well bore and continuing until the flow ceases.

(5) The driller or a person holding a license for well closure may submit a written petition for an alternative method of well abandonment. Any alternate method of filling and sealing a well shall be submitted to the Director for review and written approval prior to sealing a well by such method. In an emergency or in exceptional instances, the Department will respond to a verbal request provided the applicant submits a written application within ten (10) days of the verbal application.

(6) Hand dug water wells greater than twelve inch in diameter without steel or plastic casing and less than sixty (60) feet in depth may be abandoned by a landowner, or the following individuals licensed in Tennessee: licensed engineers, licensed professional geologists, licensed building contractors, licensed pump installers, county environmentalists, or environmental specialists for the state of Tennessee. They must all follow the construction standards for the closure of a hand dug well. The landowner should contact the Division of Water ~~Supply~~ Resources or a licensed driller prior to closing a hand dug well for additional technical assistance. The person, other than the landowner closing the hand dug well is responsible for submitting the well closure report for the hand dug well. A landowner who does the well closure is not required by law to complete a well closure report: however it is recommended that the landowner submit a letter to the Division of Water ~~Supply~~ Resources similar to information submitted on a well closure report. The information serves as a public record of the landowners' compliance with state well construction standards and will be important information for land appraisals and property transfer arrangements. No matter who does the job, the landowner is ultimately responsible for the closure of a hand dug well.

(7) Hand dug water wells may be closed by using the following procedures:

(a) Thoroughly chlorinate the well prior to sealing by the addition of sufficient quantities of liquid bleach or dry hypochlorite granules to produce a free chlorine residual of twenty-five (25) parts per million within the entire well.

(b) Cement grout or bentonite as defined in ~~Rule 1200-4-9-.16~~ subparagraph (2)(c) of this rule must be used from five feet to two feet below land surface to place a barrier for the well. The

remaining annular space from two feet to land surface may be filled with native soil or cement. Backfill must remain level with land surface.

(c) Construction debris, trash or wood are prohibitive materials and must never be used during the well closure process.

(d) Native soil material, gravel less than one inch or less in diameter, cement or bentonite may be used as well closure material from five feet below land surface to the total depth of the well.

(8) All well closure reports shall include a diagram showing the location and distance in feet of the closed well from one specific landmark and septic system or sewer systems on the property.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.17~~ 0400-45-09-.17 Geothermal Well Construction Standards for Closed Loop Geothermal Boreholes.

(1) Location of Closed Loop Geothermal Boreholes

(a) The construction of a closed loop geothermal borehole is prohibited at other than a safe distance from any potential source of contamination. The minimum safe distances shall apply for the sources listed below:

Source of structure	Minimum Distances
Sewer Line	10 feet
Septic Tanks	25 feet
Springs	100 feet
Septic Drain Fields	25 feet
Water Wells	100 feet
House to septic tank connection	10 feet
House to sewer line connection	10 feet

(2) Source of Drilling Water for Closed Loop Geothermal Boreholes

(a) All water used in drilling and construction of a closed loop geothermal borehole shall be from a public water supply, water well or protected spring box.

(b) All water used in the drilling or construction process shall be treated with enough chlorine product to retain a free chlorine residual of at least two (2) parts per million.

(c) Drilling fluids and additives shall be materials specified by the manufacturer for use in either water or geothermal well drilling or construction and approved by the Department.

(d) During the course of drilling a closed loop geothermal borehole with air rotary equipment, a minimum of one gallon per minute (1) of water must be injected or added into the air stream unless the drill rig is equipped and uses a dust cyclone to control dust. The amount of water injected shall be sufficient to control dust and to keep the borehole cleaned out.

(e) Petroleum based products or byproducts spilled or leaked from a drill rig in any quantity greater than one (1) quart shall be removed from the drilling area before the drill rig is removed from the borehole being constructed.

(3) Grouting for Closed Loop Geothermal Boreholes

(a) The entire borehole surrounding the closed loop shall be filled with a grout material approved by the Department. A cover from land surface to five (5) feet below land surface comprised of native soil material may be used in closed loop geothermal boreholes.

(b) Grout in closed loop geothermal boreholes is to be composed of cement, a bentonite cement mixture, high solids sodium bentonite or other grout material approved by the Department.

Thermal grout, Thermal Grout Lite and Mix 111 Grout are three specific type grouts approved by the board for the grouting and closure of closed loop geothermal boreholes.

1. Cement grout shall be composed of Class A, Type I Portland Cement mixed with not more than six (6) gallons of clean water per bag (one cubic foot or 94 pounds) of cement with a density of 15 to 16 pounds per gallon, or to manufacturer's specifications.

2. Bentonite-cement grout shall be composed of powdered bentonite (less than 5% by weight) mixed at not more that 8 gallons of water to the bag, with a density of 14 to 15 pounds per gallon, or to manufacturer's specifications.

3. High solids sodium bentonite grout shall have minimum of 20% solids and be mixed per manufacturer's specifications with water and/or other required additives.

(c) All grouting shall be accomplished using forced injection to emplace the grout. When emplacing the grouting material, the tremie pipe shall be lowered to the bottom of the zone to be grouted. The tremie pipe shall be kept full continuously from start to finish of the grouting procedure, with the discharge end of the tremie pipe being continuously submerged in the grout until the zone to be grouted is completely filled.

(d) The driller shall take all steps necessary to maintain safety around the borehole until the closed loop is installed and grouted in the borehole. The closed loop u-bend or dropline pipe shall be placed into the borehole to its proper depth and grouted in place within three (3) days of drilling each borehole unless the u-bend dropline pipe has been installed to its maximum depth with a dedicated tremie pipeline. All Closed Loop Geothermal Boreholes shall be grouted in-place within fifteen (15) days of being drilled.

(e) When high solids bentonite grouts are used, a cover at the land surface at least the width of the borehole made of suitable materials, as approved by the Department, such as native soils, gravel, sand or thermoplastic material sufficient to support the weight of normal foot traffic shall be used as a covering for each borehole.

(f) Boreholes that encounter caves or large fractures below thirty (30) feet from land surface that prohibit the use of standard grouting procedures shall use one of the following materials to fill these intervals up to a maximum of thirty (30) feet in each well;

1. Chipped or granular bentonite;

2. Clean washed gravel ½ inch diameter or less;

3. Clean washed coarse sand; and

4. Liner casing shall consist of steel casing if the casing is permanently installed in the borehole

(4) Reporting of Closed Loop Geothermal Boreholes

(a) A "Report of Well Driller" for a closed loop geothermal borehole system shall be submitted by the driller to the Department within sixty (60) days after the drilling or closure of the last closed loop borehole in the system at the site. A Report of Well Driller shall also be submitted for a closed loop geothermal test borehole if drilled on the site to determine geology or heat transfer characteristics within sixty (60) days after drilling the borehole. See also ~~Rule 1200-4-9-.17~~ paragraph (14) of this rule for Notice of Intent requirements for drilling.

(b) The report shall be true and accurate. Borehole footage shall be accurate to the nearest foot of measurement. The report shall include as a minimum the following accurate information about the system:

1. Name and address of the person for whom the closed loop geothermal boreholes were drilled;

2. The location of the system as denoted by county, street address and road name;

3. The location of the system as denoted by driller map number coordinate or latitude and longitude of the system and diagram of the closed loop geothermal boreholes showing each location and identification of other wells on the property and location of septic tanks, field lines or sewers;

4. The date the last closed loop geothermal borehole was drilled at the system site and additional information as required by the Department;

5. The licensed driller's name and contractor identification number, general specifications of the closed loop geothermal borehole such as depth, diameter, backfill and closed loop information;

6. Closed loop geothermal borings and underground lines associated with heat transfer to geothermal boreholes are required to have detectable underground tape placed above the boring or heat transfer lines within eighteen inches of land surface to denote the subsurface location of the installations;

7. For systems with ten or less closed loop boreholes, the driller is required to provide a master plat to both the owner and Division of Water ~~Supply~~ Resources of the location of each borehole. The plat shall include related distances from major buildings, septic tanks and field lines and sewer lines and be submitted with the Report of Well Driller within sixty (60) days upon completion of drilling of the last borehole on a given project. Site plans drawn up by a licensed engineer may be used if the driller is unable to provide a master plat;

8. For systems with eleven or more boreholes. The driller is required to provide a master plat to the owner of the property. The plat shall include related distances from major buildings, septic tanks and field lines and sewer lines. The driller shall also submit a Report of Well Driller to the Division of Water ~~Supply~~ Resources within sixty (60) days upon completion of drilling of the last borehole on a given project. Site plans drawn up by a licensed engineer may be used if the driller is unable to provide a master plat.

(5) A geothermal driller license or closed loop installer license is required to install a closed loop dropline or u-bend loop in a closed loop geothermal borehole. In a closed-loop geothermal borehole, the material used to make up the heat-exchange loop that is placed in the ground or into a body of water must be composed of high-density polyethylene or other material approved by the Department. All closed loop material placed in the borehole must be installed and grouted within fifteen (15) days upon completion of drilling of each borehole. Each loop will be pressure tested to 100 pounds per square inch (psi) and maintain constant pressure for twenty (20) minutes before grouting and placement of loop into service. The entire system shall be free of leaks or pressure loss.

(a) High Density Polyethylene Pipe. This pipe must be manufactured in accordance with dimensional specifications of ASTM D-2513 or ASTM F-714 and must have a minimum cell classification of PE345434C up to PE345464C when tested under ASTM D-3350 to be acceptable for use in closed-loop heat pump systems. No other pipe shall be used for closed loop installation unless approved by the Department.

(6) Connecting Closed-Loop Pipe. The pipe must be thermally fused according to the pipe manufacturer's specifications and must not leak after assembly. No other connection method shall be used unless approved by the Department.

(7) Heat Transfer Fluid. The fluid used inside the closed-loop assembly must be composed of:

(a) Heat transfer fluids:

1. Pure glycerin solution-glycerin must be ninety-six and one-half (96.5%) United States pharmacopoeia grade;

2. Food grade propylene glycol;

3. Dipotassium phosphate;

4. Water;

5. Methanol

6. Ethanol; or

7. Other fluids as may be approved in advance by the Division.

(b) It is the responsibility of the closed loop installer, driller, primary geothermal heat pump installer and owner to become familiar with the safe and proper use of these fluids and to take necessary precautions to ensure ground water protection.

(8) Boreholes with closed loop u-bend material in the borehole shall have all heat transfer fluid removed from the closed loop before borehole abandonment. This fluid shall be disposed in accordance with manufacturers specifications. The closed loop u-bend material shall either be completely removed from the borehole before closure and the borehole closed in accordance with ~~Rule 1200-4-9-.17~~ subparagraph (10)(a) of this rule or the loop shall be pumped full of cement grout or bentonite or other material approved by the Department. The driller shall denote on the geothermal well abandonment report how much grout or bentonite was used in sealing the closed loop or u-bend material. The upper portion of the borehole to five feet below land surface may be filled with compacted earth or same material to fill the closed loop.

(9) The driller or person holding a license for well closure shall backfill and abandon any drilled closed loop borehole in accordance with ~~Rule 1200-4-9-.17~~ subparagraph (10)(a) of this rule not intended for use within 15 days after the drill rig leaves the property. The driller shall take all steps necessary to maintain safety around the site until the closure process is completed. Prior to closing any such borehole the driller shall:

(a) Check the entire depth of the borehole for obstructions that may interfere with sealing operations and remove them, and

(b) Thoroughly chlorinate the borehole prior to sealing by the addition of sufficient quantities of liquid bleach or dry hypochlorite granules to produce a free chlorine residual of 25 parts per million (ppm).

(10) Closed loop borehole plugging and abandonment shall be accomplished by a licensed driller by the following methods:

(a) For closed loop boreholes without thermal transfer pipe, or closed loops installed, a cement grout or bentonite or other approved sealing material approved by the Department shall be placed in the borehole from two (2) feet below land surface to a minimum of twenty-five (25) feet below land surface. Native soil may be used to backfill the borehole from land surface to two feet below land surface or the driller may use cement or bentonite to land surface. The borehole twenty-five (25) feet below land surface shall be filled with either bentonite, cement grout, clean crushed stone one half inch in diameter or less, well cuttings, puddled clay, sand or combined mixture of any of these listed materials. Backfill shall remain level with land surface.

(b) The grout material used in the plugging and abandonment of a closed loop borehole shall consist of a mixture of Portland Class A cement or quick setting cement in a ratio of not over six (6.0) gallons of water per ninety-four (94) pound sack of cement, or a high solids bentonite grout with a minimum of 20% solids and a weight of no less than nine and two tenths (9.2) pounds per gallon as measured by a standard mud balance or other type grout material approved by the Department. The use of bentonite, in chip or tablet form, ranging in size from one-quarter (1/4") inch to three-quarters (3/4) of an inch will be allowed as an alternate seal to slurry grouting. The bentonite shall be mixed and applied in accordance with the manufacturer's recommendations.

The use of low solids bentonite drilling clay (designed for use as a drilling fluid to form a filter cake on the side walls of the borehole and to increase viscosity of water) is prohibited for use as a grout or sealing material except as an additive. If bentonite is used as a sealing material, only bentonite grout, bentonite tablets, or bentonite chips, approved by the National Sanitation Foundation (NSF) or American National Standards Institute (ANSI) certified parties as meeting NSF product standard 60 or 61 shall be approved by the Department as appropriate grouting or sealing material.

(c) Placement of the backfill material shall be done in such a way that there are no bridges or gaps in the borehole. The top of the backfill material shall remain level with land surface.

(11) Boreholes extending into more than one aquifer shall be filled and sealed in such a way that exchange of water from one aquifer to another is prevented.

(12) The driller or person holding a license for well closure may submit a written petition for an alternative method of borehole abandonment. Any alternate method of filling and sealing a well shall be submitted to the Director for review and written approval prior to sealing a borehole by such method. In an emergency or in exceptional instances, the Department will respond to a verbal request provided the applicant submits a written application within ten (10) days of the verbal application.

(13) Every licensed driller or person holding a license for well closure, within sixty (60) days of abandonment of a closed loop borehole, shall submit a report of the abandonment of the borehole to the Department. The well abandonment report shall be made on a form provided by the Department or a reasonable facsimile approved by the Department. The report shall include the same information as required on the completion report and shall include specific information on how the borehole was closed and the placement and type of backfill placed in the borehole. The abandonment report shall be signed by the licensed driller or person holding a license for well closure.

(14) Notice of Intent required to drill geothermal closed loop well system.

(a) A Notice of Intent to drill a closed loop geothermal borehole system must be submitted by the property owner or the licensed well driller to the Director in the manner prescribed by the Department, prior to commencement of drilling a water well or a closed loop geothermal borehole system in Tennessee. The licensed driller is required to have sufficient documentation that a Notice of Intent was submitted to the Division of Water ~~Supply~~ Resources before beginning operations at a drill site. Sufficient documentation for a Notice of Intent being filed may include one of the following:

1. Fee receipt of the Notice of Intent.

2. Confirmation number of the Notice of Intent or other approved format approved by the Director and issued by the Department.

(b) The Notice of Intent fee or copy of the receipt for a Notice of Intent fee shall accompany the submission of the driller's report. No well or borehole shall be drilled unless the driller has documentation that a Notice of Intent has been filed. All well reports shall be submitted with documentation of the Notice of Intent fee being paid. Documentation of the fee being paid shall consist of the receipt originating from a Notice of Intent or money collected and enclosed with the original driller's report by the driller for the Notice of Intent. A Notice of Intent and fee is not required for well closure, deepening or reworking any closed loop geothermal borehole. The amount of the Notice of Intent fee shall be reviewed by the Department at least every five (5) years and shall currently be scheduled as follows:

1.	Geothermal well system (closed loop), ten boreholes or less	$ 75~~.00~~
2.	Geothermal well system (closed loop) eleven to fifty boreholes	$150~~.00~~
3.	Geothermal well system (closed loop) fifty-one boreholes or greater	$500~~.00~~
4.	Closed Loop test hole for thermal conductivity and geology	$ 75~~.00~~

(c) The requirement to furnish the Department a Notice of Intent fee payment shall not apply to closed loop geothermal boreholes drilled in any local jurisdiction which is authorized, by private act or pursuant to the provisions of an adopted "home rule" charter, to regulate the location and construction of these wells and which has established a fee for the inspection of both geothermal and water wells approved by the Commissioner.

(d) A Notice of Intent fee shall not apply to any property owner who within the past five years has filed a Notice of Intent and paid the fee for the same property. The property owner or driller must identify on the new Notice of Intent submitted for the property the identification number from the first Notice of Intent fee submitted.

(e) Checks returned for insufficient funds will be charged an established check processing fee and the Division will seek payment from the individual responsible for writing the check.

(f) A Notice of Intent shall expire one hundred and eighty days from the original date filed by the well driller or homeowner.

(g) When strict compliance with these standards is impractical, the driller or installer shall make application to the Department for approval of an alternative standard prior to the work being done. The Department may grant the request for an alternative standard if it determines the proposed standards offer an equivalent or higher level of protection to the environment. In an emergency or in exceptional instances, the Department will respond to a verbal request provided the applicant submits a written application within ten (10) ten days of the verbal application.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

~~1200-4-9-.18~~ 0400-45-09-.18 Monitor Well Construction Standards.

(1) Construction standards for monitor wells are not promulgated under this statute. Construction standards for monitor wells are regulated by the state agency requiring the monitor well to be placed into service. The Well Act only requires an individual to be licensed as a monitor well driller.

(2) Monitor well reports and Notice of Intent fees for monitor wells are not required to be submitted to the Division of Water ~~Supply~~ Resources.

(3) Installer licenses are not required to install pumps or water treatment devices on monitor wells.

(4) Monitor wells are required to be constructed by licensed monitor well drillers.

(5) Monitor wells may be closed by a licensed water well driller, geothermal driller, monitor well driller or a person holding a license for well closure. Well closure standards for monitor wells are regulated by the agency requiring the monitor well to be placed into service and not the Division of Water ~~Supply~~ Resources.

Authority: T.C.A. §§ 69-10-101 et seq. and 4-5-201 et seq.

G.O.C. STAFF RULE ABSTRACT

DEPARTMENT**:**	Finance and Administration
DIVISION:	Bureau of TennCare
SUBJECT:	TennCare Standard
STATUTORY AUTHORITY:	Tennessee Code Annotated, Sections 71-5-105 and 71-5-109
EFFECTIVE DATES:	January 2, 2013 through June 30, 2013
FISCAL IMPACT:	Minimal
STAFF RULE ABSTRACT:	This rule is being promulgated to update an internal rule reference.

Public Hearing Comments

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

There were no public comments on these rules.

Regulatory Flexibility Addendum

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

(If applicable, insert Regulatory Flexibility Addendum here)

The rules are 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 rules are not anticipated to have an impact on local governments.

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

Rulemaking Hearing Rule(s) Filing Form

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

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 Amendments
___ New
___ Repeal

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

Chapter Number	**Chapter Title**
1200-13-14	TennCare Standard
Rule Number	**Rule Title**
1200-13-14-.03	Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCs)

(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)

Part 1. of Subparagraph (b) of Paragraph (2) of Rule 1200-13-14-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by deleting the word "or" from the end of Subpart (iv) and adding a semicolon ";" and the word "or" and deleting the period "." at the end of Subpart (v) and by adding a new Subpart (vi) so as amended Part 1. shall read as follows:

1. The following situations will not be determined to be "hardships":

   (i) The enrollee is unhappy with the current MCO or primary care provider (PCP), but there is no hardship medical situation (as stated in Part 2 below);

   (ii) The enrollee claims lack of access to services but the plan meets the state's access standard;

   (iii) The enrollee is unhappy with a current PCP or other providers, and has refused alternative PCP or provider choices offered by the MCO;

   (iv) The enrollee is concerned that a current provider might drop out of the plan in the future; ~~or~~

   (v) The enrollee is a Medicare beneficiary who (with the exception of pharmacy) may utilize choice of providers, regardless of network affiliation; or ~~.~~

   (vi) The enrollee's PCP is no longer in the MCO's network, the enrollee wants to continue to see the current PCP and has refused alternative PCP or provider choices offered by the MCO.

Part 2. of Subparagraph (b) of Paragraph (2) of Rule 1200-13-14-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by deleting "PCP and/or" from Subpart (ii) and deleting "PCP or" from Subpart (iv) so as amended Subparts (ii) and (iv) shall read as follows:

(ii) The member's ~~PCP and/or~~ specialist has stopped participating in the member's current MCO network and has refused continuation of care to the member in his current MCO assignment; and

(iv) The current MCO has been unable to negotiate continued care for this member with the current ~~PCP or~~ specialist; and

The last paragraph of Subparagraph (b) of Paragraph (2) of Rule 1200-13-14-.03 Enrollment, Reassignment, and Disenrollment with Managed Care Contractors (MCCS) is amended by adding a new sentence after the first sentence of the paragraph so as amended the last paragraph of Subparagraph (b) shall read as follows:

Requests to change MCOs submitted by TennCare enrollees shall be evaluated in accordance with the hardship criteria referenced above. ~~If an enrollee's request to change MCOs is granted due to hardship, all family members living in the same household and enrolled in TennCare will be assigned to the new MCO except children determined by the Bureau to be eligible to enroll in TennCare Select.~~ Upon denial of a request to change MCOs, enrollees shall be provided notice and appeal rights as described in applicable provisions of rule 1200-13-14-.11.

Statutory Authority: T.C.A. §§ 4-5-202, 71-5-105 and 71-5-109.

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

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: *03/07/12*

Rulemaking Hearing(s) Conducted on: (add more dates). *05/03/12*

Date: _____

Signature: _____

Name of Officer: Darin J. Gordon

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

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

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

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

_____
Date

Department of State Use Only

Filed with the Department of State on: _____

Effective on: _____

_____
Tre Hargett
Secretary of State